LEGAL PERSPECTIVES TO CORRUPTION, MONEY LAUNDERING AND ASSETS RECOVERY IN NIGERIA

M. A. Ayoade &
S. A. Igbinedion eds.

CONTENT

Dedication ii
Foreword iii
Preface v
List of Abbreviations vii
Notes on Contributors xii

Chapter One: Assessing the Adequacy of International and Regional Legal Framework against Corruption
Oscar Nliam 1

Chapter Two: Adequacy of Penal Section for Corruption Related Offences: A Critical Assessment
Olugbenga Akingbehin 43

Chapter Three: Pitfalls to Prosecuting Corruption in Nigeria
Azubike Onuora-Oguno and Ogechukwu Ajoku 71

Chapter Four: Economic and Financial Crimes Commission (Enforcement) Regulations 2010: An Evaluation
Akeem Olajide Bello 90

Chapter Five: Feminist Perspectives of Corruption and Corrupt Practices in Nigeria
Asikia Ige 110

Chapter Six: Judicial Attitude to Corruption: Passivism versus Activism
Olaolu Stephen Opadere 131

Chapter Seven: International and Regional Responses to Money Laundering and Financing of Terrorism
Yusuf Ibrahim Arowosaiye 159

Chapter Eight: Strategies for Combating Money Laundering in Nigeria
Yemi Oke 198

Chapter Nine: A Critical Assessment of the Prosecution of Money Laundering and Terrorism Financing Laws in Nigeria
Yomi Olukolu 223

PITFALLS TO PROSECUTING CORRUPTION IN NIGERIA

A. Onuora-Oguno and O. Ajoku

ABSTRACT

Corruption is fingered to be the bane of any society the world over. It is not peculiar only to under-developed or developing but also to the developed countries. It is however a major indicator of bad governance. The fight against corrupt practices has assumed a major concern to governments in a quest to ensure that the dividends of good governance are felt by inhabitants of every country. Nigeria ranks poorly in major corruption reports, despite the indices being contested in some quarters, with no substantial proof otherwise. This does not however suggest that the government of Nigeria is not also in the fight against corrupt practices in both public and private spheres of its existence as a nation. This chapter examines Nigeria's quest to curb corruption and highlights the pitfalls that inhibit successful prosecution. It examines the various legislative attempts that have been made to this effect while discussing the other non-legislative challenges. It concludes on the note that the major challenge is not with legal frameworks but with political will, judicial bottlenecks amongst other factors.

I. INTRODUCTION

The history of corruption is as old as the world, because ancient civilizations have traces of widespread illegality, irregularities and corruption; it is also endemic in modern governments and it is not peculiar to any continent, region, or ethnic group.[1] This does not, however, mean that the incidence and magnitude of corrupt activities are the same in every society. Some countries are obviously more corrupt; yet others have better plans in managing corrupt activities. Obviously, Nigeria is not one of those countries with better plans to handle corruption, despite its unending corruption commissions and all the noise made by every administration on the efforts to transform the nation into a corruption-free society.[2] Corruption clearly

1 V. E. Dike, "Managing the Challenges of Corruption in Nigeria"available online at: <http://www.nigerdeltacongress.com/marticles/managing_the_challenges_of_corru.htm>; <http://odili.net/news/source/2012/may/6/7.html>.

2 *Ibid.*

threatens the moral integrity of a nation, hampers development, and is generally destructive to both the individual perpetrator and the office he holds. The global effect of corruption on democracy and development is also legendary.

Corruption and other economic crimes are the bane to development of Nigeria as it bestrides our lives.[3] While individuals outside government engage in corrupt practices, there is the notion that corruption is often an exclusive preserve of government ministries, departments and agencies and their officials. The above view draws to mind the question as to whether Nigeria has different standards of corruption. In most circumstances, government officials or individuals who undertake large scale corruption are armed with the financial ability to hire the best legal representation and consequently are let-off the hook on one disguise or the other. Indeed, in recent times, Nigeria has come to embrace the term *plea bargaining*. Also, the use of ill-health as excuse to escape justice is a trend that is employed to ensure that a clog in the wheel of prosecution of corruption is left intact.

