BEYOND CHALLENGES TO COMBATING CORRUPTION: QUEST FOR MULTI-PERSPECTIVE APPROACHES

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Abstract

This paper is a critique of the challenges to combating corruption against the backdrop of understanding the fact that combating corruption defies a mono-discipline approach. This is hinged on the idea that there is need for an all-inclusive approach, capable of accommodating the cumulative tendencies operating to impose a holistic effect on the concerted efforts, together with sensitizing the general society of the overall menace of corruption not merely in the society but extending to and not limited to the state and family institutions. Furthermore, an effort will be made to critically examine the identified challenges connected with the theories and socio-legal perspectives that must act accordingly to accommodate the role and impact of state officials, professionals, global and institutional arrangements. Against this backdrop, the paper explores the function of many and varied segments of the society in redounding to the stalemate affecting the overall success of combating corruption. The author posits that a successful resolution of these issues will operate to illuminate on the

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necessary approach fundamental to checking corruption. The author therefore maintains that laws can work better if they are enforced. There must be a resolve to enforce legislations as well as ensuring positive action on corruption by denying corrupt leaders a chance to secure stolen resources in any country. There is also the call for positive action on corruption to thwart its attendant social effects and to ensure that vital information is not fettered or diverted by corrupt officials to promote criminals or criminal syndicates, but however, employed to benefit the law enforcement authorities.

Introduction

A critique of the examination of the challenges to combating corruption defies a mono discipline approach. Rather, it must reflect on the multifarious perspectives which cumulatively operate and, tend to aid and generate a holistic effect on the concerted efforts, together with sensitizing the general society, of the overall menace of corruption not just in the society but extending to and not limited to the state and family institutions. This effort will be achieved by critically examining challenges connected with theories and socio-legal perspectives which must act accordingly to accommodate the role and impact of state officials, professionals, global and institutional arrangements.

It is stated that the unique effort to enforce the law and/or diligently pursue international initiatives against corruption and money laundering produces several challenges too significant to be ignored. There is the jurisprudential argument that the menace of corruption lacks exact precision in law. This is normal for jurisprudence hinged on the reality that morality is notionally sectional and universally relative. The interaction of law in human society produces multifarious factors. What is perceived as morally wrong in one jurisdiction may be allowed in another jurisdiction

and therefore, apparently, consequently produces an attendant effect with the implication of bringing the subject of ethics in human society, which has been and remains value-free, to the front burner.[1]

Flowing from the above, it is observed that the conception of corruption raises critical and fundamental questions regarding the relationship between the state and society on the one hand, and wealth and power on the other.[2] Furthermore, the psychological make-up of the populace is equally tasked.[3]

There are varieties of arguments, emanating from the regime of social sciences to the tune that corruption is a social indulgence perpetrated by individuals and organisations. In fact, this argument tends to support the fact that it is difficult to curb corruption in the society.[4] Indeed, it is a difficult task to measure the connection of these social actors.[5] Quite recently, several organisations have developed a corruption perception index,[6] across several countries for the purpose of qualitatively assessing the pervasiveness of corruption.[7]

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1 Its goodness or badness is irrelevant and immaterial. See generally, Anya K A, 'Moral Rules, Effective Laws and the Nigerian Society,' Vol. 7, *Igbinedion University College of Law Journal,*, 2008, Pp. 68-79

2 Otusanya Olatunde, Corruption as an Obstacle to Development in Developing Countries: A Review of Literature, *Journal of Financial Crime,*, 2011, p. 8

3 This requires wide output of vagaries of opinion tending to question and challenge conducts less than transparent by not only public officials but also the private sectors.

4 Otusanya, Corruption as an Obstacle to Development in Developing Countries: A Review of Literature, *Journal of Financial Crime,*2011, p. 8

5 See generally the submission of writers such as Okogbule S N,'Official Corruption and the Dynamics of Money Laundering in Nigeria,' *Journal of Financial Crime* (2007) andDion Michael, 'What is Corruption Corrupting? A Philosophical Viewpoint, *Journal of Money Laundering,* 2010, Pp. 11, 14, See Chapter 2, for a review of the literature.

6 [Hereafter, CPI]

7 It should be noted the effort of the Berlin based (German) Non-governmental organization in publishing the most comprehensive index in at

However, there have been terse comments against the CPI. At one level, it has been recognized that CPI has been an important improvement in raising public consciousness on corruption and for promoting reforms. At another level the CPI has been criticized for the quality of its transparency survey methodology which showed only one end of the corruption equation, namely the receiving end, while being adamant the private sector (the bribe payers).[8]

Furthermore, a review of the literature on corruption reveals that series of theoretical frameworks have been used to analyse the incidence of, and recorded growth in, corrupt practices in recent years.[9] Easily identified amongst the most common theories which have dominated corruption studies in the socio-political and economic literature are: capitalism, using capital accumulation as a theoretical lens; state theory, based on class theory; policy choice; and a public choice approach.[10] In this context, some studies have used theories of modernisation and political development,[11] while others concentrated on examining corruption from the angle of cultural theory and globalisation,[12] virtues ethics and 'governmentality framework.'[13]

Discourse on the regime of corruption has been focused on series of methodological frameworks in order to show the practice as a social and a political problem.[14] Significantly, anti-social practices cannot easily be perpetrated without the contribution of

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least 163 countries of the world.

