

**CONSTITUTIONS, GOOD GOVERNANCE AND CORRUPTION:
CHALLENGES AND PROSPECTS FOR NIGERIA.**

1.0 INTRODUCTION

The Transparency International Annual Corruption Perception Index consistently rated Nigeria as one of the most corrupt, - at one time or the other the most corrupt – nation in the world.¹ The acknowledgment of corruption constitutionally² and judicially³, as one of the foremost challenges to governance and development in Nigeria, informed the making of the “Anti-Corruption Campaign” as a fundamental policy of the President Olusegun Obasanjo government, that was established by the 1999 Constitution.⁴

Nigeria’s status as an oil producing nation (member of OPEC) with enormous revenue generation capacity from oil and non-oil exports, woefully contrasts with its decaying infrastructural and institutional development. The effects of years of dictatorial and corrupt governance by successive military administration are glaringly manifest in

¹ In 2000 Nigeria was rated as the most corrupt nation in the world out of a total of 90 countries. In 2001, Nigeria was rated the second most corrupt nation out of a total of all 91 countries assessed. In 2002 Nigeria retained its number two position as the most corrupt country out of a total of 102. Though by 2005 Nigeria was ranked number six out of 186 countries. Rankings available online at <http://www.fordham.edu/economics/vinod/cie/ti-cpi2k.htm> [2000 Index], http://www.transparency.org/cpi/2001/2002_06.28_cpi_en.html; <http://www.infa.please.com/ipa/A078135Q.htm> [In 2003 Nigeria was ranked as the most corrupt country out of a total of 133]; <http://www1.transparency.org/cpi/2005/dnld/media-pack-en-pdf>.

² See Report of the Drafting Committee containing the Draft Constitution (1976) Vol. 1. p. XXXIII para. 7.5; Report of the Political Bureau 1987 (Federal Government of Nigeria, Printer, Lagos) 213 Para 12. 037. – 12.039.; See also Justice A.N. Aniagolu, *The Making of the 1989 Constitution of Nigeria*. 1993 (Safari Books) pp 156-157; Osipitan Taiwo & Oyelowo Oyewo, “Legal and Constitutional Framework for Combating Corruption in Nigeria”, in *Unilag Readings in Law* E.O. Akanki (ed) (19) pp. 257-282.

³ Attorney-General of Ondo State v Attorney-General of the Federation & 35 Ors (2002) 14 WRN 1; Olafisoye v F.R.N (2005) 51 WRN 52. These are decisions of the Supreme Court on the Independent Corrupt Practices Commission (ICPC) Act.

⁴ Mallam Nuhu Ribadu, “Nigeria’s Struggle with Corruption”, being an abridged and edited version of presentation to US Congressional House Committee on International Development, Washington D.C on May 18 2006. Available on line

the poor state of development in all the sectors of the nation's life, especially the level of poverty and low quality of life of its people.⁵

The upsurge in the adoption of international instruments on combating and preventing corruption⁶ did not only raise global focus on corruption in developing nations, but resulted into a change of approach and pressures by international financial institutions, like the World Bank, IMF, African Development Bank, on the developing countries to implement "anti-corruption" laws within their domestic legal framework.⁷

Nigeria's 1999 Constitution contain several provisions geared towards good governance, supported by the enactment and judicial validation of accountability and transparency augmented anti-corruption legislations⁸, and the articulation and vigorous pursuit of the "anti-corruption" policies by the President Olusegun Obasanjo Administration of May 29, 1999 till May 29, 2007.⁹ However the nascent constitutional democratic government grapples with the problems of governance and how to effectively combat and prevent corruption (which has been ingrained in the Nigerian value system and psyche as the "Nigerian Factor").¹⁰

⁵ Billy. J. Dudley, *An Introduction to Nigerian Government and Politics*, (1982) (Macmillan) pp. 112-120 at 116. Professor Dudley rightly observed that: "Under Military rule, with no constituents to conciliate and no electorate to be accountable to – in however weak a sense one interprets the notion of accountability to – the effect of the oil boom was to convert the military political decision-maker and their bureaucratic aides into a new property –owning, rentier class, working in close and direct collaboration with foreign business, interests with the sole aim of expropriating the surpluses derived from oil for their private and personal benefits."

⁶ See the *Compendium of International Legal Instruments on Corruption Second Edition*, publication of the United Nations Office on Drugs and Crime 2005. available online at

⁷ *Striving for Good Governance in Africa: Synopsis of the 2005 African Governance Report* prepared for the African Development Forum IV, by the Economic Commission for Africa. Christian Schiller "Improving Governance and Fighting Corruption: An IMF Perspective" Washington, March 31, 2000.

⁸ Sections 15(5) provides: "Government must eradicate all corrupt practices and abuse of power." Section 22 imposes an obligation on the Mass Media to "highlight the responsibility and accountability of the Government, to the people." The Legislature is conferred with Powers and Control over Public Funds, Audit supervision over public accounts, and power to conduct investigations in sections 80 – 89.

⁹ His administration pursued the enactment of anti-corruption legislations such as the Independent Corrupt Practices And (Other Related Offences) Commission Act (ICPC Act), the Economic and Financial Crimes Commissioner (EFCC) Act, Money Laundering (Prohibition Act). The prosecution and conviction of high ranking public officials; tracing, seizure, confiscation and repatriation of all proceeds of corruption. Reforms of the civil service, banks and anti-corruption institutions.

