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Of Corruption and Anti-Corruption Strategies in Nigeria: The More You Look the Less You See

By

Sylvester Olubani Fajonyomi

Abstract

Some members of the Nigerian public have expressed their opinion to the effect (that) our anti-corruption crusade in the last four years has been deficient in credibility because it appeared to lack the support of the Federal Executive Council who only rarely expressed their support in public. The situation has to change with the new cabinet. Each and every one of you must do more than give a nodding support for the anti-corruption crusade, to which the government is unequivocally committed. You must all be apostles of the anti-corruption crusade by your deeds and utterances at all times. You must set up anti-corruption units in your ministries and departments. Our determination to fight corruption is infinite, and we will leave no stone unturned.¹

Introduction

The statement above from the President of the Federal Republic of Nigeria is the true reflection of the outcome of the regime's efforts at fighting corruption in its first four years (1999-2003) in office. When Obasanjo was sworn in as the Executive President of the Federal Republic of Nigeria in 1999, after a long period of military interregnum, he promised that:

Corruption, the greatest single bane of our society today, will be tackled head-on at all levels. Corruption ... must not be condoned. ... No society can achieve anything near its full potential if it allows corruption to become the full-blown cancer it has become in Nigeria. ... We shall be firm with them. There will be no sacred cows. Nobody, no matter who and where, will be allowed to get away with the breach of the law or the perpetration of corruption and evil. ... I am determined to make significant changes within a year.²

1. Address by His Excellency President Olusegun Obasanjo At the Retreat for Honorable Ministers and Permanent Secretaries Nicon Hilton Abuja. July 18 - 20, 2003.

2. Inaugural speech by His Excellency, President Olusegun Obasanjo following his swearing-in as President of the Federal Republic of Nigeria, May 29, 1999

In that wise, government since 1999 has established new anti-corruption agencies like the Independent Corrupt Practices and Other Related Offences Commission (ICPC) in 2000, Economic and Financial Crimes Commission (EFCC) in 2002, Budget Monitoring and Price Intelligence Unit (BMPIU) aka Due Process Office in 2003, and the newly established Nigeria Financial Intelligent Unit (NFIU) in 2006, in addition to other pre-1999 agencies like Public Complaints Commission (PCC), Code of Conduct Bureau and Tribunal and other anti-corruption sections in the Criminal Codes of Nigeria.

What is paradoxical about the anti-graft war in Nigeria is that the proliferation of these agencies has not made any meaningful impact on corruption. The international community, as well as ordinary Nigerians, sees corruption as endemic, despite the anti-corruption agencies, among the political, bureaucratic and economic elites. The ineffectiveness of these agencies is reflected in the Nigeria's low rating by the Berlin-based corruption watchdog, *Transparency International* (TI). In its Global Corruption Report 2005, TI listed Nigeria as the 6th most corrupt country in the world and this after occupying the second position for three years, from 2001 to 2004.

This ranking, after six years of anti-corruption war and a number of self-acclaimed successes by the government, calls for serious concern. Could it be that the agencies are actually not living up to their expected role? Or that the successes these agencies claim to have achieved are nothing compared to what the international community and even Nigerians expected them to achieve? Are the citizens even impressed by the government's effort in fighting corruption? Is it that the current approach is wrong? May be Nigerians don't even believe that the government is doing anything serious as it is stated in the President's address quoted at the beginning of this paper. If we go by the remarks of Dr. Kodi, the TI's Regional Director for Africa and the Middle East, corruption is not fought by the executive alone, it can only be fought and sustained if certain institutions are established and empowered to function and this Nigeria has not done.

This paper examines the effort of the Obasanjo administration in combating corruption since its inception 1999. It argues that while the government keeps multiplying its anti-corruption agencies, it has actually neglected other mechanisms that would have made its anti-corruption war effective. The government has wittingly avoided a thorough reform of the judicial system, the police force, and even the transactions in the oil sector. Moreover, the appropriate administrative, financial and economic reforms that are necessary to discourage corrupt tendencies have not been implemented since 1999. More serious is the absence of sustainable development programs that could improve the quality of life of the citizens. Until all these are factored into the anticorruption campaign it will be difficult to win the war in Nigeria.

Conceptual Discourses

To situate this paper in its proper context, it is necessary to define and discuss relevant concepts like ethics, corruption and anti corruption strategy. This will enable me to apply them to the specific Nigerian situation as some concepts change meaning in transit.

The term ethics is often conceived in two but interrelated ways. According to Asobie, ethics is in one sense the science of morals. In another sense, it means a system of morals. As the science of morals it is "concerned with human character or human conduct examined in the light of certain ideals: for instance, the good versus the bad ... As a system of morals, ethics is concerned with the rules of behavior ... standards of social conduct."³

What constitutes good or bad, right or wrong, virtuous or vicious is also relative. It is more of the society's perspective of a particular conduct based on certain established standards that are generally accepted by the society.⁴ Consequently, Akhakpe contends that the question of whether members of a given society behave or conduct themselves ethically, morally or abnormally in the discharge of their duties, will depend on what such societies hold as morally just and ethically decent.⁵ The difficulty in arriving at a social consensus on many issues makes it impossible to equate ethics with whatever society accepts.⁶

Peter Ekeh's theory of colonialism and the two publics in Africa provides one of the most instructive discussions for understanding ethical dilemma in Nigeria. He argues that there are two publics in Africa with two different moral imperatives. The first is the primordial realm, where stealing is a taboo, an act that is almost inconceivable. The second is the civic realm where stealing is not considered as morally wrong as it is in the case by those in the primordial realm.⁷ This line of argument has been used by Daniel Jordan Smith to explore the social reproduction of 'corruption' in Nigeria. In a study conducted among the Igbo-speaking people of Southeast Nigeria, he concludes that the existing networks of kin, community, and interpersonal associations enable Igbos not only to have access to the

3. Asobie A. (2001) Ethics and University Administration, in Olojede, I. and S.O. Fajonyomi (eds.) *Ethics and Public Accountability in Nigeria*. Lagos: A-Triad Associates Publishers for Master of Public Administration Program, Lagos State University, p.44

4. Andre, C. and M. Velasquez (1987) What is Ethics? *Issues in Ethics* - V. 1, N. 1 Fall.

5. Akhakpe, I. (2001). Bureaucratic Corruption in Nigeria. in Olojede, I. and S.O. Fajonyomi (eds.) *Ethics and Public Accountability in Nigeria*. Lagos: A-Triad Associates Publishers for Master of Public Administration Program, Lagos State University, pp. 18-9.