8 Otusanya (2011), supra, note 4 quoting the OECD Observer, at p. 8

9 Ibid.

10 Ibid.

11 Huntington L Samuel, *Political Order in Changing Societies* (Yale: University Press, New Haven)1968,P. 118

12 Okogbule S N: Official Corruption and the Dynamics of Money Laundering in Nigeria, Journal of Financial Crime (2007), Citing Sikka, supra, note 6 at p. 12

13 Otusanya, Corruption as an Obstacle to Development in Developing Countries: A Review of Literature, 2011, *Journal of Financial Crime*,, p. 8

14 Ibid.

intermediaries and professionals who assist the perpetrators in converting the proceeds (illegal monies and properties) from illicit activities to a legitimate income.[15]

The Role of Professionals in the Regime of Corrupt Practices

One of the greatest challenges in fighting corruption is the role of professionals such as lawyers, accountants and bankers. This group of people usually acts as intermediaries who execute key roles in facilitating financial flows.[16]

I. Accountants and Anti-social practices

Ordinarily accountants' primary role has been executed as external watchdogs of shareholders' wealth and as protectors of the communal interest. However, due to heuristic changes in the society, accountants have deviated from their primary role and become involved in what has been defined as harmful and anti-social conduct purely for the sake of high fees.

Many research studies have reflected on the role of accountants and accounting firms in cases of financial crime. These studies revealed that accountants, in order to boost profits facilitate bribery and corruption, and orchestrate the setting up of shell companies, complex corporate structure and a web of offshore companies and offshore trusts.[17]

II. Lawyers

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[15] Okogbule S N, Official Corruption and the Dynamics of Money Laundering in Nigeria, *Journal of Financial Crime* (2007), citing Bakre, supra, note 6 at p. 78

[16] Recent scholarly works on corruption reveals that professionals are facilitators of corrupt practices. See generally, the US Senate Sub-committee on Investigations carried out in 2003, 2005, 2006, 2008, and even in 2013. These committees report that professionals such as accountants, lawyers and bankers or financial intermediaries, have helped Multinational Corporations, wealthy individuals and political elites in perpetrating anti-social practices.

[17] Otusanya, Corruption as an Obstacle to Development in Developing Countries: A Review of Literature, 2011, *Journal of Financial Crime,,* p. 8

This category of professional has been acknowledged as another 'aids' in perpetrating financial crimes. They have been variously accused of aiding in patronage of the tax avoidance industry.[18]

Lawyers have aided in creating offshore structures, drafting financial instruments and providing legal opinions justifying offshore transactions and acting as nominee directors and shareholders.[19] According to Otusanya, a good number of other studies have cited examples where lawyers have been actively involved in anti-social practices ranging from posing as 'messenger boy' for their clients and serving conflicting interest. For instance, one of the most famous class-action law firms in the USA was indicted on charges that it paid more than $11 million in kickbacks to clients who agreed to act as lead plaintiffs in dozens of corporate cases.[20] Furthermore, the US Senate Sub-committee on Investigation Report on Law firms and Tax haven abuses reported that 'apart from giving legal advice, the lawyers helped identify and negotiate with offshore service providers to establish and manage offshore corporations, devised ways to move assets offshore and drafted the paperwork needed to execute these transactions for their clients.'[21]

In Nigeria, there is the subsisting case of Senator Bukola Saraki-the Senate President, at the Code of Conduct Tribunal for inconsistencies in declaration of assets during Saraki's tenor as Governor of Kwara state in 2003.[22] In this case, lawyers are also at the centre stage, performing both normal and abnormal services to their respective clients.

III. The Banks

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18 US Senate Sub-committee, supra, note 499 at p. 238

19 (2006) Ibid

20 Otusanya, Corruption as an Obstacle to Development in Developing Countries: A Review of Literature, *Journal of Financial Crime,*, 2011, p. 8

21 Ibid.

22 The case is still pending and attracting all forms of ridicule both to the Court and the Defendant.

The banks have been accused of aiding corrupt practices by serving as the conduit through which illegal funds or 'dirty' money flows around the world. Ordinarily, it has been argued that banks are major vehicles for economic development through the provision of funds for both the private and public sectors in an economy, and yet they have been recognized as facilitators of corruption. For instance, in Nigeria, former Managing Directors of Oceanic and Inter-continental Banks were arraigned for corrupt practices by the EFCC during the Obasanjo's Administration.