¹⁰ "Nigerian Factor" is the acronym for the practice of bribery and corruption based on the general perception that every public official has a "price" at which he/she may be "bought". It also translates into the general belief that public office/public service is for personal enrichment and accumulation of wealth, as part of every Nigerians share of the "national cake" for himself/herself and for his/her family, tribe/ethnic group. See J.P. Oliver de Sardan "A Moral Economy of Corruption in Africa?", (1999) 37 *Journal of Modern African Studies* 25 – 55. He articulated certain social norms widely represented in

It is generally acknowledged that constitutional democracy is the basis for good governance, as good governance is the antidote for corruption. Thus this paper engages in the conceptual examination of the corruption phenomenon in Nigeria, before analyzing the constitutional mechanisms and framework designed to tackle corruption. The governance issues relating to corruption will be discussed, as a prelude to highlighting certain emerging prospects for combating and preventing corruption in the Nigerian state. The observations and conclusions thereafter flow logically from the preceding discussions.

2.0 THE CORRUPTION PHENOMENON

Understanding the existence, growth and impact of corruption within the Nigerian state, requires the definition or conceptualization of corruption within the context of first, the legal system and administration of justice, and second, the international legal normative expression of the term, since there is no universally acceptable definition of the term. For while the municipal legal system's definition of corruption is narrow, that of the international legal system is much broader, and the need to narrow the gap between the two systems is quite obviously necessary for effective enforcement of the legal normative expression of the term. This necessitates the call for the domestication of relevant international conventions and treaties¹¹ within the Nigerian State in order to concretize the basis for a more effective criminalization policy and anti-corruption techniques mechanisms in combating and preventing corruption in Nigeria.

2.1 Definition

The 1999 Constitution establishes a Code of Conduct for Public Officers¹² and made it a Political Objective¹³ for the state to abolish all corrupt practices and abuse of power, however, it does not define corruption or give a list of acts that will amount to corruption. It has also been observed that the statutory criminal laws, the Criminal and

modern Africa which seems to “communicate” with or influence, and “facilitate” the practice of corruption.

¹¹ For example, the United Nations Convention against Corruption (@ <http://www.unodc.org/unodc/crime-convention/corruption> html); and the African Convention on Prevention and Combating Corruption (@ <http://>

¹² See Sections 66, 107, 172, 173, 209, 292 and 318, and the Fifth Schedule Part I of the 1999 Constitution.

¹³ See Section 15(5) and item 60(a) of the 1999 Constitution and Attorney-General Ondo State v. Attorney-General of the Federation *supra*.

Penal Codes, do not define corruption.¹⁴ The criminal code for example merely states that “an offence of corruption is committed, where a public officer corruptly asks, receives, or obtains any property or benefit.”¹⁵ While the Corrupt Practices Decree of 1975, described corruption by restricting corruption to bribery, which it defines as “the offer, promise or receipt of any gratification as inducement or reward.”¹⁶

Most of the statutory definitions focus on bribery as corruption and mainly within the public sector. Whilst there is broad agreement that corruption is the “abuse of public office for private gain”¹⁷, it has also been acknowledged that corruption does not only involve private sector involvement but also foreign enterprises involvement.¹⁸

The Independent Corrupt Practices (and Other Related Offences) Commission (ICPC) Act 2000, and the Economic and Financial Crimes Commission (EFCC) Act 2004 have now broadened the definition of corruption.¹⁹ The EFCC Act empowers the Commission to investigate, prevent and prosecute offenders who engage in:

“Money laundering, embezzlement, bribery, looting and any form of corrupt practices, illegal arms deal, smuggling, human trafficking, and child labour, illegal oil bunkering, illegal mining, tax evasion, foreign exchange malpractices including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic, wastes, and prohibited goods.”²⁰

¹⁴ Taiwo Osipitan & Oyelowo Oyewo, “Legal and Institutional Framework For Combating Corruption in Nigeria in *Unilag Readings in Law* E.O. Akanki (ed) pp. 257 – 282.

¹⁵ Section 98 Criminal Code Cap 77 Laws of the Federation of Nigeria 1990.

¹⁶ Decree No 38 section 1. Section 30 of the Decree further defines gratification to include “various forms of financial benefit other than cash; such as any office, employment or contract.”

¹⁷ Alhaji B.M. Marong, Toward a Normative Consensus Against Corruption: Legal Effects of the Principles to Combat Corruption in Africa.” (2002) DENV J. INT’L 1 & poly Vol. 30: 23. (@ <http://www.law.dv.edvlilj/online-ssues-folder/marong.final.9.3.pdf>. pp. 99-109.

¹⁸ Alejandro Posadas, “Combating Corruption Under International Laws”, 10 Duke J. of Comp. & Int’l L 345 (@ <http://www.law.duke.edu/journals/djcil/articles/djci/1op.345.htm>.)

¹⁹ The ICPC Act definition of corruption *in section 2 and other sections* has been severely criticized as vague and scanty by Paul D. Ocheje, “Law and social Change. A Socio-Legal Analysis of Nigeria’s Corrupt Practices and Other Related Offences Act, 2000” Journal of African Law, 45, 2 (2001); 173 – 195 at 178 – 180.

²⁰ Section 46. EFCC Establishment Act 2004. This wide range of enumeration of offences has been criticized, among other over-reaching provisions of the Act. The Act is presently before the National Assembly for review and amendment.