6. Andre, C. and M. Velasquez (1987) What is Ethics? *Issues in Ethics* - V. 1, N. 1 Fall.

7. Ekeh, P.P.(1975) Colonialism and the Two Publics in Africa: A Theoretical Statement". *Comparative Studies in Society and History*. 17 (1) p. 19.

national economy but also to perpetuate an ethic of appropriate redistribution that fuels corruption.⁸

Defining Corruption

There exists substantial ambiguity on what constitutes corruption. This has made an acceptable and wholesale definition of corruption almost impossible. Some studies prefer a "public interest" approach, which argues that any action not in public interest amounts to corruption.⁹ Other studies have privileged the historical and cultural approaches which postulate that once corruption is entrenched in a nation it will be institutionalized through the inculcation of preferences and values of political actors.¹⁰ Another logic that has been used in the study of corruption is the Principal-Agent theory, which sees corruption as basically a relationship between three parties: the public as principal, the public official as agent obligated to fulfill the wishes of the principal, and a third party seeking to have the agent work on their behalf instead. In this model, corruption is explained through institutional determinants of the principal's ability to monitor and hold the agent or his representative accountable.¹¹

Heidenheimer, Johnston and Le Vine, mindful of this ambiguity, contend that corruption can be defined in three ways: 'public office centered,' as a deviation from the requisites of public office, 'market centered,' as rent seeking activity by civil servants, and 'public interest centered,' as action that does damage to the public interest.¹²

This paper will adopt the public office definition of corruption as postulated by Joseph Nye. He says corruption is the "behavior which deviates from the formal duties of a public role because of private-regarding (personal, close family, private clique) pecuniary or status gains; or violates rules against the exercise of certain types of private-regarding influence."¹³ Apart from the fact that this definition supports *Transparency International's* view of corruption as "behavior on the part of public officials—be they elected politicians or appointed civil servants—in which they improperly and unlawfully enrich themselves or those close to them, by the misuse of the power entrusted to them," it also covers, if well operationalized, most definitions and activities that are deemed corruptible. These include among others bribery, nepotism and misappropriation,

8. Smith, D.J. (2001) Kinship and Corruption in Contemporary Nigeria *Ethnos* Volume 66, Issue 3, November 2001, pp. 344-364.

9. Oskar Kurer (2005) Corruption: An Alternative Approach to Its Definition and measurement, *Political Studies* 53 (1), 222-239.

10. Kohli, Suresh. (1975). "The Psychology of Corruption," in Kohli, ed., *Corruption in India*, New Delhi: Chetana Publications

11. See Banfield, E. (1975), 'Corruption as a Feature of Governmental Organization,' *Journal of Law and Economics* 18, 587-605; and Rose-Ackerman, S. 1978. *Corruption: A Study in Political Economy*, New York: Academic Press.

12. Heidenheimer, A.J.; Johnston, M.; and LeVine, V.T. (eds.) (1990) *Political Corruption: A Handbook*. New Brunswick, N. J.: Transaction Publishers.

13. Nye, J.V. (1967). "Corruption and Political Development: A Cost-Benefit Analysis," *American Political Science Review* 61, no. 2, 417-427

unscrupulous performance, undue pressures to influence official decisions and failure to act, intentional deviation for personal gain, and maximizing pecuniary gains.¹⁴

One problem with the public office definition is its failure to see corruption as beneficial to the public in any way. This however may not always be the case. Norlin, in a study on Brazil concluded as follows:

In the classic principal agent model of corruption, citizens cannot observe the public servant's corrupt behavior. ... Middle class voters pay taxes and prefer politicians who spend tax revenue on public goods. Lower class voters do not pay taxes, and prefer public and private goods. Private goods are given from individual politicians to individual voters and typically take the form of basic necessities, such as food baskets.... The empirical results in both cases are consistent with the hypothesis that corrupt politicians receive more votes in electoral zones characterized by lower class voters. In particular, illiterate voters overwhelmingly voted for the corrupt candidate. Middle class zones characterized by relatively higher levels of education voted for the non-or relatively less – corrupt candidate.¹⁵

Types of Corruption

According to Section 3 of the Corrupt Practices and Other Related Offences Act 2003, corruption in Nigeria includes bribery, fraud and other related offences, this includes gratification, where money or donation, gift, loan, fee, reward etc is given or promised to any person with intent to influence such a person in the performance or non performance of his duties. This definition, according to Akinyemi, is deceptively simple, and yet on the other hand it provides a fundamental explanation of the complexity of the concept of corruption.”¹⁶ The United Nations (1989:4) has given a typology of corruption when it states thus:

As regards the various forms of corruption, it was noted that they range from acceptance of money or other rewards for awarding contracts, violations of procedures to advance personal interests, including kickbacks from developments programs or multinational corporation; pay-offs for legislative support, and the diversion of public resources for private use, to overlooking illegal activities or intervening in

14. Caiden, G. E. Toward A General Theory of Official Corruption, *Asian Journal Of Public Administration*, <http://sunzi1.lib.hku.hk/hkjo/view/50/5000279.pdf>. Accessed April 2, 2007.