Finally, it has been demonstrated the challenges caused by professional members in the concerted and continuous struggle against corrupt practices, both in Nigeria and other jurisdictions. The challenges from professional members redound in no small measure in aiding and frustrating systemic efforts made to combat corrupt practices. By their very training, some professionals continuously proffer expertise clientele advices in ensuring that their clients succeed in corrupt practices and consequent laundering of the stolen funds to safe shell havens without being detected. Therefore, the study submits that the accessibility of ready cash to professionals made possible by their rich clients place them ahead of officers within the employ of institutional agencies charged with anti-corruption activities.[23]

The Role of State Officials in the Regime of Corrupt Practices

This group, 'state officials' is not left out as parties to corrupt practices. State officials have been indicted by various studies as constituting the political and economic elites in anti-social practices. These studies confirm that states have complex

[23] For instance, in the subsisting trial of Senate President Bukola Saraki, it was reported that he engaged well over 82 (Eighty two) lawyers of no mean caliber as well as forensic experts from overseas. Caveat-the study is by no means concluding that Saraki's case relates to corruption. It has been variously alleged to be a political case of vendetta. Just recently, the TVC News reported on the 16/06/17, that the Code of Conduct tribunal has freed Saraki based on sustaining the No case submission made by Saraki's defence team.

structures, relationships and global webs that are interconnected.[24] On the one hand, states try to cut back anti-social practices while at the same time state officials are indicted in facilitating these practices.

For instance, General Sanni Abacha and his cronies were reported to have embezzled over $5bn (Five Billion Dollars), stolen from the Treasury, and about S2bn (Two Billion pounds) received as bribes.[25] These monies were purportedly laundered in foreign banks across the world, including Switzerland, Luxembourg, Liechtenstein, Hong Long, the UK, and the USA.[26] In fact, another source suggests that about $106 bn (106 billion dollars) was siphoned out of Nigeria between 1996 and 1999.[27]

Furthermore, investigation by the UK Financial Services Authority and the London Metropolitan Police reveals that over S1.3bn of Abacha money had passed through London.[28] In a nut shell, corruption is not only limited to African countries, but extends to other parts of the globe. However, it is more prevalent in Africa due to institutional weakness in checking and combating corruption.

It should also be noted that there are various methods employed by corrupt officers to siphon funds from public treasury. They usually employ fictitious proposals for assignments which are never carried out as well as contracts over invoicing or non-implementation, yet

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[24] Otusanya, Corruption as an Obstacle to Development in Developing Countries: A Review of Literature, 2011, *Journal of Financial Crime*,, p. 8

[25] Shehu Y Abdullahi, 'Combating Corruption in Nigeria: Bliss or Bluster? *Journal of Financial Crime*, 2004, vol. 12, No. 1at p. 12

[26] Ige Bola, (Fmr. Attorney General FRN), 'Abacha and the Bankers; Cracking the Conspiracy,' *Forum on Crime and Society,* vol. 2 No. 1 2002, UNODC, Austria, cited in Shehu, supra, note 26 at p. 12

[27] Cross T., *'Transnational Organized Crime: The Challenges,'* in Broadhurst RG., (ed.) Bridging the Gap: A Global Perspective on Transnational Organized Crime, (2002) Hong Kong Police, p. 28

[28] Chamberlain K., 'Recovering the Proceeds of Corruption,' *Journal of Money Laundering Control,* vol. 6, No. 2 (2000) Pp. 159-165

payments are made, and so forth.[29] According to Otusanya, 'one of the key allegations of corruption and misgovernance against the Abacha regime was the handling of the Ajaokuta Steel Complex Debt Buy-back with a Russian company. The steel mill, which was initially budgeted at S1.4 bn, had by 1994 gulped up to S4 bn due to review of contract terms and official corruption. Abacha was reported to have used the canopy of the Ajaokuta Steel Complex Debt Buy-back to siphon public funds through the Ministry of Finance and the Central Bank of Nigeria.'[30]

The President Obasanjo government after preliminary findings therefore commenced a legal action against the Abacha family, two of his Ministers Ani and Dalhatu, Abubakar Bagudu, and the Mecosta Securities Limited, the company that was used in the Ajaokuta Steel Complex Debt Buy-back deal in a suit filed in the UK on the 20th July, 1999. In that suit the Nigerian Government claimed that late Gen. Abacha was the de-facto owner of Mecosta Securities Ltd. In response to the case, the Abacha family and Mecosta Securities Ltd sought an out of court settlement which materialized in the signing of an agreement between the parties and the Federal government of Nigeria which read as follow:

a) The defendants requested that the foreign accounts of the Abachas, which were frozen at the instance of the Federal Government of Nigeria, be unfrozen. And that upon the release of their accounts by the government, the defendants would refund the sum of Dm 300m in full and final settlement of claims made by the government of Nigeria on the Ajaokuta Steel Complex Bill of Exchange;
b) That the US$ 50m promissory notes issued earlier by Mohammed Abacha should be rendered null and void.