Though the term “corruption” has not been defined in any of the documents that African leaders have signed, however the African Union Convention on Combating Corruption and related offences define acts of corruption²¹ in such pragmatic and broad manner that can be applicable to existing corrupt practices in an African country like Nigeria. We therefore call for the Nigerian Government to ratify and domesticate the Convention in order to give impetus to the “Anti-Corruption” policy and campaign of the Government.

2.2 Development

While it may not be possible in a work of this nature to fully explore and analyze the development of corruption in Nigeria, however, contemporary study on development of corruption in Nigeria dates back to the First Republic of 1963 to 1966.²² Moreover, allegations of election fraud and corruption characterized the later part of the First Republic, and this was evidently used as a justification by the military to intervene in our body politics in 1966.²³

Despite the anti-corruption crusade of the military interventionists, they were themselves caught in the web of corruption.²⁴ The oil boom, arising from the sudden upsurge in the foreign revenue from the petroleum products exports fuelled the growth of corruption under the various military administrations.

In a recent study of the development²⁵ problems in Nigeria, Bedford N. Umez²⁶, while recognizing the three main explanations for Nigeria’s lack of development, viz:

- (1) the colonial legacy explanation;

²¹ Article 4. See Noel Kutukwa, “African Anti-Corruption Commitments: A review of eight NEPAD Countries”. AHSI Paper 7/January 2005. @ http://www.iss.org.za/pubs/other/ahsi/Paper_7_Jan_05/Kutukwa.pdf.

²² R. Tignor, “Political Corruption in Nigeria Before Independence, (1993) *Journal Modern African Studies* 175 – 202; Paul D. Ocheje, *supra* 174 – 177.

²³ The then Federal Military Government, promptly responded to these allegations of corruption, by setting up Tribunals of Inquiries to probe the activities and assets of some suspected politicians. The Public Officers (Investigation of Assets) Decree of 1966; Investigation of Assets (Public Officers) Validation Decree No. 45 of 1968; Forfeiture of assets (Public Officers). Validation Decree 1968, all dealt with the investigation and forfeiture of Assets of Corrupt Officers. The Supreme Court in *Lakanmi v. Attorney General, West* (1971) 1 U.I.L.R 20; 1974 ECCLR 713 pronounced some of the acts of the Military administration in the forfeiture of assets of Corrupt Public Officers illegal, null and void.

²⁴ The Gowon Administration was, for example, an evidently corrupt government. Ten out of the twelve Military Governors in that Regime were indicted for corruption.

²⁵ See Billy J. Dudley, *An Introduction to Nigerian Government and Politics, supra*.

²⁶ *The Tragedy of a Value System in Nigeria. Theories and Solution* (1999).

(2) the corrupt leadership hypothesis; and

(3) the authoritarian regime argument, added a fourth explanation: the prevalent value system, which “glorifies and endorses corrupt and illegal means as necessary, normal and sufficient means to end.”²⁷ The prevalent value system of public acceptance of corruption as a way of life compounds the problem of combating corruption. J.P. Oliver de Sardan, explaining corruption in terms of its cultural embeddedness, identified six social “logics” that underlie a number of common behavioural traits, and two “facilitators” that integrate these logics by facilitating the “erosion and dissolution of the separation between legal and illegal everyday practices through an accentuation of social pressures inciting a disregard barrier”, thus providing a favourable ground for generalizing and trivializing corruption. His observations are true for the Nigerian society.

Little wonder that the constitutional mechanism established by the 1979 Constitution to combat corruption failed woefully during the President Shehu Shagari Administration.²⁸ Undoubtedly, the Gen Ibrahim Babaginda and General Sani Abacha Military Administrations took corruption to its nadir²⁹ which accounts for the Corruption Perception Index rating of Nigeria as the most corrupt nation in the world even under a constitutional democratic government of President Olusegun Obasanjo, and the formulation of the most robust and curative legal framework and policies for combating and preventing corruption in Nigeria.³⁰

²⁷ Id at 37 – 35.

²⁸ See the Report of the Political Bureau (1987) (FGN. Printer, Lagos) 213 para 12. 037-12.039. See also Justice A.N. Aniagolu, *The Making of the 1989 Constitution of Nigeria* (1993) 156 – 157.

²⁹ General Sanni Abacha as Head of State, acknowledged that besides having negative impact on the political and economic sectors of the nation, corruption has also undermined the principles of equity and social justice which are fundamental to the orderly evolution of a human, democratic, strong and united country: See The Guardian Newspaper, June 29, 1994, p.4. See also T. Falola and J.O. Ihonybere, *The Rise and Fall of Nigeria's Second Republic* (1985).

³⁰ See Mallam Nuhu Ribadu *supra* The President Obasanjo Administration's target is zero tolerance for corruption. This it has pursued through:

- i. Enactment of laws against graft, viz: Independent Corrupt Practices (And Other Related Offences) Commission (ICPC) Act; EFCC Act; Money Laundering (Prohibition) Act 2004.
- ii. Prosecution and conviction of high ranking Public Officials such as the Inspector-General of Police, Governors, Senators, Civil Servant, and Government Contractors.
- iii. Tracing, seizures and confiscation of all proceeds of corrupt practices.
- iv. Establishment, funding and strengthening of anti-corruption and economic crimes institutions for effective policing and law enforcement.