15. Norlin, K. *Political Corruption: Theory and Evidence from the Brazilian Experience*, Department of Economics, University of Illinois, Champaign-Urbana

16. Akinyemi, Bolaji A (2004) "Corruption : A battle Nigeria must win" in *THE GUARDIAN*, September 1.

the Justice process. Forms of corruption also include nepotism, common theft, over pricing, establishing on- existing projects; payroll paddling, tax collection and tax assessment frauds.¹⁷

In categorizing corruption among public officers, the Criminal Code of Nigeria, has the following categories:

a. Official Corruption: Section 98 of the criminal code of Nigeria states that "Any person who: (a) being employed in the public service, and being charged with the performance of any duty by virtue of such employment 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. gives, confers, procures or promises, or offers to give or confer, or to procure or attempt to procure any property or benefit, of any kind on account of any such act or omission on the part of the person so employed...

b. Extortion By Public Officers: Section 99 of the criminal code states, that "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: Under section 114 of the criminal code, any person, being a judicial officer, that (a) "corruptly asks, receives or obtains, or agree or attempts to receive or obtain any property or benefit of any kind for himself or any other person on account of anything already done or omitted, 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, 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.¹⁸

Causes of corruption

There is the need to examine what causes corruption if an effective anti-corruption strategy has to be developed. The causes of corruption are many. They range from, political and cultural variables, to social diversity, ethno-linguistic fractionalization, the proportions of country's population adhering

17. United Nations Department of Technical Cooperation for Development and Centre for Social Development and Humanitarian Affairs. Corruption in Development, Report of an Interregional Seminar, p.4

18. Ifeanyi, Onuola E.(1999), "The Effective Administration of criminal justice for the prevention of corrupt activities by public officials: The Nigeria position" in *Resources material series* No56. Interpol Section Criminal Investigation Department, Nigeria Police Force.

to different religious traditions'¹⁹ Johnston also notes that corruption is rampant in most non-democratic countries, undergoing democratic consolidation, with weak political and market institutions.²⁰ Corruption is also prevalent in countries where 'neo-patrimonialism,' 'kleptocracy' and 'prebendalism' are the order of the day.

Perhaps, it is Klitgaard (1988) that provides a good model for explaining corruption in transitional democracies. According to him C (Corruption) = M (Monopoly Power) + D (Discretion) – A (Accountability) Put in simpler form, corruption will thrive where there is an increase in the use of monopoly and discretionary powers and an almost total absence of accountability.

A breakdown of the causes of corruption in Nigeria includes the following:

- Obsession with materialism, as social status is determined by what you possess irrespective of the source.
- Poor salaries and incentive system (perhaps the poorest in the world) that is neither commensurate to the work done nor the standard of living.
- Family pressures that give public servants commitments and obligations more than their legal income can accommodate.
- Unreliable, inaccurate and ineffective taxing system which makes tracking down personal income difficult.
- The absence of serious enforcement strategies encourages more people into corrupt practices.²¹

On Anti – Corruption Strategy

Corruption prevails where the existing structures give numerous opportunities for corruption at little or no cost. Anti-corruption strategies therefore are aimed at reducing the opportunities for corruption while increasing the cost. This may however not be an acceptable definition of an anti-corruption agency as there are many of them. Meagher therefore defines an anti-corruption agency as "permanent agencies whose primary function is to provide centralized leadership in one or more of the core areas of anti-corruption activity – including policy, analysis and technical assistance in prevention, public outreach and information, monitoring,

19. Dike, Victor E. (2002) "Corruption in Nigeria: A New Paradigm for effective control" (Internet) Vdike@cwnet.com.

20. Johnston Michael (1998) What can be Done About Entrenched Corruption?" in Boris Pleskovic (ed.), *Annual World Bank Conference on Development Economics* 1997. Washington, DC: The World Bank, pp. 149-180. Johnston Michael (2000) "Corruption and Democratic Consolidation" Being A Paper Presented to The Conference on 'Democracy And Corruption' Shelby Cullom Davis Center For Historical Studies, Princeton University, March 12,1999.

21. For more on this see, Dike, Victor E. (2002) "Corruption in Nigeria: A New Paradigm for effective control" (Internet) Vdike@cwnet.com

investigation, and prosecution.”²² He also identifies six functions that they commonly perform as:

- Receive and respond to complaints
- Intelligence, monitoring, and investigation
- Prosecutions and administrative orders
- Preventive research, analysis, and technical assistance
- Ethics policy guidance, compliance review, and scrutiny of asset declarations
- Public information, education, and outreach.

The World Bank argues that, “any strategy to combat corruption must limit the motives and opportunities for public office holders to abuse their positions. This should be done directly for unilateral corruption, while for multiparty corruption it can also be done indirectly by focusing on the supply side of bribes”.²³

What it means is that there is no optimal anti corruption strategies for all countries since the motives, opportunities and supply side varies from one country to the other. That is why the World Bank continues that, “Although we do not know enough to identify optimal anti corruption strategies for different country situations, there is no one – size – fits – all strategy”.²⁴

To Johnston “Anti-corruption effort should aim not just at detecting, discouraging and punishing particular kinds of corrupt practice ... but also at addressing deeper problems of political and economic development.”²⁵

This according to Johnston would include the following:

INSTITUTIONS:

- Where accessibility of elites decisively exceeds their autonomy, enhance official autonomy by regulating channels of private influence, improving internal bureaucratic management, and enhancing state capacity.
- Where elites’ autonomy decisively outweighs their accessibility, open up channels of mass participation, accountability and bureaucratic access.

22. Meagher, Patrick (2004) “Anti-Corruption Agencies: A Review Of Experience,” The Iris Discussion Papers On Institutions & Development, Center For Institutional Reform And The Informal Sector, At The University Of Maryland, Paper No. 04/02, March.

23. World Bank (1999) “An Anti-Corruption Strategy For Revenue Administration” in *PREM* note October, Number 33.

24. World Bank (1999) Ibid.

25. Johnston Michael (2000) “Corruption and Democratic Consolidation” Being A Paper Presented to The Conference on ‘Democracy And Corruption’ Shelby Cullom Davis Center For Historical Studies, Princeton University, March 12, 1999

PARTICIPATION:

- Where economic opportunities greatly exceed political opportunities, enhance the depth and equality of political competition.
- Where political opportunities greatly exceed economic opportunities, encourage broad based economic growth.