According to CLEEN report on a conference on Corruption and Nigeria:

> Since the return to civil rule in 1999, Nigeria government has taken some steps to address the twin problems of corruption and bad governance in the country. These measures include public service reform (monetization to reduce waste and reduction of over bloated personnel, reform of public procurement); establishment of Anti-corruption Enforcement agencies (such as the Economic and Financial Crime Commission, Independent Corruption and other Practices Commission); and the ongoing sanitization of the financial services sector by the Central Bank under Governor, Sanusi, which has revealed mind-bugling levels of bare faced theft by the management of several banks in Nigeria. Despite the successes achieved by these measures, the situation remains unacceptable as corruption continues to permeate and pervade every facet of national life in Nigeria.[4]

---

3 Nuhu Ribadu, "Obstacles to Effective Prosecution Of Corrupt Practices And Financial Crime Cases In Nigeria" available online at: < http://www.nigerianlawguru.com/articles/criminal%20law%20and%20procedureOBSTACLES%20TO%20EFFECTIVE%20PROSECUTION%20OF%20CORRUPT%20%20PRACTICES%20&%20FINANCIAL%20CRIMES%20IN%20NIGERIA.pdf>.

4 CLEEN Foundation Monograph Series, No 7.

In addition to the above scenario, the need to fight this vice has long arisen and still persists. Sadly, the question remains: is there an effective framework to achieve this? Moreover, how effective are the sundry policies and programmes, as well as adjudicatory process and procedure established to address this vice?

This chapter therefore interrogates the menace of corruption in Nigeria by analysing identified hurdles to the prosecution of corrupt practices. It is instructive that individuals caught for lesser financial crimes are usually given more severe punishment than those who are involved in financially substantial acts of corruption.[5] To achieve this, the chapter discusses the challenges of lack of political will, plea bargaining and the lack of an effective legal frame work in the laws and policies deployed in fighting corruption. These lapses will be evaluated with a view to seeking to unveil where they have succeeded in the fight against corruption and where they have failed. Legislations to be examined in this chapter are: Independent Corrupt Practices and other Related Offences Act *Cap C31 Laws of the Federation of Nigerian 2004*; Economic and Financial Crimes Commission (Establishment Act) 2004 as amended The criminal Code and Penal Code; Code of Conduct Bureau and Tribunal Act *Cap C15 Laws of the Federation of Nigeria 2004*; Criminal Procedure Act, *Cap C41, Laws of the Federation of Nigeria 2004*. Conclusions and recommendations are made at the end of the chapter, suggesting likely solutions to the corruption menace.

B. Corruption in the Corridors of Government

The tendency for government officials to succumb to corrupt practices in Nigeria has become rife.[6] It is hitherto proven difficult to trace the origin of corruption in Nigeria. It is also difficult to decipher which era is most corrupt, that is, the past

---

5 Adamu Abubakar, an 18 year old, was arrested on March 19, 2012, at Durazo market in Bauchi State, Nigeria, while trying to spend a fake N500 Nigerian currency with an orange seller in the market. He was sentenced on May 2, 2012 by Justice M. T. Salihu of the Federal High Court, sitting in Bauchi to 10 years imprisonment. Unfair trial of corruption cases in Nigeria, available online at: <http://www.thenigerianvoice.com/nvnews/98660/1/unfair-trial-of-corruption-cases.html>; Michael J. Ajombo et al., "Good Times in the Nigerian Economy", available online at: <http://www.hardnewsplus.org/developing/story>.

6 Steven Pierce, "Looking Like a State: Colonialism and the Discourse of Corruption in Northern Nigeria". Available online at: < http://democraciaejustica.org/cienciapolitica3/sites/default/files/looking_like_a_state_nigeria.pdf>.

colonial, military or civilian governments. It is recalled that most military coups in Nigeria were believed to be hinged on the desire for the military to find an end to the seeming impunity with which the civilian governments in place handled the nation's economy. However, this position has been variously faulted, as most military administrators have used government offices to perpetrate worse financial mismanagement. The Sanni Abacha and Ibrahim Babangida's regimes remain the worst fingered in this situation with billions of dollars from oil revenue stashed away in foreign accounts. Consequently, it is difficult to ascertain which of these regimes should be castigated more for engaging in corrupt activities. Undoubtedly, the origin of corrupt public officials within modern structures of public administration in the country can be traced to the British colonial administration.[7]

In the current democratic dispensation, several state executives have been arraigned for one form of corruption or the other. These include James Ibori, former governor of Delta State and Diepreye Alamieyeseigha of Bayelsa State among others. It is however, not safe to assume that government officials are alone in the corruption saga. The private sector is as equally culpable. The rot in most Nigeria banks that occasioned past shake ups and sacking of several bank chiefs also attest to this. From whatever perspective, the issue of corruption is broached in Nigeria, it is obvious that corruption has deeply and adversely affected the lives of honest Nigerians. Corrupt practices are resented in Nigeria and other parts of the world, and has adversely impacted on foreign investment..[8] Thus, to eradicate corruption effectively, the solution must be pervasive to cover every facet of the Nigerian system (legal, economic, social, political, among sundry others).[9]

Suffice to state that corruption in Nigeria is due to a lack of accountability and transparency, bureaucratic inefficiency, weak governance, excessive concentration of power in the executive arm of the government, and the failure to practice true federalism. There is reckless act of looting of public treasury, properties and public assets to the extent that it has now become a daunting and onerous task to tackle the menace of corruption in Nigeria. It is unfortunate to note that public office is

7 C.C. Sunday, *Corruption in Nigeria* (Afro-Orbis & Snaap Press Ltd.2004) p. 19.

8 T.A. Oyeyipo, *Strides in Anti-corruption campaign: the Nigerian Experience, Judicial Integrity and Reforms*, Essay in Honour of Hon. Justice M.L. Uwais (Snaap Press Ltd. 2006) pp. 3-4.

