

LEGAL AND INSTITUTIONAL MECHANISMS COMBATING CORRUPTION IN NIGERIA

BY

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This paper comes at a time when Nigeria as a country is seeking to recharge its anti corruption drive by injecting it with new impetus and vigour. It is obvious given the recent negative publicity both locally and internationally that the country needs to take radical steps towards cleaning up its image. Such a move is only rational if the country is to enjoy international acceptance and regain investor confidence substantial effort must be exerted towards combating corruption, which appeared to have become institutionalized. Prof Okonkwo¹ writes;

“In most cases there are existing laws which deal with relevant crimes but still there was need for legislation to cover the full ramifications of the crime, plug loopholes, create stringent penalties, provide speedy, effective and more appropriate procedures, provide specialized institutional framework for dealing with crimes and importantly to manifest governments determination and preparedness to do battle with criminals.”

In apparent move to revamp the economy the president of Nigerian presented as an executive bill the anti corruption bill to the National Assembly which subsequently passed it into law and it became the Corrupt Practices and Other Related Offences Act 2000. It is against this backdrop that this paper examines the legal and institutional mechanisms for combating corruption in Nigeria

The institutional and legal mechanism for combating corruption does vary from society to society. Countries usually would adopt measures that best suit its local circumstance in setting up anti corruption laws and mechanisms. In the introduction to the work “Combating Corruption”² it was stated;

“From a domestic point of view, there are two separate, but complementary, aspects of the fight against corruption. The first consists of upstream rules and norms of good behaviour (codes of conduct, manifestos, declarations) conducive to a corruption free

¹ “Legal and Institutional Mechanism Against Corruption In Nigeria” P.1, (Paper delivered at a Conference on Combating corruption in Nigeria 2001.)

² Combating Corruption: a comparative review of selected legal aspects of state and major international initiatives W.Paatii Ofosu-Amaah, Raj Soopramanien, Kishor Uprety

society (preventive approach). The second aspect consists of anticorruption laws proper (general or specific legislative enactments), whose purpose is to provide appropriate remedies, including criminal sanctions and penalties, procedural rules, and institutional mechanisms as needed, to combat acts of corruption that have already occurred (curative approach). The first aspect deals with corruption ex ante; the second aspect deals with corruption ex post.”

To combat corruption a country must choose an approach that suits its economic, social and political circumstance. The enormity of the problem associated with corruption can be glimpsed from the global action against the malaise of corruption. Various international initiatives have been mounted to combat corruption globally in the last seven years.

The success of international initiatives like the fight against corruption and money laundering must necessarily be indexed against successes at national level. Thus local initiatives must be as resolute as their international counterparts. No society is immune from corruption. Available statistics tends to suggest that more economically advanced countries are less corrupt than the less developed ones. Sometimes this assumption is debatable what is however not debatable is the effect of corruption on developing economies. A World Bank report on corruption put it thus;

“In many such societies, corruption exacts heavy economic costs, distorts the operation of free markets, slows down economic development, and destroys the ability of institutions and bureaucracies to deliver the services that society may expect. Corruption also casts a negative influence on the efforts to deal with the incidence of poverty”³.

To put this paper in its proper context we must begin by defining what “corruption” is. In its ordinary meaning corruption means the destruction or spoiling of anything. The World Bank defines corruption as “the abuse of public office for private gain. It involves the seeking or exacting of a promise or receipt of a gift or any other advantage by a public servant in consideration for the performance or omission of an act, in violation of duties required of the office. It may also involve extortion of monies or theft by public servants of amounts due or payable to public coffers⁴.”

In Nigeria there are several legislations dealing with and defining corruption. Corruption under the Corrupt Practices Act⁵ is defined as including bribery, fraud and other related offences. This definition is no doubt a little vague. Learned author Prof. Okonkwo⁶ states that ‘corruption’ is an amorphous expression and that it could however

³ ibid at P.1

⁴ ibid P.2

⁵ Corrupt Practices And Other Related Offences Act 2000 (hereinafter referred to as the “Act”)

⁶ Supra note 1 at P.7

be defined to mean to “deflect, to sway, someone from a proper performance of his duty”⁷.