The World Bank Group has recommended what it terms a Multi-pronged Strategies for Combating Corruption. The strategy, which is a departure from the other models which focus mainly on public administration and management reform, take a serious look "at broader structural relationships, including the internal organization of the political system, the relationship between the state and firms, and the relationship between state and society."²⁶

The World Bank approach is very close to the concept of National Integrity Systems (NIS). An integrity system, according to Staphenurst and Kpundeh, embodies "a comprehensive view of reform, addressing corruption in the public sector through government processes such as leadership codes and organizational change and civil society participation through the democratic process, private sector and the media. Reform is therefore initiated and supported not only by politicians and policy makers, but also by ordinary citizens."²⁷

Accordingly, Hong Kong's Independent Commission Against Corruption (ICAC), from where Nigeria seemed to have borrowed its ICPC, is a point of reference when it comes to an effective anti corruption oversight body. Doig remarked that "ICAC is very well resourced, its higher echelons have been staffed with seconded and expatriate officers and it has a very intensive selection and training program. It operates within a relatively well regulated administrative culture alongside a large and again well- resourced police force under a supportive political and legal frame work. It has deliberately developed a highly successful public relations profile, exploiting both mass communications and a media-using population at a time of economic growth."²⁸

A Review of Existing Anti-Corruption Agencies

Successive Nigerian governments have used several mechanisms to combat corruption. This paper will however discuss the following agencies placing particular emphasis on the legal instruments creating them and the problems

26. The World Bank (2000) *Anticorruption in Transition: A Contribution to the Policy Debate*, Washington D.C., p.39.

27 Staphenurst, Frederick and Sahr J. Kpundeh (1998) "Public Participation in the Fight Against Corruption" *Canadian Journal of Development Studies*, VOLUME XIX, NO 3, pp. 491-508.

28 Doig, Alan (1995) "Good government and sustainable anti-corruption strategies: a role for independent anti-corruption agencies". In *Public Administration and Development* Vol. 15, p160.

that make them ineffective. The agencies that make waves now are the Code of Conduct Bureau, the Independent Corrupt Practices and Other Related Offences Commission, the Economic and Financial Crimes Commission, and the Due Process Office.

The Code of Conduct Bureau

The Code of Conduct Bureau was established in 1989 with a specific mandate of establishing and maintaining "a high standard of morality in the conduct of government business and to ensure that the actions and behavior of public officers conform to the highest standards of public morality and accountability." In executing this mandate, the Fifth Schedule of the 1999 Constitution of the Federal Republic of Nigeria confers the following powers on it:

- To receive declarations by public officers under paragraph 12 of part I of the Fifth Schedule of the Constitution;
- To examine the declarations in accordance with the requirements of the Code of Conduct or any law;
- To retain custody of such declarations and make them available for inspection by any citizen of Nigeria on such terms and conditions as the National Assembly may prescribe;
- To ensure compliance with and, where appropriate, enforce the provisions of the Code of Conduct or any law relating thereto;
- To receive complaints about non-compliance with or breach of the provisions of the Code of Conduct or any law in relation thereto, investigate the complaints and, where appropriate, refer such matters to the Code of Conduct Tribunal;
- To appoint, promote, dismiss and exercise disciplinary control over the staff of the Code of Conduct Bureau in accordance with the provisions of an Act of the National Assembly enacted in that behalf; and
- To carry out such other functions as may be conferred upon it by the National Assembly.²⁹

The law, to the best wisdom of its architects, did not have retroactive powers as it was not empowered to investigate most of the period under the military rule i.e. from 1989 to 1999. At inception the Bureau only had the power to accept the declaration of assets as presented by the affected public officers and not the power to investigate such declaration, thereby giving room for false declaration as the case may be.

Even if the Bureau decides to investigate certain cases, it lacks the wherewithal to do such. According to the Secretary of the Bureau, "In the

29. Saba, Sam (2001) "Nigeria Code of Conduct" *International Anti-Corruption Newsletter*, July.

year 2000 for example, a total of 90,554 forms were issued and 44,762 completed and returned into the custody of the Bureau. In the same year, details of a total of 1,363 defaulters were forwarded to the Code of Conduct Tribunal.³⁰ As recent as last year, the Bureau accused some governors of violating the Code of Conduct law by holding foreign bank accounts. Up till now, the affected governors have not been prosecuted. Even when defaulters are prosecuted, they go away with light sentences as we had in 2004 when options of fine were granted to most of the convicts instead of a more serious punishment of banning from holding any public office for ten years³¹. This for sure can not deter future offenders.

The Chairman of the Bureau in a nationwide television program, *NTA Scorecard*, aired on Sunday 23 January 2005 (8.00 – 9.00 P.M.), specifically highlighted the major problems of the agency to include: One, the residency of the Bureau in the Executive Branch of government instead of the Judiciary where it will be more independent. Two, the total absence of administrative, operational and financial independence of the Tribunal also disturbs its operations. A situation where the Tribunal goes cap in hand to beg for funds from the executive has also impaired its operation.

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

The ICPC was to be the arrow head of Obasanjo's war against corruption as announced by the President in his inauguration speech. The ICPC has the duty to:

Where reasonable grounds exist for suspecting that any person has conspired to commit or has attempted to commit or has committed an offence ... or any other law prohibiting corruption, to receive and investigate any report of the conspiracy to commit, attempt to commit or the commission of such offence and in appropriate cases, to prosecute the offenders.

It is also vested with the powers to educate, prevent, detect, investigate and prosecute all offences under the Act. In fact, sections 8-26 of the ICPC Act clearly detail such corruptible offences and corresponding penalties which range from 1 to 7 years. The Commission was given enormous powers in the execution of its functions. In fact, it has the power not only to tap telephone lines but also to freeze bank accounts of suspects.