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[29] Otusanya, Corruption as an Obstacle to Development in Developing Countries: A Review of Literature, 2011, *Journal of Financial Crime*,, p. 8

[30] Otusanya, Corruption as an Obstacle to Development in Developing Countries: A Review of Literature, 2011, *Journal of Financial Crime*,, p. 8

c) That the settlement be filed in the High Court of Justice (Queen's Bench Division, England) and adopted as the court judgment in this case; and
d) That all parties would cooperate in discharging the judgment accordingly, Chief Bola Ige who succeeded KanuAgabi as Attorney General and Minister of Justice later disclosed that the out of court settlement resulted in the return of over $1 bn from various banks in Liechtenstein, Switzerland, Luxembourg and the UK.[31]

Furthermore, another huge challenge to corruption is the theoretical assumption that a state capture leads to mis-governance. Therefore, the actions of the Nigerian government in the recovery effort of Abacha loot are a demonstration that when a state is captured, part of reviving the institutions of good governance is to deny corrupt officials the benefit of their loot.[32]

An Examination of Perspectives on Challenges to Corrupt Practices

The challenges of corruption generally are inherent in both the public and private sectors. There is an erroneous trend to restrict it to the public sector. The study therefore summarizes some of these practical challenges as follows:

i. Lack of Political will on the part of Government

The study assumes that after the recovery effort of lootings from the Abacha family and government Ministers, corrupt practices will be at the lowest minimum. However, the reverse is the case following the Dasuki scandal involving well over =N= 300 bn (three hundred billion Naira) and affecting top government functionaries and military brass. In fact it has been stated by a

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[31] Otusanya, Corruption as an Obstacle to Development in Developing Countries: A Review of Literature, 2011, *Journal of Financial Crime*,, p. 13

[32] See note 3 on psychological make of citizens.

fellow Nigerian that: 'the incidence of corruption in Nigeria has increased and is still increasing; this must be critically curtailed.'[33]

According to Chief Obla O. Godwin:[34]

> Over the years, successive administrations have failed to show the sorts of political will that is requisite to effectively fight corruption. Even in instances where the agencies responsible for prosecuting allegedly corrupt persons seemed to bring some enthusiasm and urgency to bear on their operations, their motives have often being interpreted in the light of being selective witch-hunting of political enemies of the government of the day. Suffice it say that government must muster all the will it can ensure the prosecution of its friends, allies or supporters where they breach the law and should not interfere with the work of the law enforcement agencies or the Attorneys-General of the Federation and the states in this regard. There must be no sacred cows or 'untouchables.' This would, in turn, make the prosecution of Politically Exposed Persons (PEPs) much easier.[35]

The guest lecturer identified the following as part of the challenges facing the prosecution of corruption and other connected financial and economic crimes in the country.

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[33] Ayida A. Allison, *'Rise and Fall of Nigeria:' Power without Corruption in Nigeria,* Lagos, Heinemann Publishers, 1990, Chapter 25-page 37.

[34] Obla, *'The Prosecution of Corruption Cases in Nigeria: Trends, Challenges and Prospects,'* unpublished paper., being the text of an address at the Annual Valedictory Session for the 2014/2015 Academic Session of the Oba Erediauwa College of Law, Igbinedion University Okada, (13 June 2015), p. 4

[35] Chief Obla(SAN) was a guest of the Law Students Association (LAWSA) 2014/2015 session.

ii. Weak Mutual Legal Assistance and Collusion by Officials of Foreign Banks

This goes beyond mutual legal assistance. Prior to this, there must have been receipt of stolen monies lodged in foreign banks through money laundering. There is this thinking of maximization of profits by banks, apparently through any means possible, inclusive of collusion in receiving stolen monies and expertise legal advice on how best to secure these monies in shell accounts. Therefore, there is shielding of corrupt officials and actors by banks in order to make huge profits.

Flowing from the above and related to weak mutual legal assistance, the following situations may arise for consideration as an impediment to fighting corruption related cases.

a) Location of the Evidence in the Criminal case in foreign jurisdiction. For example, the SIEMENS and TSKJ cases.
b) Difficulty and in some cases unwillingness of witness outside jurisdiction to return for the trial. For example in the SIEMENS and PANALPINA prosecutions.
c) Illicit proceeds moved and laundered in an International Banking System through increasingly obscure means.
d) Slowness of the Money Laundering Act process has been captured in the following words:

> As well known, the main weakness of mutual assistance in penal matters as a tool for assets tracing and recovery is its slowness. Even in the most cooperative jurisdictions, it takes at least one year until the documentary evidence relating to transfer of the proceeds of crime is transmitted to the requesting authority. In most cases, it is then too late to trace the assets to other jurisdiction in time to freeze them.[36]

[36] Obla, *The Prosecution of Corruption Cases in Nigeria: Trends, Challenges and Prospects,* unpublished paper., being the text of an address at the Annual Valedictory Session for the 2014/2015 Academic Session of the Oba Erediauwa College of Law, Igbinedion University Okada, (13 June

iii. Immunity against Prosecution for categories of Politically Exposed Persons

Section 308 (1) of the 1999 Constitution of the Federal Republic of Nigeria provides for restrictions on legal proceedings, arrest or imprisonment, or the compelling of appearance by process of court, against the President, Vice President, Governors and Deputy Governors.