Some experts suggest that there are three forms of corruption; collusive (involving willing and planned cooperation of the giver and taker), extortionary (implying forced extraction of bribes or other favours from vulnerable victims by the authority), and anticipatory (involving payment of a bribe or presentation of a gift in anticipation of favourable actions)⁸.

Usually legal mechanisms are directed at containing whatever aspect of corruption the society considers to be most problematic to it. The question of legal mechanism is important because corruption invariably exists within a legal framework and it is either that such framework is effective in containing corruption or the corruption will invariably lead to the destruction of such legal system. It is therefore incontestable that law is crucial in the fight against corruption. The law provides the framework for dealing with acts that are considered illegal or wrong by the particular society. The importance of law in corruption is demonstrated by the heavier punishment imposed for what was termed judicial corruption in section 116 of the Criminal Code⁹ than that imposed for similar offence in section 98 of the same code.

The Corrupt Practices Act creates several offences dealing with corrupt practices. In sections 8 to 27 the act provides for a platitude of offences. These include offences of accepting gratification¹⁰, giving or accepting gratification through an agent¹¹, fraudulent acquisition of property¹², fraudulent receipt of property¹³, making false statements or returns¹⁴, bribery of public officer¹⁵, use of position for gratification¹⁶, bribery in relation

⁷ *Azie v. State* (1973) 1 N.M.L.R.

⁸ Paul Samuel “Corruption: Who Will Bell the Cat?” *Economic and Political Weekly*(June 7) 1997

⁹ The Code imposes a punishment of 7 years under section 98 and a maximum of 14 years under section 116. The Criminal Code provisions on corruption were amended by the Criminal Justice (Miscellaneous Provisions) Act 1966 by replacing the previous provisions with Sections 98, 98A, 98B, 98C and 98D. In Nigerian it must be noted that there are two principal codes dealing with crimes, that is the Criminal Code which applies to the states in southern Nigeria and the Penal Code which applies to states in the North.

¹⁰ Section 8 (1) (a)

¹¹ Section 17

¹² Section 12 the punishment for the offence is seven years imprisonment.

¹³ Section 13

¹⁴ Section 16

¹⁵ Section 18

¹⁶ Section 19

to auctions¹⁷, bribery for giving assistance in regards to contracts¹⁸ and attempt or conspiracy to commit any of the offences¹⁹.

The first question regarding the offences created under the is are they new offences and if they are do they sufficiently cover the plethora and hybrid corrupt practices that have developed over the years and in some cases have been described as having become so institutionalised that they are now taken be part of our every day life.

A general feature of the offences created by the Act is the fact that they are defined widely. For instance the offence of gratification by an official in section 8 is defined thus;

“ Any person who corruptly-

- (a) asks for receives or obtains any property or benefit of any kind for himself or for any other person: or*
- (b) agrees or attempts to receive or obtain any property or benefit of any kind for himself or for any other person, on account of-*
 - (i) anything already done or omitted to done, or for any favour or disfavour already shown to any person by himself in the discharge of his official duties or in relation to any matter connected with the functions, affairs or business of a Government department, or corporate body or other organisation or institution in which he is serving as an official; or*
 - (ii) anything to be afterwards done or omitted to be done or favour or disfavour to be afterwards shown to any person, by himself in the discharge of his official duties or in relation to any such matter as aforesaid, is guilty of an offence of official corruption and is liable to imprisonment for seven years.”*

The above provisions highlight how broadly the sections are drawn. The aim of the Act is obviously to catch within its ambit all forms of dishonesty relating to corruption and allied offences. Under section 8 also it is also provided that once it is shown during the course of proceedings that any property was or benefit was received by a public officer or another on behalf of such public officer from a person holding or seeking a contract, licence, permit or anything whatsoever from the public body or department in which the public officer serves such benefit property or promise unless the contrary is proved shall be presumed to have been corruptly received on account of any of mentioned in section 8 (1) (a) or (b). The sum total of the provisions of section 8 is that where a public officer is guilty of official corruption where he receives or induces the giving of any benefit to himself or any other person in the discharge of his official duty. It is also immaterial under that section that the public officer did not do, make or show the act omission favour or disfavour in question.