Arising from the above, one would have expected the commission to bring the scourge of corruption under check in the country. This was not to be. The reasons are not far fetched. On the fourth anniversary of the establishment of the commission on June 13, 2004, and also while presenting a paper titled "Is ICPC a Toothless Bulldog?" at a three-day summit on Corrupt Practice and Financial Crimes, organized by the House of Representatives, the Founding Chairman, Justice Akanbi, highlighted the problems that have not made the commission to live up to the bidding of

30. Saba, Sam. Ibid

31. This Day, March 28, 2005

Nigerians and the international community. The major problem is the "inadequate political will to help the commission achieve its mission." The inadequate political will is visible in several respects. There seems to be a calculated attempt to frustrate the activities of the commission through financial strangulation. The annual budgetary allocation to the commission is just N500 million as against N2 billion being requested by the Chairman. This is grossly inadequate because according to Justice Akanbi, "Investigating governors and other top people involved sending investigators abroad. ... When you file a case in court, the fees for the counsel are enormous."³² The impact of this is evident. In its first four years of existence, the Commission received 1,270 petitions but has only been able to investigate 608 of them while only 34 were charged to court as a result of shortage of finance.³³ Second, the Obasanjo administration saddled the Commission with what its chairman described as a very limited jurisdictional power. The law establishing the commission forbade it from investigating previous military regimes under which tenures corruption assumed a wider dimension in Nigeria and this no matter the amount of evidence against them."³⁴

Lastly, the commission has the judiciary to contend with and this has actually crippled it from prosecuting or convicting highly placed public officials. As at March 2006, the Commission claimed to have received enough evidence to prosecute 24 State Governors in the law courts. This is not possible however, because the law setting up the ICPC in Section 52(1) requires that the Commission forward such requests to the Chief Justice of Nigeria (CJN) who will now "authorize an independent counsel (...) to investigate the allegation and make a report of its findings to the National Assembly in the case of the President or Vice President and to the relevant State House of assembly in the case of the State Governor or Deputy Governor." This provision actually has stalled the prosecution of many of these governors, including the former Bayelsa State Governor.

Economic and Financial Crimes Commission (EFCC) Act 2002

The EFCC as it is commonly referred to is the most outstanding of all the anti-corruption agencies in Nigeria in terms of power, functions, efficiency, publicity and operation. The reasons for this are not far fetched. On one hand, it is an inter agency Commission in that it is the co-coordinating agency for the enforcement of all economic and financial crimes laws in the country. The Economic and Financial Crimes Commission, is charged with the following responsibilities among others;

- Enforcement and administration of the Act in the overall context of preventing, detecting, investigating and prosecuting all cases of economic and financial crimes in Nigeria.

32. *Vanguard Newspaper*, June 17, 2004

33. *Vanguard Newspaper*, June 17, 2004

34. *Vanguard Newspaper*, June 17, 2004

- Charged with the responsibility of enforcing other laws and regulations relating to economic and financial crimes including;
- Money laundering Act of 1995.
- Advance Fee Fraud (otherwise known as 419) and other Related Offences Act of 1995.
- Failed Bank (Recovery of Debts) and Financial Malpractices in Banks Act of 1996.
- Banks and other Financial Institutions Act of 1991
- Miscellaneous Offences Act, 1985.
- In addition, the Commission is the key agency of government responsible for fighting terrorism and terrorist financing.³⁵

On the other hand, the EFCC enjoys both the financial and administrative support of not only the Federal Government, but also those of international agencies such as INTERPOL, FBI, UNODC and FATF. The former chairman of ICPC remarked this support when its agency was accused of not performing as well as EFCC. According to him, EFCC has a 'wider range of power. So, there is no basis to compare us with EFCC. Number one, the Chairman of EFCC is an executive chairman ... Two, EFCC has money. They get money from even outside the country. We don't have.'³⁶

With the type of support above one should not be surprised at the level of performance of the agency in its few years of existence. The Chairman of EFCC is always ready to read a litany of the agency's achievement. These include: the recovery of money and assets derived from crime worth over \$700 million, the arrest of virtually all the notorious Advance Fee Fraud kingpins with over 500 suspects in custody while most of them are standing trial in the various high courts in the country, the recovery of revenue of over N20 billion Naira for government, and the continuous campaign against economic and financial crimes, which has brought relative stability in the financial industry.³⁷

Of recent however, the Commission has been accused of being a tool in the hand of government to witch hunt members of the opposition and those that have fallen out of favor with the President. A national newspaper, *The Punch*, in its Editorial of Friday March 23rd 2006 specifically queried the selective manner in which the EFCC chooses those he investigates or prosecutes. The paper listed the agency's cases against 2007 Presidential hopefuls like Buba Marwa, Orji Kalu and Bashir Dalhatu, while close associates of the President like the Vice-Chairman (South West) of the President's ruling Peoples Democratic Party (PDP) were not investigated despite allegations of corrupt practices against the Nigeria Ports Authority (NPA) when he was the Chairman of its Board. The opinion expressed by *The Punch* is representative of the general public who sees some people as

35. Ribadu, Nuhu Esq (2005) Implication of Economic and Financial Crimes On The Nation's Economy, <http://www.efccnigeria.org> accessed 07/04/2006

36. Obineche, Chidi (2005) Judges are frustrating us – Justice Akanbi www.onlinenigeria.com Posted To The Web: Tuesday, May 17, 2005

37. Ribadu, 2005

being exonerated from investigation while serious search light is beamed at others.³⁸

Budget Monitoring and Price Intelligence Unit

The Budget Monitoring and Price Intelligence Unit (BMPIU), also known as Due Process Office, was established in June 2003 to inject a new impetus into the government's war on corruption. Its core function was to sanitize the procedure for the award and execution of government contracts that had hitherto served as drains for public funds. The objectives of the Due Process Office include to:

- Harmonize existing government policies/practices and update same on public procurement.
- Determine whether or not due process has been observed in the procurement of service and contracts.
- Introduce more honesty, accountability and transparency into the procurement process.
- Establish and update pricing standards and benchmarks for all supplies to government.
- Monitor the implementation of projects during execution with a view to providing information on performance, output and compliance with specifications and targets.
- Ensure that only projects, which have been budgeted for, are admitted for execution.