Unfortunately, the Herculean task of clearing the stable of the Nigerian State of corruption is far from done, and the efforts of our newly elected President Umaru Musa Yar'Adua will determine the trend in the development or eradication of the corruption malaise.

3.0 CONSTITUTIONAL FRAMEWORK TO TACKLE CORRUPTION

The Constitution as the fundamental law or basic law defines the limits of exercise of powers conferred on the organs of government established by it. Thus the practice of constitutionalism aims at limiting the excesses of government, government officials and elected office holders within the limits of the law, and through governance that is based on legislations, regulations rules and practices developed pursuant to the provisions of the Constitution.

Consequently, the 1999 Constitution contains several provisions to curb the abuse of power, combat corruption, and subject the government to accountability and transparency. However, it must be noted that some of the constitutional provisions have had the effect of protecting some public official from any civil proceedings or criminal prosecution relating to acts or practice of corruption. Most significant in this light is the immunity provisions of section 308 of the Constitution. Moreover, the Fundamental Rights provisions on due process and Fair Hearing have been sought to be employed by persons accused of corruption “blanket” their actions, by claiming their constitutional right to remain silent and not to incriminate themselves, the effect of which imposes an almost impossible task for the Prosecution to discharge its burden of proving its case beyond reasonable doubt since the accused is presumed innocent until the contrary is established in our adversary criminal justice system. However, the said constitutional rights have been limited by legislations such as the ICPC AND EFFCC Acts, in ways that have been interpreted to be reasonably justifiable by the courts.

3.1 Constitutional Provisions

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- v. Monthly publication of distributable revenue from the Federation Account to different tiers of government.
 - vi. institution of accountability and transparency mechanism in Government contracts, procurements accounting and auditing, in public expenditures and in the oil sector.

The general scheme of the 1999 Constitution is to adopt several constitutional law principles for the limitation of governmental powers, such as separation of powers, rule of law, federalism, good governance, accountability and transparency, human rights protection, guarantee of free and fair elections, participatory democracy, independence of the judiciary, autonomy of the legislature and press freedom.³¹

These are all relevant to combating and preventing corruption; however, there are certain salient provisions that are more germane to the anti-corruption approach in particular. These will now be highlighted.

3.1.1. Abolition of Corrupt Practices

As earlier observed section 15(5) and item 60(a) Second Schedule Part I of the 1999 Constitution specifically makes it a political objective of the state to abolish all corrupt practices and abuse of power. Though, the political objective forms part of the Fundamental Objectives and Directive Principles of State Policy in Chapter II that are made non-justiciable by Section 6(6)(a), however, the Supreme Court in the *Attorney-General of Ondo v. Attorney-General of Federation*³² enforced the provisions of Section 15(5), by developing a dynamic jurisprudence of constitutional interpretation that innovatively gave effect to the hitherto non-justiciable provisions by reading them together with the justiciable provisions of the Constitution. Moreover, the provisions of the ICPC Act were validated by the Court by employing arguments based on the corruption ratings of Nigeria in the world and its impact on the Nigerian citizenry.³³

The court's decision has subsequently been followed in other cases.³⁴

³¹ Ademola Yakubu, *Nigerian Constitutional Law* (2004)

³² *supra*.

³³ Per Uwaifo J.S.C at pp. 176 – 177 and I quote: “The purpose and mission of the Act are clear. The Act is meant to make justiciable by a legislation declared State policy to abolish corrupt practices and abuse of power, it is to harken to national and international concern over corruption; it is to give a national leadership and impetus to the crusade while not standing in the way of the states; it seeks amongst other things to deal with and punish specific offences on corrupt practices even including those committed outside Nigeria by citizens and persons granted permanent residence in Nigeria: see section 66. It is not in any way an attempt to embark on a general criminal law legislative jurisdiction. The eradication of corrupt practices and abuse of power will inure to the good government of Nigeria.”

³⁴ *FRN V. Anache* (2004) 14 WRN 1 (SC); *Olafisoye v. FRN* (2005) 51 WRN 52 (SC). See also Akeem Olajide Bello, “Decision in the Anti-Corruption Case: Constitutional and Other Matters Arising”, in *Trends in Nigerian Law: Essays in Honour of Oba Olateru-Olagbegi III*, Oluduro, Ibraheem and Oke-Samuel (eds) 2007, Chapter 8, pp. 100 – 126.

3.1.2 Code of Conduct

The imposition of a duty to observe and conform with a Code of Conduct by Public Officers³⁵ is an innovation of the 1979 Constitution, that is retained by the 1999 Constitution. The Code of Conduct prohibited, *inter alia*, the giving and receiving of bribes, abuse of office by Public Officers, the operation of private foreign accounts, as well as conflict of personal interest with official duties on the part of Public Officers.³⁶

Pivotal to the Code, is the scheme of declaration of assets required of every Public Officer within three months of the coming into force of the Code or immediately after assuming office and thereafter at the end of every four years, and finally at the end of his/her term of office.³⁷

A Code of Conduct Bureau is charged with the responsibilities of receiving, retaining custody of and examining assets declaration forms filed by Public Officers. It is also vested with the duty of receiving and dealing with allegations that a Public Officer has committed a breach of or has not complied with the provisions of the Code of Conduct Tribunal conducts the administrative adjudication on all allegations of contraventions of the Code of Conduct and imposes any of the punishments specified by the Constitution.