Most other provisions of the Act are drafted along similar lines. In the contest of a legal framework for combating corruption they appear to be sufficiently worded legislations in

¹⁷ Section 21

¹⁸ Section 22

¹⁹ Section 26, this section makes it an attempt to do any preparatory act towards the commission of any offence under the Act.

the Act for tackling most facets of corruption in pervading public and business life of the country.

In section 8 (4) the Act the act seeks to make it unattractive to law enforcement agents involved in the enforcement of the Anti-corruption Act from using the Act as means of perpetuating corruption. The section provides that;

“Without prejudice to subsection (3), where a police officer or other public officer whose duties include the prosecution, detection or punishment of offenders is charged with an offence under this section arising from-

- (a) the arrest, detention or prosecution of any person for an alleged offence;*
- or*
- (b) an omission to arrest, detain or prosecute any person for an alleged offence; or*
- (c) the investigation of an alleged offence,*
it shall not be necessary to prove that the accused believed that the offence mentioned in paragraph (a) (b) (c), or any other offence had been committed”.

Thus the fact that no offence was committed by the person from whom the gratification was obtained or that the officer took the gratification knowing that no offence was committed is not a defence.

The provision was inserted as a result of our experiences in the past in trying to deal with any social malaise through special commissions and bodies. The outcome of such attempts was always that a new avenue was created for those entrusted with either investigating or prosecuting offenders to enrich themselves and thereby further advance the cause of corruption.

It is also important to note that the Act makes it an offence in section 15 for any person with intent to defraud or conceal a crime or frustrate investigation of a crime to destroy alter mutilate or falsify any book, document etc received by him on the account of his employment or is in his possession or that of his employer. Thus the Act draws from the historical events in Nigeria where corruption in public offices had been covered up by deliberate acts of fire or other methods of destruction of evidence.

These provisions reveal some of the legal framework contained in the Corrupt Practices Act for dealing with corruption. There however several other legislations dealing with corruption in one form or the other. Some these legislations include the Criminal Code and Penal Codes. Under the Criminal Code chapter 12 covers offences relating to corruption. Existing case law points to difficulty in prosecution experienced under the Code leading to paucity of convictions. In essence these codes punish similar acts of corruption as the Corrupt Practices Act, however the essential definition of the offences in the Codes revolve around the word corruptly without defining what amounts to

corruptly. In *Biobaku v. Police*²⁰, Bairamian J. held that “corruptly does not simply mean improperly and that more is required:

“The mischief aimed at by section 98 of the Criminal Code is the receiving or offering of some benefit, reward or inducement to sway or deflect a person employed in the public service from the honest and impartial discharge of his duties-in other words as a bribe for corruption or its price.”

The Corrupt practices Act is some improvement on the Code provisions, in that what amounts to an offence under the Act is easier to discern. Although the Act does use the word “corruptly” in section 8 it is submitted that what is meant by ‘corruptly’ is clear from the provisions of the sub-sections of that section. The Act also does attempt some general definition in section 2 where it is stated that corruption includes bribery, fraud and other related offences.

The penal Code provisions on corruption are found in sections 115 to 122 and suffer from similar criticism as the Criminal Code. Prof Okonkwo is of the opinion that the Penal Code provisions are wider, more lucid and less technical than the criminal code provisions.