The BMPIU in its short period of existence has been able to introduce some sanity in the way government contracts are tendered for, awarded and executed. The establishment of the Office of Due Process and its efficient monitoring system has resulted in savings of six hundred million dollars (\$600m) for government³⁹. Surprisingly, there is no record of the Due Process Office ever taking anybody to court for over invoicing, false contract claims etc despite its avowed blockage of several billions of false claims in the National Stadium Abuja contract verification exercise or any other exercise it has conducted.

Looking Deeper

It is interesting to discover, when a closer look is taken, that the efforts of government in combating corruption peter as a result of the absence of a virile judicial system, a badly motivated police force, an economic

38. Okey Ndibe writes "The EFCC and its chairman, Nuhu Ribadu, appear too tethered to Aso Rock, constantly looking to the presidency for directives on who to probe and prosecute and who to let free. If the agency is to discharge its mandate, then it must establish its independence" See "Is Ribadu a yeoman?" *THE GUARDIAN*, Thursday, September 8, 2005, p.65.

39. See "Due process unit foils N150 billion contract fraud" *THE GUARDIAN*, Thursday, February 2, 2006, p.6

development program that is not sustainable and absence of transparency and accountability in government operations. Most of the reforms embarked upon by the regime to put in place the necessary institutions that could make the reforms enduring are not carried to conclusive ends. On the whole, enormous doubts persist on the sincerity of government in the war.

The Judicial System

The idea that the judicial system is in order and can successfully prosecute the anti-corruption war becomes hard to sustain when all the anti-corruption agencies point accusing fingers at how the judiciary handles those cases that are referred to it. In fact, the Economist Intelligence Unit (EIU) appropriately describes the state of the judiciary when it writes that: "the judicial system is still deeply undermined by corruption and hugely under funded. This has resulted in poor administration of justice, including long delays in the hearing of cases ..." Nnaemeka Agu, a Justice Emeritus of the Supreme Court, noted: "It is accepted all through the democratic world that no Nation can have a Judiciary better than the one it can pay for. This is because an impecunious Judiciary cannot attract the best legal brains that the country can afford; an ill-equipped Judiciary will lack the necessary Law books, periodicals and Library which are the tools of trade of a good judge; a poorly paid and ill-equipped Judge can be susceptible to corruption and bound to be a worker with low morale."⁴⁰ This is reflected in the number of cases that are pending in several courts in the country. Cases drag for so long to the extent that people forget them and they die out naturally. The first celebrated case of corruption that was charged to court by ICPC involved a former Minister of Internal Affairs Chief Sunday Afolabi and five others over \$214 million (USD) National Identity Card fraud. Since 2003 when the case started nobody has been convicted despite the overwhelming evidences that were made public. As at 2005, the ICPC and EFCC have about 78 and 102 cases respectively pending in various courts across the country.

Other cases that pervert the war on corruption was the one in 2002 involving a Permanent Secretary in the Ministry of Defense and others who were alleged to have embezzled N450 million. As the case was being prosecuted, the Minister of Justice entered a nolle prosequi. Since then, nothing has been heard on the case. A similar pointer to the attitude of the courts to the fight against corruption is the ruling by the High Court in Abuja, on 29th April 2005 discharging two Senior Advocates of Nigeria, a former Commissioner in the Independent Electoral Commission INEC and her son on corruption charges brought by the ICPC. What was surprising in this case was that they were discharged without any application by the defense counsel. The case of the former Inspector General of Police, Tafa Balogun, who was accused of embezzling billions of naira from police funds and who was just given six months jail term is another case in point⁴¹

40. Cited in Godzama, "Challenges of national socio-economic reforms to the judiciary" *THE GUARDIAN*, Tuesday, April 25, 2006, p.68.

41. See Olu Onagoruwa, "Beyond Tafa Balogun's conviction" *THE GUARDIAN*, Wednesday, December 14, 2005

The Police

Another major pillar of a successful anti-corruption war is the police. Unfortunately, the Nigeria Police Force has been adjudged as the most corrupt government parastatal in the country. In a survey conducted by the World Bank, the police share the position with the government electricity generating company, Power Holding Company of Nigeria (ICPC). Corruption in the police is a very serious issue if the war against corruption must be won. This, according to Alemika, is for three significant reasons. First, the police is expected to be the moral as well as the law enforcement agents. If the police whose duty is to prevent and detect corruption, and bring culprits to judgment is itself stinking corrupt, the society's crusade against corruption is guaranteed to fail. Second, the police exercise powers that have profound implications for the life, property, safety and freedom of citizens. Where the exercise of such powers is contaminated by corrupt motives, the citizens feel exceedingly vulnerable, insecure and powerless. Third, police corruption is often tantamount to extortion, a form of robbery or demand with force. In many circumstances, police brutality is a means of coercing individuals to succumb to demands for bribes, and at some other time, it is a punishment for not cooperating with the police in their demand for gratification⁴².

While not exonerating the police from its corrupt tendencies, the government also has a big part of the blame to share. Government is quite familiar with the pathetic situation of the police in Nigeria. The operational problems of the police have been well discussed by *Human Rights Watch*, 2006. These range from inadequate manpower, both in terms of quantity, but more especially of quality, inadequate funding, poor remuneration and general condition of service, inadequate training and deficient syllabi which places too much emphasis on law enforcement and order maintenance without adequate liberal and broad training that can illuminate the nature and sources of law and criminality to more serious ones like poor resource management, inadequate logistic, arms and ammunition, uniform and accoutrement, telecommunication and transportation facilities - both in terms of quality and quantity, inadequate office and residential accommodation, un-hygienic working environment. low commitment, lack of integrity, etc. It will not be too much if substantial funds committed to fight corruption is invested in the development of the police. *Human Rights Watch* in its remark on police reform advised that "President Obasanjo must publicly endorse efforts to reform and fund the development of the police with the same zeal he has thrown behind the anti-corruption drive. Obasanjo's prominent role on the regional and international stage, particularly as a continental peacemaker, does not sit comfortably alongside the reputation of his police force."⁴³

42. Alemika, E. E. O. (1999) "Police Community Relations in Nigeria: What Went Wrong?" Paper Presented at the Seminar on Role and Function of the Police in a Post-Military Era, Organized by the Centre for Law Enforcement Education in Nigeria (CLEEN), and the National Human Rights Commission (NHRC) at the Savannah Suite, Abuja, F. C. T., from 8th to 10th March, p.10.