The efficacy of this provisional requirement was tested in the case of Gani Fawehinmi v Inspector General Police.[37] It should be noted that this restriction makes it impossible to arrest or prosecute these officials until after their tenures, when the illicit funds or assets have either been dissipated or sufficiently laundered. Furthermore, it has been argued that this provisional requirement of the Constitution of the Federal Republic of Nigeria poses as a huge smack on firstly on the rule of law, and then on good governance, especially, in a developing country, where political exposed persons may capitalise on the constitutional provision as a leeway to indulge in corrupt practices.[38]

iv. The Legal Infrastructure and the Slow and Laborious Judicial process

The jurisprudence of litigation reveals a great detail on the psychology of parties during criminal trials.[39] It is therefore not unimaginable to say that accused persons and counsel take advantage of every conceivable technical loopholes to prolong the

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2015), p. 4

37 (2002) 7 NWLR (Pt.767) 606

38 Otusanya, Corruption as an Obstacle to Development in Developing Countries: A Review of Literature, 2011, *Journal of Financial Crime,*, p. 8

39 Chu wan Khan, Trials in Samoa Island, *Journal of Criminal Trials,South Pacific,* vol. 2, New Zealand, 2010, p. 98

prosecution subjecting the appellate process to abuse even in interlocutory matters thereby frustrating the entire process;[40]

> I have to put it on record that the desire of the judiciary to curb the now notorious attitude of some legal practitioners and politicians faced with very bad cases to employ delay tactics to either defeat the ends of justice or postpone the evil days, needs the encouragement of all well-meaning legal practitioners, particularly the very senior members of the profession.[41]

v. Legislative Inertia

It has been argued the effect of non-passage of the 'Non-Conviction Based Assets Confiscation Bill' by the Nigerian National Assembly, continues to pose as challenge to fight against corrupt practices.

The power of confiscation allows police to confiscate money and assets without proving any criminality. The Police could apply to civil courts to confiscate cash, cars, yachts, even houses, and hand them over to the treasury simply on the suspicion that they are proceeds of crime. The test would be on the 'balance of probability' (civil standard) and not beyond 'beyond reasonable doubt' (criminal standard).

Recently there was a special convocation discussion of like minds at the University of Lagos canvassing for a special court to be vested with powers to handle corruption related issues. The issues

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[40] Obla, '*The Prosecution of Corruption Cases in Nigeria: Trends, Challenges and Prospects,*' unpublished paper., being the text of an address at the Annual Valedictory Session for the 2014/2015 Academic Session of the Oba Erediauwa College of Law, Igbinedion University Okada, (13 June 2015), p. 4

[41] Onnoghen JSC, in Dapianlong v. Dariye (2007) 8 NWLR (Part 1036) 332 at 415-416, paras G-D) quoted by Obla.

most respectfully advanced by Professor Sagay and like-minds were not far from supporting the proposed Confiscation Bill.[42]

vi. Threats to Lives of Witnesses and absence of Witness Protection Programme

According to an EFCC Report, no less than 19 key officials of EFCC have been assassinated, as at 2013. This is hardly surprising when viewed in the context of the high-risk, low-protection nature of their operations and the desperation of some of the subjects of investigation.

The absence of this witness protection plan also inhibits the ability of the prosecutors and law enforcement agencies to elicit or extract crucial testimony from potential witnesses.

vii. Undue reliance on technicality to knock out vital electronically generated evidence during trial of the accused in respect of cross boarder corruption.

viii. Ad-hoc Investigation Panels

These groups fall out after they are disbanded or their assignment is completed. Follow up by the prosecution in grey areas becomes difficult. Nobody is in charge and traditional agencies of investigation reject obligation or ownership of the process. This as a matter of fact is greatly exacerbated by changes in administration and government political objectives.

ix. Inconsistency and Uncertainty of the Judicial Process

Increasingly, the pronouncements of Courts of coordinate jurisdiction on certain matters relating to the prosecution of corruption cases have been inconsistent or even contradictory. This is a serious problem because it significantly complicates and prolongs criminal prosecution. For instance, with respect to the

[42] Sunday Punch, 31/04/16, p. 59

prosecution of Erastus Akingbola, the former MD/CEO of the now-defunct Intercontinental Bank PLC, before the Lagos High Court on a charge of obtaining money by false pretences and advance fee fraud running into several billions.[43]

The Court of Appeal had to set aside the decision of the court and struck out the charge on the grounds that it is only the Federal High Court that has jurisdiction to try matters relating to 'capital market transactions,' having regard to the provisions of Section 251 of the 1999 Constitution. According to the Court:

> As the Appellant rightly submitted, the purchase or non-purchase of the shares is an integral part of the Counts against him, and the falsity or otherwise of the alleged pretence, will depend on whether the shares were purchased or not by the said Company on behalf of the said Bank. These are issues that can only be verified by the Federal High Court, and being capital market transactions are within its exclusive jurisdiction.

Conversely, in the case of Ehindero v. F.R.N[44] decided in the same year, the same Court of Appeal (albeit the Abuja Division) held thus: 'There is no provision in section 251 of the 1999 Constitution which grants 'exclusive' jurisdiction to the Federal High Court in Criminal causes or matters.'

This sort of judicial summersault hampers the ability of the state to effectively prosecute this sort of trials and comes at the great expense to it, considering the time and financial resources that would be wasted when a Court holds that it has no jurisdiction.[45]

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43 Charge No: ID/148C/2001; Appeal No: CA/497/2014).