Most Nigerian legislations on corruption have always generally focused on corruption in the public sector with little or no attention being focused on the private sector corruption. The reason for this had long held assumption that corruption in the public sector is more damaging to the interest of the country and should therefore be tackled more vigorously than corruption in the private sector. Prof. Okonkwo in his paper stated that section 8 (1) of the Corrupt Practices Act opens with the phrase “any person” therefore implying that it applies to both public officers and persons employed in the private sector. He however criticizes the provision in section 8 (2) Of the same Act relating to presumption of corrupt gift since in his opinion it only affects a public officer.

A U.K. Law Commission report²¹ has stated that such an assumption was increasingly becoming unattainable. A commentary on this perception of private sector corruption stated;

“ There are at least three reasons that account for the growing interest in corruption in the private sector. First, to suggest that corruption in the private sector is less serious than corruption in the public sector is to create a double standard that is hard to justify on moral, ethical or economic grounds, and, in so doing send the wrong signals on the moral standards expected of the private sector.

Second, as more and more public sector functions are being privatised or taken over by the private sector, the line between the public and private

²⁰ (1951) 20 N.L.R. 30

²¹ U.K. Law Commission 1997, March 18, Paragraph 6.19-6.21

sectors has become increasingly difficult to draw. Where public utility entities have been privatised ... there is no apparent reason why corruption in that sector ought to be treated less harshly solely because that sector has been privatised.”

Another reason for the importance of the dealing with the private sector corruption can be glimpsed from the menace that the “Advanced Fee Frauds” a.k.a 419 had posed to the reputation of the country with an attendant capital flight. Not only this to be successful the scams required to a large extent the participation of certain government officers thus their corruption was inevitable. The Corrupt Practices Act does cover some aspects of private sector corruption but they are mostly with giving or receiving as agents of public officers.

An attempt at tackling the notorious 419 scam was made by the Advanced Fee Fraud and Other Related Offences Decree. The Decree sought to cover the loopholes inherent in the existing criminal Code offences of fraud and obtaining by false pretences. One of the important features of that Decree was that it made elaborate provisions on money laundering of the proceeds of the fraudulent scams. This creates an additional weapon in the fight against corruption.

Also the Money Laundering Decree²² is another statute that provides additional legal mechanism for combating corruption. Though the Decree was made with drug trafficking in mind yet the provisions requiring disclosure of lodgement beyond certain amounts by banks and other financial institutions²³ presents another weapon in the fight against corrupt practices.

Another legislation that provides legal mechanism for combating corruption is the Code of Conduct for Public Officers²⁴. There are ample provisions here geared towards accountability in public service and prevention of corruption amongst public servants. In section 3 the Code of Conduct prohibits maintaining of foreign accounts by public officers²⁵. Section 6 of Code also prohibits a public officer from asking for or accepting property or benefits of any kind for himself or any other person on account of anything done or omitted to be done by him in discharge of his duties. More important perhaps are the provisions of sections 8 and 9 of the Code of Conduct.

Section 8 provides that, “ No person shall offer a public officer any property, gift or benefit of any kind as an inducement or bribe for the granting of any favour or the

²² No. 3 of 1995

²³ Section 10 Of the Money Laundering Decree provides that “Notwithstanding anything to the contrary in any other enactment a financial institution or casino shall disclose and report to the Agency in writing, within 7 days, any single transaction, lodgement or transfer of funds in excess of- (a) N500,000 or its equivalent, in the case of an individual; and (b) 2 million Naira or its equivalent, in the case of body corporate.

²⁴ Fifth Schedule Part 1 1999 Constitution.

²⁵ This provision has been criticised as not being in tune with modern day reality of global financial transactions

discharge in his favour of the public officer's duties". A general provision on abuse of office is contained in section 9 to wit "A public officer shall not do or direct to be done, in abuse of his office any arbitrary act prejudicial to the rights of any other person knowing that such act is unlawful or contrary to any governmental policy." To give teeth to these provisions section 18 empowers the Code of Conduct Tribunal to impose any of the following punishments for any contravention of the provisions of the code;

- (a) vacation of office or seat in any legislative house as the case may be
- (b) disqualification from membership of a legislative house and from the holding of any public office for a period not exceeding ten years
- (c) seizure and forfeiture to the state of any property acquired in abuse or corruption of office.