43. Human Rights Watch (2006) Nigeria: "Rest in Pieces": XI. Police Reform, Human Rights Watch Publications. www.hrw.org sighted 02/05/2006.

The Government Economic Program

The situation of the Nigerian economy and the measures taken so far to revamp it has not helped the anti-corruption war. The former Minister of Finance, Okonjo-Iweala remarked:

... the Nigerian economy has all the characteristics of a post-conflict economy or an economy in low-grade conflict. Virtually every sector is in difficulty, everything needs to be done, and social and economic indicators do not look promising. Education is in shambles, quantity and quality-wise, health systems and health infrastructure are of poor quality, basic infrastructure is severely degraded or non-existent in many areas, and there is limited access to the basics of light, clean water and passable roads; the productive sectors – agriculture and manufacturing – are suffering and, in essence, the structure of the Nigerian economy has changed little if at all in the past three decades since oil became the dominant sector.⁴⁴

The above facts are confirmed by the UNDP assessment of Nigeria's economy. Nigeria has a disappointing level of economic development with a GDP of about \$45 billion in 2001 and a per capita income of about \$300, ranking her one of the poorest countries in the world. Overall, the economy is characterized by low savings-investment equilibrium (at less than 20 percent), and low levels of industrialization and exports. With an average annual investment rate of barely 16 percent of GDP, Nigeria is far behind the minimum investment rate of about 30 percent of GDP required to reach a growth rate of at least 7-8 per cent per annum required to achieve the Millennium development goals by 2015. Most of the foreign direct investment (FDI) into the country is geared to the oil and extractive sectors. Thus, the economic structure remains undiversified and oil exports accounts for 95 percent of total export earnings, while manufacturing sector accounts for less than one percent.⁴⁵

The abysmal performance of the economy should not be of much surprise given a number of institutional problems like: macroeconomic policy inconsistency, instability and policy reversals, conflicts of macroeconomic policy goals, public sector dominance in production and consumption, and pervasive rent seeking and corruption occasioned by government being the hub of economic activities. Other problems include infrastructure inadequacy and decay, high volatility of major macroeconomic aggregates, weak institutional capacity for economic policy management and coordination, non-sustainability of public finance at all

44. *The Guardian*, Tuesday, April 8, 2003, pp.69-70

45. UNDP (2005) Nigeria Development Profile March 2004
www.undp.org.ng/abngal.htm sighted 4/5/2005

levels of government, lack of effective coordination among the tiers of government, and a large debt overhang.⁴⁶

An attempt at correcting this trend made the federal government to introduce an economic framework, National Economic Empowerment and Development Strategy (NEEDS), and its state level counterpart, State Economic Empowerment and Development Strategy (SEEDS). The main thrusts of the reforms are four:

- Reforming government institutions and to restructure and strengthen government
- Growing the private sector by reducing the influence of government in the economy and accelerating the privatization, deregulation and liberalization program
- Implementing a social charter to improve people's access to health, education, welfare, employment, security and participation
- Value re-orientation including anti-corruption, freedom of information and enhancing the role of civil society.

Roughly three years after the commencement of the implementation of NEEDS, there is practically nothing evident on ground that could discourage corruption, the program has actually aggravated it. *Constitutional Rights Project*, a Nongovernmental organization, appropriately describes the result of governments economic reforms thus: "Despite President Obasanjo's economic revival and pro poor programs, the social well being and the economic fortunes of the populace seems to be on a steady decline, the desired investment-friendly environment is lacking, due largely to corruption in the system. The teeming masses today complain of economic downturn and decreasing purchasing power – basic necessities of life: food, clothing and shelter are becoming increasingly expensive and luxury items, Government officials are unashamedly telling the masses that basic ingredients, such as kerosene, are no longer for the poor but the rich."⁴⁷

In the country, every household runs its own security outfit, provides water for daily use, generates its own electricity, and pays exorbitantly for basic and tertiary education. The general belief one would argue is that if government could not provide these services, citizens must do it at the expense of government via corruptible practices. As at today, government has still not accepted that its Poverty Alleviation Program has yielded no benefit to the common man. In a Seminar organized by the government to discuss poverty problem in Nigeria, the Executive Director of National Poverty Eradication Program, Dr. Magnus Kpakol, claimed that its agency had been able to reduce poverty level from 70 percent in 1999 to 54 percent in 2005. In a swift reaction, the Speaker of the House of Representatives contested the figures and submitted that instead of reducing, poverty rate in

46. UNDP Ibid.

47. *Constitutional Rights Project* (2006) *Our Rights. The Corruption Virus!* The Guardian, Tuesday, April 25, p.11.

Nigeria had actually increased.⁴⁸ In this type of situation, Peter Ekeh's theory of the two publics comes handy.⁴⁹ Citizens don't bother when the loot comes from government, as it would be shared among the members of the local community as gains from an enemy that has failed to understand their problems. It is these corrupt public officials that provide boreholes to supply water to their community, generators to provide them with electricity and even scholarships to their children that could not be accommodated in schools because of unfavorable government policies. It becomes difficult as such except for personal political gains for natives of the same area to report their kinsman who is involved in glaring corrupt practices. More disturbing is the fact that when public figures are accused of corruption, their kinsmen see it as an assault on their tribe. This was demonstrated in the ways Governor Joshua Dariye of Plateau State and former governor of Bayelsa State, Chief DSP Alamieyeseigha were received back in their states by the people after jumping bail in London where they were both facing money laundering offences.