44 (2014) 10 NWLR (Pt. 1415) 281 at 304 PARAS C-D

45 Obla, *'The Prosecution of Corruption Cases in Nigeria: Trends, Challenges and Prospects,'* unpublished paper., being the text of an address at the Annual Valedictory Session for the 2014/2015 Academic Session of the

x. Lack of citizen access to information/ineffectiveness of the Freedom of information Act

The ability of the citizen to readily access information and/or knowledge on a wide range of matters is indispensable to the promotion of probity, transparency and accountability and is of significance in the nation's fight against corruption-especially given Nigeria's less-than-enviable history of corruption and embezzlement within the public and private sectors. To preserve the opacity of this very vital component of the anti-corruption drive is to render the various anti-money laundering laws ineffective and hollow.[46]

After the euphoria that attended the presidential assent to the Freedom of information Act after several years of executive and legislative foot-dragging, it appeared that its introduction would ensure greater transparency into hitherto obscure areas, especially as the preamble to the Act opens with the following words: 'An Act to make public records and information more freely available, provide for public access to public records and information to the extent consistent with the public interest…'[47]

Sadly, the FOI Act is of little of no practical value in this regard. One need not look further than Section 12 of the same Act to realize why this is so. Section 12 (1) (a) (v) states that:

> A public institution may deny an application for any information which contains- Records compiled by any law enforcement or correctional agency for law

Oba Erediauwa College of Law, Igbinedion University Okada, (13 June 2015), p. 9

[46] Ibid.

[47] Obla, *'The Prosecution of Corruption Cases in Nigeria: Trends, Challenges and Prospects,'* unpublished paper., being the text of an address at the Annual Valedictory Session for the 2014/2015 Academic Session of the Oba Erediauwa College of Law, Igbinedion University Okada, (13 June 2015), p. 4

> enforcement purposes or for internal matters of a public institution but only to the extent that disclosure would-constitute an invasion of personal privacy under section 15 of this Act, except, where the interest of the public would be better served by having such record being made available, this exemption to disclosure shall not apply.[48]

The exemption of information is prone to 'constitute an invasion of personal privacy,' to all intents and purposes, excludes the rights of members of the public to apply for, say, information relating to details of assets declared by any public officer or details of personnel expenditures in an organization-thus effectively extinguishing any prospects of greater public inclusion and/or involvements in governance.[49]

This is especially problematic when viewed against the background of how citizen vigilance can aid the law enforcement agencies in prosecution.

xi. Acts of Sabotage including compromise on the part officials, law enforcement agencies, and judicial officers to frustrate prosecution.

xii. Inadequate Resources

High cost of maintaining the requisite team of experts for the prosecution of persons accused of committing cross-border corruption. The institutions saddled with the responsibility of investigating and prosecuting white collar crimes in Nigeria often experience a dearth of operational funds and appear to be a comparatively disadvantaged position to their foreign counterparts. A classic example of this is the James Ibori Case. In 2012, the Crown Metropolitan Police of the UK spent an estimated £14million to investigate and prosecute James Ibori in UK on the basis of information supplied by the EFCC. However, for the 2012

[48] Ibid, citing the provisions of the FOI Act

[49] Ibid, at p. 8

fiscal year budgetary plan, the Nigerian EFCC received a sum which stood at a comparatively paltry =N=15 Billion (about £47m).

The amount expended on the prosecution of James Ibori in UK Government therefore represents about 35% of the budget of the EFCC-an Agency required by law to investigate 36 states, 774 Local Government Areas and a host of Ministries, Departments, and Agencies, in addition to the private sectors.

xiii. Instability and Indiscriminate changes in government policy vis-à-vis anti-corruption agencies. For instance, subordinates of anti-corruption commissions to Executive arm of government.

Furthermore, there is the emerging undue Political office holders' interference with anti-graft agencies. It should be stopped so that the independence of anti-corruption agencies be ensured in assuring efficacy of relevant legislations. Tenure of office of officers of anti-graft agencies should not be at the whims and caprices of the Executive arm.

Challenges at Global Level

An examination of the challenges related with corrupt practices at domestic scene will not be complete without considering the challenges at global level. It is the submission of this paper that factors prevalent at international level will definitely impact immensely on the domestic level. Furthermore, there is interplay of forces linking one legal regime to the international regime, if regard is hard to the effect of globalisation in the 21st century.

Plausible argument has been adumbrated in the foregoing as to the exact definition of the term corruption. The definition of corruption adopted so far are purely conceptual and operational definitions, best suited for the moment, particularly to elucidate the nearest meaning in appreciation of the term corruption. Therefore it is difficult to determine what sort of conduct is sufficient to describe its product as illegal. Legal definitions vary from one society to

another and the use of legal terminologies and languages are also not the same.[50]

Corruption undermines societies by overwhelming institutions of government such as the Police and the Judiciary. In many developing countries, the police, whose principal function is to keep law and order by combating crimes, has been a veritable nightmare, to a great extent, in aiding and abetting the commissioning of crimes.[51] Cases involving corrupt practices have become intractable, either because of influence peddling or high profile individuals implicated in corruption scandals, making it difficult for anti-corruption provisions to be implemented.