The immunity clauses of section 308 of the Constitution that restricts the institution of civil or criminal proceedings against the President, or Vice-President, Governor or the Deputy Governor have been employed successfully against the Code of Conduct Tribunal.³⁸ Apart from the immunity clauses, several other constitutional lapses

³⁵ Fifth Schedule Parts I & II. The list of Public Officers for the purpose of the Code of Conduct include the President, Vice President, all members and staff of legislative houses, Governors and Deputy Governors of States, all judicial officers and all staff of courts of law, etc. The list covers every Public Office in Government.

³⁶ The aborted and draft Constitutions of 1989 and 1995, respectively, extended the prohibited conducts, by the inclusion of acts such as Public Officers living above their legitimate income, and certain property transactions. Thus acts of "Illicit enrichment" that were covered by the 1989 and 1995 aborted and draft Constitutions are omitted in the 1999 Constitution. "Illicit enrichment" as used by the African Union Convention on Preventing and Combating Corruption in Article 1, means "the significant increase in the assets of a public official or any other person which he or she cannot reasonably explain in relation to his or her income." Interestingly, most retired and serving Public Officers are guilty of "Illicit enrichment".

³⁷ The assets declaration scheme is dependent on the bureaucracy of verification of the assets declared by the Code of Conduct Bureau.

³⁸ Attorney-General of the Federation, Code of Conduct Bureau, and Code of Conduct Tribunal V. Alh. Atiku Abubakar [2007] 8 NWLR (Pt 1035) 117 at 155; Atiku Abubakar V. Attorney-General of the Federation [2007] 3 NWLR (Pt 1022) 546 at 648.

in the drafting of the Fifth Schedule have been employed to make both the Bureau and Tribunal ineffective.³⁹

3.1.3. Public Complaints Commission

The Public Complaints Commission was smuggled into the 1979 Constitution by way of a Military Decree preserved as an existing law specifically by the Constitution. This has been retained by Section 315(5) of the 1999 Constitution.

However, it must be noted that the Commission was evidently not primarily designed as an anti-corruption body. As rightly observed by Professor Nwabueze, that the Commission was “designed to check the pervasive incidence of Administrative arbitrariness and injustices” and not necessarily to deal with corruption. Expectedly, the proportion of cases handled by the Commission on corruption and abuse of office, have been minimal.⁴⁰

3.1.4. The Legislature

The role of the legislature as the watchdog over public finance is part of its oversight functions over the executive in the management of the capital and resources of the Nigerian state in order to ensure good governance accountability and probity.⁴¹ By virtue of sections 80 and 81 of the 1999 Constitution it is the National Assembly that gives authorization to the President for all expenditures from the Consolidated Revenue Fund, thus affording the representative body an opportunity to rigorously debate and rationalize the budget. Unfortunately, the performance of the legislature has fallen woefully below expectation, as they have been sometimes involved in bribery and corruption as an incentive to pass appropriation Bills.

The National Assembly’s powers also extends to post-appropriation control through the device of auditing of public accounts by the Auditor-General and the Conduct of investigations into the expenditure patterns of the government.⁴²

³⁹ Taiwo Osipitan & Oyelowo Oyewo, “Legal and Institutional Framework for Combating Corruption in Nigeria”, *supra*, at pp. 271 – 274.

⁴⁰ B.O. Nwabueze, *Military Rule & Constitutionalism* (1992) (Spectrum) at pp. 161 and 168.

⁴¹ Oyelowo Oyewo, “Constitutionalism and the Oversight Functions of the Legislature in Nigeria”, being a paper presented at the African Network of Constitutional Lawyers Conference in April 2007 held at Nairobi, Kenya.

⁴² See sections 85 - 87 on Audit of public accounts; and sections 88 – 89 on power to conduct investigations under the 1999 Constitution.

From 1999 till date the Legislature, especially at the Federal level, demonstrated the importance of oversight functions of the legislature in not only exposing corrupt practices of the administration but in controlling the excesses of the executive in governance and management of the nations resources.

Most significantly, is the exposure of corruption even in the Presidency that indicted the Vice-president, Atiku Abubakar and implicated President Olusegun Obasanjo in the now notorious Petroleum Trust Development Fund (PTDF) scandal.⁴³

3.1.5 Political Parties and Elections

The representative democracy established by the 1999 Constitution is based on political party system as the vehicle for canvassing votes by any public office seeker.⁴⁴ Thus the finances of the political parties and all campaign and election financing are constitutionally regulated together with electoral laws made pursuant thereto.⁴⁵ The current Electoral Act 2006 contain ample provisions on campaign financing. However, it has been acknowledged that these constitutional and statutory provisions have been either poorly enforced or not enforced at all by the Independent National Electoral Commission (INEC). This anomaly, interestingly, accounts for the pervasive corrupt practices in governance arising from too much money, and from tainted and dubious sources at that, in elections in Nigeria.⁴⁶ Corruption and election rigging and other malpractices have compromised the 2007 elections and raised issues of legitimacy and effectiveness of the President Umaru Yar'Adua administration.

3.1.6. Press Freedom

The guaranteed freedom of the press is further constitutionally enhanced with an imposed duty “to uphold the fundamental objectives” and “uphold the responsibility and accountability of the Government to the people.”⁴⁷

⁴³ The indictment of the Vice-President and his subsequent change of party, from PDP to AC, were sought to be employed as grounds for his ineligibility to stand for elections for the Office of the President, and his disqualification to continue to hold on to the Office of the Vice-President. These arguments were rejected by the Appellate Courts, and the Vice President was able to continue in office till May 29 2007, and to stand for the election for the office of the President during the 2007 Elections. See Attorney General of the Federation V. Atiku Abubakar, *supra*.