9 Uwais CJN in *A.G Ondo State V. A.G Federation (2002) FWLR* (Pt. 111) 1972 @ 2070 – 207.1

now being regarded as a vehicle for amassing wealth and unbridled affluence, rather than an avenue for rendering meritorious service to the nation for the benefit of all.

II. THE LEGISLATIVE ADVENTURE

We cannot effectively discuss challenges to prosecution of corruption and corrupt practices without mentioning the legal framework put in place to guide the adjudicatory process. An overview of these anti-corruption legislations is examined in the following section of the chapter.[10]

A. Corrupt Practices Related Offenses Act (ICPC)

This statute established the Independent Corrupt Practices Commission (ICPC). The ICPC is among the anti-corruption agencies in Nigeria. The Act generally prohibits perceived acts of corrupt practices arising from interactions or transactions involving public officials, political appointees, the general public, private individuals/ entities, and elected political office holders. The basic mandate of the Act is prohibition of corrupt practices that consist of bribery and influence peddling. The essential elements of these corrupt practices are giving or receiving an item of value to influence an official act. The ICPC Act views corruption as including bribery, fraud, and other related offences.

The law affects natural persons, juristic persons, or any other entity whether corporate or not. The Act basically affects acts of corruption in public offices, government institutions and agencies. Yet it is equally empowered to cover corrupt practices in private business transactions and inter-personal relationships among individuals and persons.

The ICPC Act consists of 56 sections that are not clearly marked into parts. The relevant aspects of the Act for the purpose of this chapter are the offences and penalties thereof which form the nucleus of criminal prosecution and adjudication. The offences and penalties sections are found in sections 12 through 29. The

10 Ibrahim Imam & Mariam A. Mustapha. "Combating corruption in Nigeria: the role of the legislature"available online at: < http://unilorin.edu.ng/publications/imami/CORRUPTION%20MARIAM%20&%20IMAM.pdf>

offences that are punishable under the Act include wilful giving and receipt of gratification and bribery to influence a public duty; fraudulent acquisition and receipt of properties; deliberate frustration of investigation by the ICPC, making of false returns; making of false or misleading statement to the anti-corruption agency; attempts, conspiracies and abetment of offences under the Act.

The ICPC Act created four categories of offences in the eighteen sections dealing with offences under the Act. These four categories are: giving and receiving bribes to influence public duty; fraudulent acquisition and receipt of properties; failure to report bribery transactions; and concealment of information and frustration of investigation. The Act also prohibits indirect offering and receipt of bribes or gratification for the purpose of influencing official acts related to official duties. The major instances under which bribes may be offered or received are enumerated in the Act. Thus, the Act prohibits corruptly giving or receiving gratification for or on behalf of public officers for performance or non-performance of official duties;[11] it prohibits giving and receiving of bribery through agents;[12] it prohibits bribery of a public officer with intent to influence decision making and other related official acts;[13] bribery with intent of inducing a person to abstain from bidding on any auction conducted by or on behalf of any public body;[14] and bribery to influence contract award.[15]

These harems of gratifications need not only be in cash alone but also includes certain advantages and favours such as dignity, employment, forbearance, elite club membership, among others. A person will be liable under any of the provisions, whether he gave or he received bribe for himself or on behalf of another. The act for which the offer or receipt of bribe is made may be an actual or a promised act. The *'mens rea'* in the sections is corruptly. The Act only defines corruption but not the word "corruptly", even though both are not synonymous.[16] The word "corruptly" seems to mean "deliberately or purposely, or knowingly doing an act which the

11 ICPC Act, sections 12,13 and 14.

12 *Ibid.*, s. 2.

13 *Ibid.*, s. 21.

14 *Ibid.*, s. 24.

15 *Ibid.*, s. 25.

16 *Cooper v. Slade* (1857) HL case 746.

law prohibits and/or forbids as tending to corrupt."[17] "Corruptly" may also mean a wrongful desire for pecuniary gain or other advantages.[18] In other words, to be effectively prosecuted and found guilty under these sections, the gratification must have been given or received with a wrongful desire for pecuniary gain.