For instance, in the United Kingdom, Money Laundering legislations, though theoretically laudable, have been hamstrung in practice as result of the constant lack of resources available for tackling Money Laundering related activities, disorderly handling of suspicious activities and the low policy priority given to Money Laundering prosecutions.

In developing countries, corruption is so rampart that it cannot simply be reduced to being committed in a limited range of sector areas. For instance, in Uganda, corruption has reportedly submerged the whole business community, more particularly, the judiciary with regard to bribes solicited by court officials such as magistrates, the army-where army officers have been found increasing the size of the payroll in form of 'ghost employees,' the list goes on. However, the dynamics of corruption makes it a global

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[50] Shehu Y Abdullahi, 'Combating Corruption in Nigeria: Bliss or Bluster? *Journal of Financial Crime,* vol. 12, 2004, No. 1at p. 15

[51] In fact, this singular factor is the primary reason why the enforcement of corrupt practices through the criminal and penal codes was practically impossible. Thus the government of the day considered it appropriate to introduce economic and financial legislations in the 1980s to separately assist and reinforce the fight against corrupt practices, then gradually assuming a new dimension by spreading and involving economic and financial activities.

problem given that so many foreign banks might have been used to hoard the illicit proceeds of corruption for safe custody abroad.[52]

The global community has failed to work together in enforcing many global legal regimes they build, often with good intent on overlapping global threats such as corruption.[53] This would seem to infer that unless a country anticipates some benefits of some sort, or is itself a victim of global ineptitude, they tend to err on the side of caution and show the kind of 'I don't care attitude' towards global regimes.[54]

As such, the so called global village is yet to form itself as a coherent single viable community[55] subjected to a single set of rules. Besides, interstate alliances, some states would not want to be seen as intrusive, paternalistic, imperialistic and disrespectful, charges that are often made whenever one state imposes its discretionary values upon another.[56] Certainly in the development of global regimes the majority of countries have not had the opportunity to influence their inception or reinforce the foregoing contentions.[57] How far true this is remains a moot point.

However, it would seem prudent for a few countries to work together in initiating regimes, but increasingly as issues evolve, other countries mostly those subject to the regulatory framework should be consulted or even co-opted where necessary. This would

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52 See for example the Panama Leaks, where by several Nigerian politicians were reportedly fingered and exposed in the maintenance of off shore shell accounts, some through alleged nominees. See generally, The Sun Newspapers, 07/05/16.

53 Mugarura Norman, 'The Effect of Corruption factor in Harnessing Global anti-money Laundering Regimes,' *Journal of Money Laundering Control,* 2010, p. 1

54 Ibid.

55 Mugarura Norman, 'The Effect of Corruption factor in Harnessing Global anti-money Laundering Regimes,' *Journal of Money Laundering Control,* 2010, p. 1

56 Ibid.

57 Ibid.

serve to disperse any legitimacy issues creeping into the implementation of emerging global initiatives. Corruption has remained a serious dilemma because despite all the proliferated anti-corruption regimes, both at an individual government level with a extraterritorial reach; and at the global level such as the UN and EU, money accrued from corruption continues to flow into many countries' financial centres unfettered.[58]

It is the contention of this paper that laws can work better if they are enforced. Prescribing regimes without the will to enforce them cannot go far in forestalling the twin threats of corruption and Money Laundering.[59] Therefore, there must be affirmative action on corruption by denying corrupt leaders an opportunity to secure stolen assets in any country. There is also need for positive action on corruption to stop its concomitant social effects and to ensure that essential information is not fettered or diverted by corrupt officials to benefit criminals or criminal syndicates but used to benefit law enforcement authorities.[60] Here, globalization can play a considerable role by bringing some societies into the fold of fruitful progressive societies, and leveraging poor countries by bringing down transaction costs.[61]

Conclusion

The issue of plea bargaining as it relates to corrupt practices should not be ignored. There was some debate in the past about the legality of this practice as it applies to Nigeria and, as a result, the relevant law enforcement agencies relied generally on the provisions of the Criminal Procedure Act and the EFCC Act which are somewhat vague on the subject. Notwithstanding these doubts surrounding the legality or otherwise of the introduction of plea bargain arrangement, it was applied 'successfully' in a long line of

58 Ibid.

59 Ibid.

60 Mugarura Norman, 'The Effect of Corruption factor in Harnessing Global anti-money Laundering Regimes,' *Journal of Money Laundering Control*, 2010, p. 1

61 Ibid.

cases, prominent among them the Cecilia Ibru and Lucky Igbinedion cases.

Section 180 (1) CPA provides thus:

> When more charges are made against a person and a conviction has been had on one or more of them, the prosecutor may, with the consent of the court, withdraw the remaining charge or charges or the court, of its own motion, may stay trial of such charge or charges.

Section 14 (2) of the EFCC Act 2004 provides as follows:

> The Commission may compound any offence punishable under this Act by accepting such sums of money as it thinks fit exceeding the maximum amount to which that person would have been liable if he had been convicted of that offence".