Absence of Transparency and Accountability in Government Operations

The Civil Society that could have assisted in the war against corruption has been incapacitated to a large extent by the total absence of transparency and accountability in government operations and the failure of government to pass the Freedom of Information Bill.⁵⁰ More than three years after the bill was presented to the National Assembly, it has not seen the light of the day. Official transactions in Nigeria take place under "Confidentiality", "Top Secret," "Restricted," etc. because civil servants operate under the Official Secret Act (OSA) of 1962 and this forbids civil servants from divulging any information they come across in the exercise of their duties. A government that is serious in fighting corruption should have made the passing of the bill the first step so as to lead by example. Every attempt by private individuals to access the Declaration of Assets forms of public officials, no matter the level, has been rebuffed even by the law courts. Of more serious implication is a statement by the President, while defending allegations of corrupt enrichment against him, that his Obasanjo Farms at Ota, earns N30 million per month. In a corrupt free environment, it would have been more

48. *Nigerian Tribune*, Thursday May 4, 2006

49. Ekeh argued that there are two publics in Africa with two different moral imperatives. In the primordial realm, which is the first, stealing is a taboo, an act that is almost inconceivable whereas to steal from the civic realm which is the second is not considered as morally wrong by those in the primordial realm. See Ekeh, P.P.(1975) *Colonialism and the Two Publics in Africa: A Theoretical Statement*". *Comparative Studies in Society and History*. (17) 19.

50. For more on civil society and public accountability in Nigeria, see Fajonyomi, S. O. (2001) "Civil Society and Public Accountability in Nigeria," in Olojede, I and S.O. Fajonyomi (eds) *Ethics and Public Accountability in Nigeria*, Lagos: Master of Public Administration Program, Lagos State University, pp. 1-16.

appropriate for the President to state how much the farm pays as tax to the local government, state government and even the federal government. More interesting would have been the declaration of the President's salary from the farm.

This is where the problem lies. Top public officials get themselves involved in big businesses, earns fat money in kick backs or "donations" and yet this is not accounted for anywhere and nobody can ask any questions. Even when official panels are set up to investigate serious cases of embezzlement and fraud, the reports of such committees are kept as official documents and their recommendations are hardly implemented. A case in point is the Okigbo Panel Report that investigated how a whopping \$12.4 billion windfall from the first Gulf War was squandered by General Babangida and the then Governor of the Central Bank. Up till today the copy of that report can not be made available to the public by the present administration. The impact of this on the anti-corruption war is not negligible. *The Punch* newspaper in its editorial to President Obasanjo remarked in no mean terms:

As your Excellency presumably knows, the Secretary to the Government of the Federation, Chief Ufot Ekaette, was the Secretary to the Okigbo Panel set up in 1994 to investigate how the military regime of General Ibrahim Babaginda spent the extra oil earnings from the Gulf War in 1994.... *Punch* believes that bringing the document to the public domain, where it rightly belongs, is not only consistent with the cardinal principle of your administration already mentioned (i.e. the anti-corruption crusade) , but such a step will strengthen public confidence in the outcome, efficacy and utility of official enquiries, now and in the future.⁵¹

This has been the fate of similar committees, panels, tribunals and commission of inquiries that have been set up in the country to investigate corrupt practices.⁵² All the three tiers of government receive substantial amount of money from the federation account every month without any corresponding expenditure profile. In year 2006 alone, the three tiers had shared N267 billion in January, N252.83 billion in February, N300 billion in March, and N232 billion in April. This represents a huge sum and yet poverty remains all over. The absence of freedom of information prevents citizens from asking questions as to what has become of these monthly allocations at federal, state and local government levels.

51. *The Punch*, November 10, 2003

52. Okojie and Momoh, 2005 provide a catalogue of such panels and commissions. See Okojie, Paul and Abubakar Momoh (2005) Corruption and the Crisis of Development in Nigeria. Paper presented at the Conference on 'Redesigning the State? Political Corruption in Development Policy and Practice', held at Manchester Metropolitan University, 25 November, 2005: 14-19).

Conclusion

The war on corruption in Nigeria is being fought with 'rigor' since 1999 when Obasanjo assumed office as the President of the Federal Republic. The fruits of the war are visible in the various agencies like ICPC, EFCC, BMPIU and NFIU. In reality, however, the opposite is the case. Daily, reports from newspapers indicate that one form of corruption or the other take place in government ministries and departmental agencies. As at the time of concluding this article, there are reports that the federal government in its attempt to prolong the tenure of President Olusegun Obasanjo, has been distributing N50 million and N40 million to Senators and members of the House of Representatives respectively to influence the debate in the National Assembly for the purpose of amending the 1999 Constitution to favor such tenure extension.⁵³ Despite denials by the Minister of Information, this is a pointer to one of the leakages in the avowed war on corruption in Nigeria.

As if that was not enough, the celebrated Petroleum Trust Development Fund (PTDF) scandal involving the President (government) and the Vice President has further exposed the insincerity of government in its anti-corruption war. Up till now, no serious proof has been offered by the Presidency to exonerate itself from various expenses authorized by the President for purposes other than for which the fund was established. The indictment of the Vice President by an administrative panel set up by the President under the chairmanship of the minister of Justice and Attorney General of the federation is considered as a diversion from the real investigation that such an act of corruption deserves.⁵⁴

Consequently, the anti-corruption agencies in Nigeria may well be multiplied, but they will not end up reducing the level of corruption in the country. Just as Williams has concluded, "in too many cases, the problem is a non-problem in that far from attempting to improve the situation, governments, or at least major parts of them, are the problem. Anti-corruption campaigns then degenerate into political rhetoric designed more to appease foreign donors and international financial institutions than to address the major issues."⁵⁵ The major issues in this case are the absence of the rule of law, transparency and accountability, good quality of life and sustainable socio-economic development programs that could benefit the majority of the people.

53. *The Punch*, Tuesday, May 09, 2006, Front page

54. See Uzo Chinyere 2007 Atiku as a clever diversion! *Daily Sun* Thursday, March 15.

55. Williams, R. (1987) *Political Corruption in Africa*, Gower, Aldershot, p.125