Furthermore, the acts or omission for which the bribe is given may or may not be related to an official act. The Act provides that officials may be any director, functionary, officer, agent, servant, privy or employer serving in any capacity whatsoever in the public body, political party, institution or other empowerment whether under contract of service or contract for services or otherwise. A public officer is identified as a person employed or engaged in any capacity in the public service of the federation, state or local government, public corporations or private company wholly or jointly incorporated by any government or its agency including the subsidiary of any such company whether located within or outside Nigeria. It also includes judicial officers serving in magistrate or customary courts or tribunals. This Act has clearly shown that it is not concerned with acts of public officials alone but also with acts of management and employees of private companies in which government is an equity holder or which is related to the government.[19]

Note that once bribery or inducement can be proved to have been given or received through or by an agent for an act, both the agent and principal will be criminally liable.[20] The test to determine guilt (culpability) in this matter will be whether the act was carried out with the intent to corrupt by agent and principle, though the latter will ordinarily be vicariously liable for the act of the agent under the circumstances.

The ICPC Act[21] makes it an offence for anybody employed in the public service, to knowingly acquire or hold directly or indirectly (otherwise than as a member of a corporate organisation consisting of more than 20 persons), a private interest in any contract, agreement or investment emanating or connected with the department office in which he is employed or which is made an account of public service in

17 *Ibid.*

18 Black's Law Dictionary.

19 ICPC Act. s. 13(2).

20 *Ibid.*, s. 20(2).

21 *Ibid.*, s. 15 and 16.

which he is employed. The penalty, if successfully prosecuted, for the offence is seven years imprisonment. The Act[22] also punishes fraudulent receipt of properties or anything whether within or outside Nigeria which if done in Nigeria would have amounted to felony or misdemeanour, and would amount to any offence in the foreign country. Before being found guilty, on prosecution, the receiver must have the knowledge that the property was obtained frequently by means of a felony or misdemeanour.

Whistle blowing is a global phenomenon that seeks to expose illicit dealings in an organisation or a public/governmental agency. The whistle blowing is often anonymous, so as not to be victimised, and/or compromised. The ICPC Act[23] imposes a duty on public officers and private individuals (concerned citizen) to expose bribery transactions. Failure to report or expose an incidence of bribery and corruption in the public office or private organisation without reasonable excuse is an offence punishable with imprisonment and/or fine, for such a person has aided and abetted corruption.

It is an offence under the ICPC Act, to conceal information from law enforcement agencies.[24] It is also an offence to deliberately frustrate investigation into corruption related matters.[25] The manner of perpetrating these offences includes making false or misleading statement to the anti-corruption agency, deliberate frustration of investigation by the anti-corruption agencies, and concealment of gratification.[26] In the prosecution of this offence, there must be a proof of knowledge and the intent to conceal or frustrate investigations by the enforcement agencies.

B. Economic and Financial Crimes Commission (Establishment) Act 2004[27]

Nigeria, as well as other countries in the world, is well acquainted with the detrimental effects of financial crimes on society in general and the economy in

22 *Ibid.*

23 *Ibid.*, ss. 16 and 26.

24 *Ibid.*, s. 28.

25 *Ibid.*, s. 18.

26 *Ibid.*, s. 27.

27 CAP E1. Laws of the federation of Nigeria, 2004, as amended in the EFCC Act 2003; and subsequent amendments in 2004.

particular. The EFCC Act establishes the Economic and Financial Crimes Commission (EFCC), as an agency mandated with the primary responsibility of investigating and prosecuting economic crimes. The EFCC is also mandated to bring such perpetrators within the ambit of established law. According to the EFCC Act,[28] "Economic Crime" is a non-violent criminal activity committed with the objective of earning wealth illegally. The Act sets out offences with which the Act is concerned, even though the list is in-exhaustive.[29]

The membership of the commission consists of virtually all the government bodies saddled with economic issues. The EFCC wields the powers of not only investigation and enforcement of the provisions of the Act, but also the enforcement of other legislations dealing with various economic crimes. The EFCC Act[30] confers special powers on the EFCC to enforce the provisions of such other laws as:

i. The Money Laundering Act
ii. The Advance Fee Fraud and other Related Offences Act
iii. The Failed Banks (Recovery of Debt and Financial Malpractices in Banks) Act
iv. The Banks and other Financial Institutions Act
v. Miscellaneous Offences Act
vi. Any other legislation or regulation relating to economic and financial crimes which also includes the Criminal Code and Penal Code.

The powers of the EFCC, generally, include:

i. Coordination and enforcement of all economic and financial crime laws.
ii. Adoption of measures to eradicate the commission of economic and financial crimes.
iii. Adoption of measures for the prevention of economic and financial crimes.