⁴⁴ Sections 221 and 222 of the 1999 Constitution.

⁴⁵ Sections 225 – 228 of the 1999 Constitution.

⁴⁶ *Law, Money and Politics* Epiphany Azinge (ed) 2004.

⁴⁷ Section 39, 1999 Constitution, guarantees eight to freedom of expression and the press. Section 22 expresses the obligation of the mass media.

The Nigerian mass media is one of the most vocal on the continent, and its role in exposing corruption in the public and private sectors has contributed in no small measure in combating and preventing corruption in Nigeria, and engendering accountability, transparency and good governance. The refusal of President Olusegun Obasanjo to assent to the passing of the Freedom of Information Bill by the National Assembly, thereby vetoing its enactment into law, is a rather unfortunate development that has hindered the statutory empowerment of the mass media to discharge its constitutional duty to hold the government accountable to the constitution.

3.1.7. The Judiciary

An independent judiciary is a *sine qua non* for combating corruption. The 1999 Constitution contain provisions aimed at ensuring the independence of the judiciary, especially, the establishment of the National Judicial Council (NJC) which oversees the affairs of the judiciary in finances, appointments, removals and discipline.⁴⁸ Moreover, the leadership offered by the Nigerian Supreme Court in delivering sound judgments without the intermeddling of the other arms of government, has enhanced its stature as the last hope of the citizen and the defender of the Constitution.⁴⁹ Of note is its celebrated decision in the *A – G Ondo v. A –G Federation Case*⁵⁰ in which the court gave a judgment that gave impetus to the anti-corruption campaign of the Obasanjo Administration, by validating the ICPC Act, helped in no small measure in establishing the new legal framework for the campaign.

4.0 GOOD GOVERNANCE AND THE CHALLENGES OF CORRUPTION

Governance refers broadly to the exercise of power through a country's economic, social, and political institutions in which institutions represent the organizational rules and routines, formal laws, and informal norms that together shape the incentives of public policy-makers, overseers, and providers of public services.⁵¹ Governance in Nigeria

⁴⁸ Section 153 and Third Schedule Part I of the 1999 Constitution.

⁴⁹ Several landmark decisions of the apex court helped in stabilizing and strengthening our fledging constitutional democracy, such as: *A-G Ondo v A-G Federation supra*; *A-G Abia v A-G Federation 92002)6 NWLR (pt 11) 24*.

⁵⁰ *supra*.

⁵¹ Governance for Sustainable Human Development, A UNDP Policy Paper, UNDP 1997 p 2 – 3 For global perspectives on Governance see: (i) UNDP at <http://magnet.undp.org/policy/default.htm>.; (ii) Commission on Global Governance at <http://www.cgg.ch/welcome.htm>; and

dates back to the colonial period. However, good governance is a much recent and novel idea of democratic governance that found expression in the detailed provisions of the 1979 Constitution that contained the Fundamental Objectives and Directive Principles of State Policy. Good governance became the reducible criteria for assessment of government under the 1999 Constitution, due to the negative effect of military rule, the activities of civil society and the pressures of international financial institutions such as the World Bank, IMF and UNDP.⁵²

Good governance is, among other things, participatory, transparent and accountable, effective and equitable, and it promotes the rule of law. It ensures that political, social and economic priorities are based on broad consensus in society and that the voices of the poorest and the most vulnerable are heard in decision-making over the allocation of development resources.⁵³ In its report, *Governance for Sustainable Human Development*, the UNDP acknowledges the following as core characteristics of good governance:

- 1) Participation
- 2) Rule of Law
- 3) Transparency
- 4) Responsiveness
- 5) Consensus Orientation
- 6) Equity
- 7) Effectiveness and Efficiency
- 8) Accountability
- 9) Strategic Vision⁵⁴

(iii) World Bank at <http://www.worldbank.org/publicsector/overview.htm>.

⁵² B.O. Nwabueze, *Constitutional Democracy in Africa* Volume 4 (2005); Dr. Adewale Banjo, "Africa: still in the Anti-Graft Crusade", Wednesday, April 28, 2004 (Print Monograph) at <http://www.ai.rg.za/print-monograph.asp?ID=20>; Adamolekun, "Are Nigeria's governance institutions 'hollow'?" Vanguard Wednesday, Marcy 07, 2007 at <http://www.vanguardngr.com/articles/2002/columns/Adaolekun/had07032007.html>; "Fighting Corruption to Improve Governance" a publication of Bureau of Development Policy UNDP 13 November 1998; Hyden Goran & Dele Olowu (ed), *African Perspective on Governance* (Africa World Press, 2000).

⁵³ Adel. M. Abdellatif, "Good Governance and its Relationship to Democracy and Economic Development" a paper presented at the Global Forum III on Fighting Corruption and Safeguarding Integrity, Seoul 20 – 31 May 2003. (GF3/wa/iv – 3/S1). Pp. 4 – 6.

⁵⁴ *Governance for Sustainable Human Development*, A UNDP Policy Paper UNDP 1997, pp. 2 – 3; http://www.adb.org/Documents/Policies/Governance/gov_300.asp?p=policies.