Significantly, this ambivalence has been expressly addressed by the Administration of Criminal Justice Act 2015 passed in the twilight of the 7th National Assembly of the Federal Republic of Nigeria and signed into law by President Goodluck Jonathan on the 13th of May 2015.[62]

Section 270 (1) of that Act provides as follows:

> Notwithstanding anything in this law or any of other law, the prosecutor may:
>
> a) Receive and consider a plea bargain from a defendant charged with an offence either directly from that defendant or on his behalf; or
>
> b) Offer a plea bargain to a defendant charged with an offence.'

[62] Between 2011 and 2015

Therefore, the coast is now clear for the State to use this very important tool to shorten the duration of criminal trials and to expropriate the proceeds of crime or illicit activity. However, it is imperative to review the four ingredients of settlement/plea-bargaining.

i. The offender is charged. In some cases, some organizations initiate settlement moves as a prelude to being charged.
ii. The offender pleads guilty
iii. The offender agrees to pay monetary fines among other terms
iv. The terms of the agreement are kept confidential, subject to exceptions woven into agreement.
v.

Therefore, the introduction of plea bargaining in Nigeria is capable of heralding speedy trials of corruption and other connected financial and economic offences in Nigeria.

Another venture worth considering is the issue of the admissibility of improperly obtained evidence in the course of trials of corruption related offences in Nigeria. Section 14 of the Evidence Act provides thus:

> 14. Evidence obtained:
> (a) Improperly or in contravention of a law; or
> (b) In consequences of an impropriety or of a contravention of a law' shall be admissible unless the court is of the opinion that the desirability of admitting the evidence is out-weighed by the undesirability of admitting evidence that has been obtained in the manner in which the evidence was obtained.'[63]

This is an extremely important provision which would doubtlessly help in navigating or circumscribing the needless technical challenges to the admissibility of electronic and other forms of evidence based on the fact that prosecutors now have wider latitude

[63] 2011 (as amended)

to tender documents obtained in the course of their investigations, whether or not they were properly obtained.[64]

In fact, it appears that this section provides latitude to the prosecutor with regards to the duty to provide a certificate for all computer generated documents like bank statements, images and the like, as provided in Section 84 of the same Act. Hypothetically, once a prosecutor can demonstrate the over-reaching importance of this type of evidence, even without this certificate, such evidence may be admissible.

Furthermore, despite the challenges stated above, the prospects of improved prosecution of corruption cases appear to be capable of improving considerably, if the following measures/reforms were to be implemented:

i. Remove the immunity clause as it relates to charges of corruption as recommended by the Commonwealth Working group 2005.
ii. The retention of highly skilled and resourceful prosecution counsel

Undoubtedly, the prosecutorial challenges faced by the government are being addressed by the hiring of senior and experienced counsel from the private sector to drive prosecution involving serious cases, for example, the Central Bank of Nigeria in Cooperation with the EFCC retained formidable legal teams to prosecute the banking crisis suspects, while the Federal Government of Nigeria outsourced the TSKJ, Siemens, Julius Berger and related prosecutions to teams of legal experts.

i. Improvement of the access of citizen to information

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[64] Obla, *'The Prosecution of Corruption Cases in Nigeria: Trends, Challenges and Prospects,'* unpublished paper., being the text of an address at the Annual Valedictory Session for the 2014/2015 Academic Session of the Oba Erediauwa College of Law, Igbinedion University Okada, (13 June 2015), p. 10

The passage of the Freedom of Information Act2011 and the proactive judicial disposition towards the Act has assisted Civil Society Organization to garner information which they act upon. However, as earlier mentioned, the bottlenecks created by officials of the Bodies responsible for providing the information must be urgently addressed through the sensitization and strong political will of the government.

ii. The judiciary should be sensitized to place greater emphasis on substantial justice over techniques.[65]

Finally, if the Nigerian nation can afford to seize the courage to take decision to eradicate and fight corruption, legal technicalities therefore, should not constitute an impediment and/or hindrance to the laudable effort. Recall that the law as a matter of fact, should be focused on preserving and protecting the regime of and sustenance of electronic obtained evidence, the political and social well-being of the state and its citizenry. Any interpretation ascribed to any legal instruments that fails to conform to this value must be ignored since that is capable of suggesting enthronement of anarchy in the Nigerian legal system.[66]

Even though the fight against corruption appears to be an uphill task, the eradication of this scourge is achievable with the right amount of determination and will. All Nigerians, including members of the Bar, academics, civil society and activists and non-governmental organisations must join hands to ensure that this fight is not only left to the domain of the law enforcement agents.

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[65] Obla, *'The Prosecution of Corruption Cases in Nigeria: Trends, Challenges and Prospects,'* unpublished paper., being the text of an address at the Annual Valedictory Session for the 2014/2015 Academic Session of the Oba Erediauwa College of Law, Igbinedion University Okada, (13 June 2015), p. 22

[66] Galinje, JCA, in FRN v. Fani Kayode (2010) 14 NWLR (Pt.1214) 481 at page 500, (Paras. A-F)