---

28 *Ibid*., s. 46.
29 *Ibid*., s. 5.
30 *Ibid*., s. 7.

iv. Facilitation and rapid exchange of scientific and technical information as well as conducting joint operations geared towards the eradication of economic and financial crimes.

v. Examination and investigation of all reported cases of economic and financial crimes for the purpose of identifying individuals and corporate bodies involved.

vi. Collaborating with government agencies, ministries and departments, within and outside Nigeria carrying on functions wholly, or in part analogous with those of the EFCC.

vii. Establishment and maintenance of a system for monitoring international economic and financial crimes in order to identify suspicious transactions and persons involved.

viii. Taking charge of supervising, controlling, coordinating all the responsibilities, functions and activities relating to the current investigation and prosecution of all offences relating to or connected with economic and financial crimes in consultation with the Attorney-General of the Federation.

ix. The coordination of all existing financial crimes investigation units in Nigeria.

x. Carrying out all such other activities as are necessary or expedient for the full discharge of all or any of the functions conferred on it under the Act.

It is pertinent to note that the list is not exhaustive.[31] It only gives an idea of the nature of offences which the EFCC is mandated and empowered to investigate.

The EFCC Act is awash with offences and their punishments. The problem has been the prosecution, trial and conviction of these offences, which have raised deep suspicion and public opprobrium. The modus operandi of prosecuting and trying these offences is deeply flawed. The following section of the chapter is devoted to the challenges and pitfalls of prosecution of corruption in Nigeria criminal justice system. The offences and their penalties include:

---

31 *Ibid.*, s. 5(1).

(a) Financial Malpractices

This offence is prevalent in the banking and other financial services subsector. It is particularly concerned with the personnel of the banks and other financial institutions. It requires that personnel of the financial institutions must ensure compliance with the provisions of the Act[33]. These personnel are required to ensure the authenticity of any statement submitted pursuant to the provisions of the Act.[33] Additionally, where such personnel are required by the Act to furnish any useful information, they must be true and correct. They must provide credible information breach of which will be punished with 5years imprisonment term.

(b) Acquisition and Retention of Proceeds of Criminal Conduct

The offence of acquisition and retention of proceeds of criminal conduct[34] applies to persons who knowingly and deliberately retain possession and control of the proceeds of a criminal conduct or an illegal act on behalf of another[35]. This retention might be either by concealment, removal from jurisdiction or transfer to nominees. The main ingredient for conviction of the crime under these provisions is the possession of the requisite knowledge that the property is acquired through an illegal act. It is an offence for any person to knowingly acquire, possess or use property derived from the violation of the provisions of this Act.[36] Thus, where a person attempts to conceal, disguise the true nature, source, location, disposition, movement, with respect to or ownership of property derived from commission of an offence, he will be culpable.[37]

C. Code of Conduct Bureau and Tribunal Act

The Act provides for the establishment of the Code of Conduct Bureau and Tribunal.[38] It deals with corrupt practices by public servants regarding breaches of its

---

32 *Ibid*., s. 13.

33 *Ibid*., s. 13(1) (b).

34 *Ibid*. ss. 17 & 18.

35 *Ibid*. s. 17(a).

36 *Ibid*. s. 18(a).

37 *Ibid*. s. 18(d).

38 CAP C15 Laws of the Federation of Nigeria 2004.

provisions. It is divided into three parts. Part one deals with the Code of Conduct Bureau, part two deals with interpretation of words used in the statutes, as well as other miscellaneous provisions.

The Code of Conduct Bureau (CCB) is empowered with the mandate to establish and maintain high standards in the conduct of government business thereby ensuring that the actions and behaviour of public officers conform to the highest standards of public morality and accountability.[39] Public officers are required to declare their assets for examination to the CCB.[40] The Bureau is in charge of the entire process for the declaration of assets. It receives complaints of non-compliance with assets declaration.[41] On receipt of such complaints, the Bureau shall refer same to the Code of Conduct Tribunal established under the Act.[42]

Under the Act, a public officer is not required to put himself in a position where his personal interest conflicts with his public duties and responsibilities.[43] Such a public officer is not expected to maintain or operate a bank account in any country outside Nigeria.[44] The public official should not receive gifts or benefits of any kind on account of anything done or omitted to be done in discharge of his duties.[45] Such a person should not receive bribes in manner of properties, gift or benefit of any kind as an inducement for granting of favours.[46] The Act also prohibits abuse of powers in any way prejudicial to the rights of any person entitled to the proper exercise of powers.[47] A public officer that violates these provisions shall be reported to the CCB for appropriate disciplinary action or prosecution.[48]