The above highlighted characteristics of good governance were glaringly deficient in governance under the different military administrations that governed Nigeria from 1966-1979 and 1984 – 1999. Thus to talk about good governance under those regimes will be a misnomer or at best an undue elastication of a term that will ill-fit dictatorial and absolute regimes.⁵⁵ Hence it can be affirmed that good governance as an element of constitutional government is in its infancy in Nigeria constitutional history and development. Good governance has been acknowledged as the term that symbolizes the paradigm shift of the role of governments.

There has definitely been a paradigm shift in the role of government under the 1999 constitutional democracy of President Olusegun Obasanjo and the challenges of corruption in governance.⁵⁶

4.1 Leadership

The major challenge of governance in Nigeria is that of the process for electing public officers into leadership positions. The President and Vice President at the federal level; the Governor and Deputy Governor at the State level; and the Chairman and Councilors at the Local Government level; and all the members of the legislative Houses- (National Assembly, Senate and House of Representatives) at the Federal level, State Houses of Assembly, and legislative Councils of the Local Governments – are all by elections. However, the electoral process and political party system are all corruption ridden and not sufficiently participatory.⁵⁷

The elections are not only flawed but warped, the political parties are dominated by money bags and ex-military leaders, and their party primaries are mostly selective, non-participatory and undemocratic, thus resulting in the corruption of the leadership, loyalty to god-fathers and patrons, and indifference to the electorate and citizens in their style of governance.⁵⁸ The issues of legitimacy and representative nature of the

⁵⁵ Though some were “benevolent dictatorships”, however, they were all lacking in the attributes of good governance.

⁵⁶ See Noel Kututiwa, “African Anti-Corruption Commitments: A review of eight NEPAD Countries”, African Human Security Initiative, AHSI Paper 7. 1 January 2005 pp 3 – 7 at <http://www.ISS.org.za/pubs/other/ahsi/Paper7Jan05/Kututiwa.pdf>.

⁵⁷ *Law, Money and Politics*, Epiphany Azinge, supra at pp. 19 – 108.

⁵⁸ The EFCC’s investigations of most of the elected government officers including the presidency revealed massive scale of corruption. Interestingly, only one Governor, that of Bayelsa State was successfully

leadership in the country, is reflected in their lack of accountability to the constitution, the political party and the electorate. Thus the root of corruption can be traced to the problem of leadership, thereby necessitating the call for the reform of the electoral and party systems.

4.2 Governmental Institutions

It has been observed that the corruption of public office has existed in Nigeria since the establishment of modern structures of public administration in the country by the British Colonial Administration, however, its escalation has coincided with the expansion of administrative structures and the full development of the public sector.⁵⁹ The administrative structure's development has been accompanied with lack of transparency and accountability arising from an over bloated public service that is bedeviled with excessive bureaucracy, red-tapeism and corruption.⁶⁰ Consequently, the national wealth has mostly disappeared into the private bank accounts of military leaders, politicians, civil servants and their collaborators in the private sector.⁶¹

The public service in Nigeria has been characterized by lack of culture of accountability and weak institutional structure; excessive centralization of administrative power; lack of access to citizens, and gross inefficiency.⁶² These characteristics foster the practice of barefaced "theft and stealing" of public funds and properties, waste and mismanagement of national resources and public assets. The resultant effects of which has been the phenomenon of inflated contracts, abandoned projects, lack of public infrastructures, poverty of the citizens and the poor standard of living.⁶³ Attempts at reforms of the Public Service have been usually accompanied by retrenchment of workers, reductions in the number of the ministries and parastatals, and changes in policies. However, these have not been effective in checking corruption and corrupt practices, as the reforms have failed to address the fundamental causes of corruption in the public service, especially the

impeached for corruption and his assets forfeited to the State and the proceeds of corruption repatriated from abroad.

⁵⁹ Paul D. Ocheje, "Law and Social Change: A Socio-Legal Analysis of Nigeria's Corrupt Practices and Other Related Offences Act 2000" *Journal of Africa Law*, Vol. 45, No. 2 (2001) pp. 174 – 177.

⁶⁰ Dele Olowu, Eloho Otopo & M. Okotoni: "Issues in Nigeria Public Administration System" at <http://www.indiana.edu/~csrc/olowu2.html>.

⁶¹ *ibid.* The Public Service has been regarded as: "... An amoral public realm to be plundered to sustain individual survival or the informal public realm, the community or other primordial groupings."

⁶² *Public Administration in Africa*, Ladipo Adamolekun (ed.) (Spectrum Books Limited, 2002).

⁶³ Paul D. Ocheje *supra* at 175 – 177.

conditions of service of the public servants and the establishment of transparency and accountability procedures for the public service.

4.3 Sanctions, Prosecutions and Punishments

Adherence to the rule of law is one of the basic features of good governance. Thus governmental and private sector actors in the governance processes must observe the laws and rules established for the administration of the government. Hence the establishment of the system of administrative law, criminal justice administration and other mechanisms against abuse of governmental powers that foster corruption becomes important.