It is further provided that none of the above sanctions shall preclude criminal liability where any crime was committed in addition to breaching the Code.

Apart from creating offences relating to corruption, Corrupt Practices Act along with the other anti-corruption legislations provide various punishments for contravention of those provision. These punishments include long term imprisonment, fines and forfeitures. The power to seize property that is acquired corruptly is contained in most of local legislations dealing with corruption apart from the Criminal Code and Penal Code. In section 37 of the Act an officer of the commission investigating an offence under the Act who suspects on reasonable grounds that any movable property is the subject matter of an offence or is evidence relating to such offence shall seize such property. Section 45(1) provides that the chairman of the commission may on information given to him by an officer of the commission order the seizure of any property including money in a bank which is the subject matter of an investigation.

The court²⁶ may also in any prosecution for an order the forfeiture of any property which is proved to be the subject matter of the offence or to have been used in the commission of the offence where the offence is proved against the accused or if not proved against the accused the court is satisfied that the accused is not the true and lawful owner of the property²⁷. The court may also where the offence has been proved against the accused person but the property has been disposed of or cannot be traced the court may order the accused to pay as penalty a sum equivalent to the amount received as gratification²⁸. The chairman of the commission is also empowered by the Act with respect to a seized property where there is no prosecution or conviction before the expiration of twelve months from the date of the seizure to apply to a judge of the high court for an order of forfeiture.

Other notable provisions in Corrupt Practices Act include the power of the high court to order a legal practitioner to disclose information available to him in respect of any dealing or transaction under investigation relating to property liable to seizure²⁹. A

²⁶ Section 47 (1)

²⁷ Also that no other person is entitled to the property as a bona fide purchaser for value. Section 47 (1) (b) (ii)

²⁸ Section 47 (2)

²⁹ Section 39

court³⁰ may also by an order authorize an officer of the commission with respect to a bank or other financial institution to exercise all the powers of investigation set out in section 43 (2). These powers include power to inspection of bank documents, account statements etc.

Other notable provisions in the Corrupt Practices Act relate to evidence. Section 53 provides that once it is proved in any proceedings that a gratification was accepted obtained solicited given promised or offered or attempted to accept obtain solicit give promise or offer by or to the accused it shall be presumed to have been corruptly accepted given etc unless the contrary is proved³¹. Thus the onus is shifted to the accused to disprove corrupt intent. There is also in the Act what is called public corroboration to the effect that once it is proved in relation to an offence under section 8 to 19 that at or about the time of the alleged offence or thereafter the accused or any relative or associate held property which he is unable to give satisfactory account how he came into its ownership possession or custody or entered into any dealing for acquisition of property and is unable to account for the consideration for which it was acquired the evidence in relation thereto shall be presumed to corroborate any evidence relating to the commission of the offence.

INSTITUTIONAL MECHANISMS

The Corrupt Practices and Other Related Offences Act establishes a Commission known as the Independent Corrupt Practices and Other Related Offences Commission under section 1 of the Act. The qualification and composition of the thirteen member Commission is provided for in section 2 of the Act. The Act essentially provides the members of the commission shall be members of proven integrity. They are to be appointed by the president subject to confirmation by the Senate. It is the duty of the commission as espoused in section 6 of the Act to receive complaints investigate and prosecute offenders. Thus the Commission is at the thrust of Nigeria's fight against corruption. Their duties are not just limited to the above section 6 also places the duty of supervising the review of practices and procedures of public bodies where in the opinion of the Commission it aids or facilitates corruption³². Also the commission is to advice and assist any officer agency or parastatal on way of eliminating or minimizing fraud or corruption³³. Educate the public on and against bribery corruption and related offences and to enlist and foster public support in combating corruption³⁴. The agency in charge of combating corruption is as important as the laws it seeks to enforce, because the success or otherwise of the laws depend largely on the activities of such an agency. The Commission from the Act provisions has enough legal mandate for the purpose of effectively combating corruption. The officers of the commission are given similar powers of arrest and prosecution as the police³⁵. Their powers are in lot of cases far wider

³⁰ Section 43 (1)

³¹ Section 53 (2) (3) and (4) making further presumptions as to motive, value of consideration and custom officers.