The Code of Conduct Tribunal (the tribunal) is established under the Act.[49] The tribunal is empowered to try and punish public officers that violate and breach the provisions of this Code of Conduct Bureau and Tribunal Act.[50] The tribunal is

39 *Ibid.* s. 2.
40 *Ibid.* s. 3 (a) – (d).
41 *Ibid.*
42 *Ibid.* ss. 20-25.
43 *Ibid.* s. 5.
44 *Ibid.* s. 7.
45 *Ibid.* s. 10.
46 *Ibid.* s. 12.
47 *Ibid.* s. 13.
48 *Ibid.* s. 16.
49 *Ibid.*, s. 20
50

required to work in accordance with the Criminal Code and Penal Code if the breach of its provisions constitutes a criminal offence.[51] A person convicted by the tribunal has a right of appeal to the Court of Appeal.[52] The Act also provides for rules of procedure and institution of proceedings in the Tribunal.[53] It also provides that the Attorney-General of the Federation (AGF) or anybody appointed by him from the Ministry of Justice shall prosecute any violation of the provisions of the Act.[54] Where the violation takes place in any state of the federation, the AGF shall work in cooperation with that state's Attorney General.[55] This makes for smooth prosecution of breaches of the provisions of this Act.

Despite the above laws, it is sad to note that the prosecution of corruption in Nigeria is not moving in a positive direction. One is therefore left to imagine the major clogs in the wheel of ensuring accountability in Nigeria. Identified and to be discussed below is the delay in the criminal justice prosecution, the sudden emergence of plea bargaining concepts, and the lack of political will.

III. INHIBITORS TO EFFECTIVE PROSECUTION OF CORRUPTION IN NIGERIA

A. Delay in the Administration of Justice

As pointed out above, most big time corrupt government officials or private individuals with the resources to hire the best legal minds to defend them end up frustrating corruption proceedings before the courts in Nigeria. The consequences of delay on prosecution of corrupt practices can be summed up in the dictum 'justice ought not to limp; Speedy, because delay is indeed denial'.[56] Most prosecution in Nigeria lasts for so long that people lose track of the event, and in most circumstances people are discouraged to persevere with prosecution. Indeed, waiting for years to resolve a dispute, blurs truth, weakens witness memory, and

---

51 *Ibid.* s. 23(3).

52 *Ibid.* s. 23(5).

53 *Ibid.* s. 24.

54 *Ibid.* s. 24(2).

55 *Ibid.* s. 23(3).

56 E Coke, *Institutes of the laws of England* (1642) 55-56.

makes the presentation of evidence difficult.[57] Lengthy delays prior to trial may cause physical evidence to be lost, tainted or destroyed. Moreover, a correlation exists between time and the accuracy of eyewitness testimony.[58] According to Ribadu,

> The congestion of cases in our courts and slow pace of court proceedings occasioned by insufficient number of courts/judges and the manual recording system take their share of blame in the problems associated with the enforcement of our laws particularly the prosecution of economic and financial crimes.[59]

B. Plea Bargaining

Questions emanating from plea bargains in the Nigerian criminal justice system have continued to rage with both positive and negative opinions trailing same. However, the authors are of the opinion that plea bargaining lacks social justice content as it derails the average Nigerian who is at the suffering end of lack of good governance from feeling that justice has been done. This is more so because the leniency offered to offenders in exchange for the plea, undermines the ability of the penal system and its goal, particularly that of deterrence and retribution.[60] Black's Law Dictionary defines plea bargaining "as a process whereby the accused and the prosecutor in a criminal case work out mutually satisfactory disposition of the case subject to court approval. It usually involves the defendant's pleading guilty to a lesser offence or to only one or some of the counts of a multi-counts indictment in return for a lighter sentence than that possible for graver charge". Plea bargaining occurs when a prosecutor and the defendant may enter into an agreement whereby the defendant pleads guilty and the prosecutor offers either to move for dismissal of a charge or charges, recommend to the court a particular sentence or agree not to oppose the defendant's request for a particular sentence, or agree that a specific sentence is the appropriate disposition of the case.[61]

---

57 M. Bassiouni. "Human Rights in the context of criminal justice: Identifying International procedural protections in national constitutions" (1993) 3 *Duke Journal Contemporary & international law* 235, 285.

58 E. Loftus, "*Eye witness testimony*" (1979) 53. Loftus commenting on Prof. Ebbijnghaus renowned 1985 study. A Ebbinghaus *Memory: A contribution to experimental psychology* (1964) 18.

59 Ribadu, *supra* note 3.

60 Aschuler, W Albert, "The Changing Plea Bargaining Debate", (1981) 69 *CAL. L Rev*. 652.

61 GO Adeleke, "Prosecuting Corruption and the Application of Plea Bargaining in Nigeria: a Critique" (2012) 3 *International Journal of Advanced Legal Studies and Governance* 53.

It is therefore submitted that the availability of plea bargaining now encourages office holders to continue in their corrupt acts with a mindset that they will be availed of lesser punishments while keeping a larger chunk of their loot.[62] Other factors that inhibit the prosecution of corruption offences in Nigeria include the lack of political will by Nigerian politicians and office holders. For example the President and Governors are required to declare assets on assumption of office, but the process is not respected by politicians and is therefore rendered ineffective. Also, accusations levelled against members of the political class often go un-investigated and reports emanating from any investigation are usually frustrated and never implemented.

In addition, inefficiency on the part of prosecuting lawyers also ensure that the accused have lee-way to evade justice. An otherwise good case can be destroyed by the incompetence of a prosecuting counsel, who either is professionally incompetent or has compromised himself in order to defeat the trial. Criminal trials entail diligence, quick-wittedness and industry on the part of prosecuting counsel. A prosecuting counsel must know the law and the criminal procedure to effectively be able to counter antics of defence counsel. He must not fall into their snare. He must call only relevant witnesses and lead evidence only on facts that are relevant to the prosecution. A prosecuting counsel who is devoid of these qualities has himself become an obstacle to the successful prosecution of his case. There is need, therefore, to properly remunerate and provide adequate resources for the continuing legal education of prosecuting counsel. They should also be availed the tools to do their work effectively.[63]

C. Lack of Political Will

A starting point in the inability to curb the corruption menace in Nigeria , is the absence of political will to stem the continuity of corruption. There seem to be some consensus on the path of social commentators that corruption will remain a strong albatross in Nigeria until the government is able to muster sufficient political

62 Former Managing Director of Oceanic Bank, Cecilia Ibru, was jailed by a Federal High Court in Lagos for 6 months without an option of fine for granting $20m and N2bn credit facilities above the approved limits of the Central Bank of Nigeria.

63 Ribadu, *supra* note 3.

will to curb it."[64] In a report by the *Premium Times*, the head of the ICPC is quoted as affirming that lack of political will in the quest to stem corruption is a major hurdle and not the insufficiency of legislation. He opined that:

> There had been corrupt practices decree, War Against Indiscipline, MAMSA, NOA, Foreign Exchange Decree, Money Laundering Decree, EFCC and ICPC Acts, Fiscal responsibility 2010, etc. We have more than enough laws that will stamp corruption out of our system but the problem is implementation. Implementing our laws is the problem.[65]

In recent times in Nigeria, various allegation of missing funds by the Central Bank of Nigeria; misappropriation of funds by the former minister of Aviation remain some corrupt allegations that received no concerted efforts from the government in terms of investigation. Consequently, an assessment of the political will of the government can be best described as non-existent.[66]

D. Inefficiency of Prosecuting Lawyers

The Nigerian Legal System is an adversary one; this implies that judges do not interfere with proceeding before the court. The outcome of a case is therefore hinged largely on the competence of the lawyer handling a matter.

It is insinuated in several quarters that many a corruption matter have been lost for inability of the prosecuting lawyers to properly marshal arguments based on the existing legal framework in the country. The loss of cases by the EFCC especially in the corruption trial of Gbenga Daniels (former Governor of Ogun State) is one that seemingly exposes the incompetence of some prosecuting lawyers saddled with the responsibility of bringing alleged corrupt officials to justice.[67] It is on record that "the EFCC has demonstrated blinding incompetence at putting their cases together, even following simple court administrative procedures".[68]

---

64 Abdul Oroh, "FG Lacks Political Will to Fight Corruption" available online at: < http://dailyindependentnig.com/2014/02/fg-lacks-political-will-to-fight-corruption-oroh/>.

65 Nigeria lacks will to fight corruption, says ICPC boss available online at: < http://premiumtimesng.com/news/119996-nigeria-lacks-will-to-fight-corruption-says-icpc-boss.html>

66 O. N. Ogbu, "Combating Corruption in Nigeria: A Critical Appraisal of the Laws, Institutions, and the Political Will," (2008) 14 *Annual Survey of International & Comparative Law*, Article 6.

67 Bungled Corruption Trials in Nigeria, available online at: <http://www.africanexecutive.com/modules/magazine/articles.php?article=6411>.

68 *Ibid.*

However, it is encouraging to note that with more capacity building within the Nigeria Bar Association (NBA) and concerted efforts in ensuring the emergence of public interest litigation the ability to engage existing laws to fight corruption is becoming more promising.[69] Following closely with the inability of prosecuting officials is the challenge of a corrupt judiciary.