³² Section 6 (b)

³³ Section 6 (c)

³⁴ Section 6 (d) and (e)

³⁵ Section 5 (1)

than that of the regular police force. Not only can they inquire into things that the police had no access to the also have powers of seizure of properties suspected to be subject matters of an offence. Our Commission is similar in many respects to other specialized corruption investigation agencies worldwide.

The success of the Commission to a large extent depends on the public perception of it, as has been stated;

*“ The public must also be assured that the fight against corruption is in the hands of a thoroughly reliable agency. The organisation charged with this important responsibility must be beyond reproach. ”*³⁶

It has been said that corruption investigation is an expensive undertaking, requiring considerable resources, which very few developing countries care to afford. It may not be wrong to say that Nigeria in the past was not in a dissimilar position. However it is hoped that the renewed drive against corruption will bring with and added enthusiasm to deploy reasonable funds towards combating corruption. Public distrust against government anti corruption crusades must further be destroyed by not just the appointment of credible Nigerians to the Commission as indeed evidenced by the calibre of those presently in the Commission the government must go further to provide the commission with adequate and real independence and resources. Indeed a World Bank report has stated;

*“Although there is no compelling reason to assume that political leaders are the main source of corrupt practices, let alone the only source, there is a real perception-at least in the eyes of the public-that, along with other public officials, they rank among the chief perpetrators of corruption offences and other economic crimes, if only because of the power they wield and, more important, their ready access to public funds. ”*³⁷

Some other institutional mechanisms in the fight against corruption include the requirement under the Act for the designation of special courts³⁸ for the purpose of dealing with corruption cases. It is hoped that the creation of such special courts will lead quick disposal of cases dealing with corruption.

Another agency whose existence is important in the fight against corruption is the Code of Conduct Tribunal³⁹. The tribunal had over the years been ineffective. It is hoped that with the advent of democracy the tribunal will come alive to fulfil its constitutional role.

³⁶ “The Experience of Hong Kong, China, in Combating Corruption B.E.D.de Speville, Curbing Corruption –Toward a Model For Building National Integrity, Pg.53

Members of Hong Kong’s ICAC are very well paid because the government recognises that a poorly paid civil servant particularly a poorly paid corruption fighter is more vulnerable to the temptation of a bribe than one paid generously.

³⁷ supra note pg.47

³⁸ Section 61 (3) such court is to hear exclusively corruption cases.

³⁹ Sections 15 to 18 Fifth Schedule Part 1 1999 Constitution

On a generally note it must be noted that though the Corrupt Practices Act has made strong legislative reform but there still exists some aspects of corruption that have not been sufficiently dealt with in Nigeria. For instance there is the need to make provisions that will adequately deal with possession of unexplained assets and maintaining an unrelated standard of living.

In conclusion the effectiveness of any framework for combating corruption depends largely more on political will than the legal framework. It has been suggested that over reliance on legal remedies is not an effective corruption combating strategy. In fact it has been stated that “too much reliance on enforcement leads to repression, abuse of enforcement power, and the emergence of further corruption”⁴⁰.

It is also hoped that the International community will give Nigeria a chance by assisting its economic policies so as to enhance the standard of living of its people as it is well known that the economy does play a large role in how the society responds to corrupt practices. Public servants must be empowered in a manner that they will not be easily susceptible to corruption. Also the International community must ensure that they are not havens for hiding looted funds by corrupt government officials. Not only must they discourage such activities they must ensure that they cooperate with law enforcement agencies seeking to prosecute such offenders.

⁴⁰ Supra note 31 Pg.98