E. Corruption of the Judiciary

As earlier stated, the Nigeria Legal System does not allow for an indiscriminate interference by a presiding judge during the course of a trial. However, it has been alleged in several quarters that the Nigerian judiciary have in several instances comprised ethical standards. For example, the charges preferred against James Ibori (former Governor of Delta State) were all struck out before a Federal High Court in Nigeria, while he was subsequently found guilty of corruption on the same charges in England.

The basis on which corruption in the Nigerian judiciary can be curbed has been advanced by the Nigerian Bar Association, which argues that:

> [T]he independence of the Judiciary must be guaranteed and secured. To secure the independence of the judiciary, government must grant to it true financial autonomy, and a full self-accounting status. The funds of the judiciary must be released to it as soon as the same is approved in the budgets of the Federal and State Governments.[70]

Ensuring the independence of the judiciary will safeguard judicial officers from political pressures brought to bear by corrupt individuals and government officials.[71]

The number of allegations against corrupt judicial officers in Nigeria remains on the increase. The sacking of the Nigerian Chief Justice to Gambia Joseph Wowo represents serious embarrassment for the Nigeria Judiciary; the allegation against

---

69 See for instance the activities of SERAP, available online at: < http://serap-nigeria.org/seraps-paper-the-international-anti-corruption-conference-bangkok-thailand/>.

70 Stop the Bribes, available online at: < http://stopthebribes.blogspot.com/2013/12/level-of-corruption-is-high-in-nigeria.html>.

71 D. Benson & A. Abdulah "Why corruption must be stamped out from the judiciary"– available online at : <http://www.vanguardngr.com/2012/09/why-corruption-must-be-stamped-out-from-the-judiciary/#sthash.qVno4OQw.dpuf>.

former President of the Court of Appeal Hon. Justice Ayo Salami[72] and the alleged perjury committed by the Chief Justice of Abia State on age falsification are a few unsavoury acts in the Nigerian judiciary.[73]

Indeed, it is important to note according to Falana that many Nigerian judges are not corrupt but at the same time stress the need to sustain the quest to eradicate the corrupt few among the judiciary. According to Falana:

> The fight against judicial corruption is therefore being waged against the few that have perfected the act of selling justice to the highest bidders and thereby dented the image of the judiciary.[74]

IV. CONCLUSION AND RECOMMENDATIONS

It is established that the menace of corruption ensures the entrenchment of poverty and the poor state of development in the nation. Indeed corruption has left the majority of the population in abject poverty, whilst allowing politicians live a life of affluence. Moreover, the clamour by corrupt people to continue leading Nigeria is making Nigeria appear to be a "lootocratic" state, a state run by financial rogues. While several laws exists to minimise and punish corruption, these statutes do not seem to have made a major impact on the prosecution of corruption in Nigeria. This is essentially due to important factors such as bureaucratic delay in administration of justice, plea bargaining problems, absence of political will, inefficient prosecutors and possible judicial corruption.

It is evident that corruption wastes skills, as precious money and time is lost in the setting up of committees to fight corruption, and monitor public projects that are often abandoned by unscrupulous politicians and contractors. The unending chains of corruption-fighting commissions in the society includes, the Code of Conduct Bureau and the Independent Corrupt Practices and Other Related Offences Commission (ICPC), the Police, Central Bank and the Court of Justice, etc.[75]

---

72 For a detailed analysis of the alleged corrupt acts see generally Modern Corruption in Nigeria Judiciary- Case of Justice Ayo Salami and Justice Katsina-Alu, available online at: <http://www.antigraft.org/cc-case/modern-corruption-nigeria-judiciary-case-justice-ayo-salami-and-justice-katsina-alu>.

73 Time to Rein in Corrupt Judges, The Punch, 15 August 2013.

74 Femi Falana, "Fighting Corruption in the Judiciary" Thisday Newspapers, 17 February 2014.

75 Dike, *supra* note 1

Consequently, the problem is not the result of lack of laws but rather the political will to implement laws.

It is therefore recommended that for prosecution of corrupt practices to be more efficient in Nigeria, the following must be adhered to:

i. Delay in the criminal justice system must be eradicated as this will ensure speedy dispensation of justice;

ii. The need for political will by the ruling class to ensure that any individual found wanting of corrupt practices is adequately prosecuted;

iii. Ensuring that equality exists between the poor and rich in Nigeria and anyone found wanting is made to face the law;

iv. Proper implementation of laws and policies put in place to fight corruption;

Finally, it is pertinent to note that lawyers involved in prosecution of criminal justice have to be properly trained to ensure that they do not get ensnared in needless errors that will provide a lee-way for accused persons to evade justice.