As earlier observed, the absence of an effective governmental supervision and oversight of the public servants and their private sector collaborators has meant that much reliance has been placed on police investigation, prosecution and sanction of corruption under the Criminal and Penal Code.⁶⁴ Unfortunately both the Criminal Code and Penal Code did not constitute an effective legal framework for combating corruption in Nigeria. The ICPC Act and the EFCC Act were therefore the direct response to the need to establish an effective legal framework for investigating, prosecuting and sanctioning corruption in Nigeria.⁶⁵

It must be noted that the Nigerian Police that is primary charged with policing the State is openly corrupt and ineffective in policing corruption. The Prosecution Units and Office of Director of Public Prosecution are usually not independent and are obviously under the influence of the executive. Not to mention the fact that the judiciary in Nigeria is plagued with corruption and susceptible to corrupting influence and miscarriage of justice.⁶⁶

5.0 PROSPECTS FOR COMBATING AND PREVENTING CORRUPTION

Corruption has been universally acknowledged as antithetical to development. Nigeria's experience so far in governance validates this statement. It is therefore glaringly obvious that to combat and prevent corruption in Nigeria a multi-faceted

⁶⁴ Osipitan Taiwo and Oyelowo Oyewo *supra* at 263 – 267.

⁶⁵ Paul Ocheje *supra*, Nuhu Ribadu *supra*.

⁶⁶ Global Corruption Perspective Report 2007 of Transparency International.

approach of socio-economic, legal and cultural mechanisms must be engineered to address the malaise.

5.1 Constitutional and Institutional Approach

The issues of legitimacy and effectiveness of the 1999 Constitution prompted several calls for constitutional amendments and reforms. Constitutions do not necessarily guarantee constitutionalism, and the practice of 1999 Constitution has been observed not to foster rule of law and constitutionalism.⁶⁷ Unfortunately, the whole reform process was corrupted by the “third term agenda” of President Olusegun Obasanjo, and was terminated by the Senate of the National Assembly.

As earlier observed the constitutional framework for combating corruption is weak in practice. The legislative oversight must be enhanced and the independence of the judiciary bolstered to check executive lawlessness and abuse of power.

5.2. Political Process and Electoral Reforms

In the last 2007 election that brought about a civilian to civilian transition from President Obasanjo to President Umar Yar’Adua, it was acknowledged that the elections were massively rigged and the political parties’ primaries were corruption and intimidation ridden.⁶⁸ In fact the current President Yar’Adua has acknowledged this and has called for urgent reforms of the electoral and political party system.⁶⁹ The reform of the electoral and political systems must be aimed at achieving transparency and especially the accountability of the leadership to the constitution, political party and the electorate.

5.3 Public Sector Reforms

The Public/Civil Service in Nigeria has witnessed several reform initiatives that were aimed at addressing several of the problems associated with the service.⁷⁰ However, the recent reforms in the Public service through the work of the Bureau of Public Service Reforms, including the formulation of the Service Charter (Servicom), is aimed at ensuring “the effective coordination and monitoring of implementation of

⁶⁷ Oyelowo Oywo, “Constitutionalism and the Oversight Functions of the Legislature in Nigeria.” *supra*.

⁶⁸ The elections are now being contested before the various Election Petition Tribunals established throughout the federation.

⁶⁹ At the recent G8 – Summit, the President met with the UN Secretary-General and at a subsequent Press Briefing acknowledged the need for Electoral Reforms and solicited for the aid and support of the UN.

⁷⁰ Dele Olowu, Eloho Otodo & M. Okotoni *supra* pp. 1 – 9.

government policies and programs in all spheres of our national life for the overall development of the country and the benefit of the citizenry”.⁷¹ Though servicom is referred to as the Service Compact of the Public Service with Nigerian citizens upon whom they can expect improved efficient and transparent timely and good quality service delivery, however, this is perceived as “new wine in old wine skin” as the impact of the reforms and Servicom, with all the propaganda accompanying its public presentation, are yet to be felt by the Nigerian citizenry.

5.4 Privatization

Privatization, a popular concept and process that connotes the transfer of ownership in and control over government property, assets, companies, interests, going corporate concern’s, shares, securities and stakes from the public sector to the private sector of the economy. The Public Enterprises and parastatals in Nigeria have long been seen as constituting an unnecessary burden on government resources due to their inefficiency, mismanagement, waste and unbridled corruption.⁷²

The Privatisation and Commercialization Decree of 1988 is the legal norm that initiated privatization in Nigeria, followed by the Bureau of Public Enterprises Act of 1993 and the Public Enterprises (Privatisation and Commercialization) Act of 1999⁷³. The on-going privatization has been slow, lacking in transparency and corruption ridden. It has so far largely been seen as an instrument for transferring public properties and assets into the hands of private collaborators of the present leadership in government. However, the impact of privatization has been to eliminate the employment of the public enterprises and parastatals as vehicle for corruption.

5.5 Accountability and Transparency

Apart from the constitutional mechanisms for ensuring accountability and transparency, the Administration of President Olusegun Obasanjo established mechanisms for ensuring accountability and transparency, especially, the establishment of “Due Process”, Procedures for Contracts and ‘Procurements’ and investigation of contracts and

⁷¹ Office of the Secretary to the Government of the Federation (OSGF) Publication www.osgf.org.ng.at pp 5- 12. See also <http://bpsr.org/about-bpsr/mission-vision>.

⁷² Office of the Secretary to the Government of the Federation (OSGF) Publication www.osgf.org.ng.atpp 5-12. See also [h p: bpsr.org/about-bpsr/mission-vision](http://bpsr.org/about-bpsr/mission-vision).

⁷³ See [h p: bpsr.org.IPPrs-Project/Project-background](http://bpsr.org.IPPrs-Project/Project-background), where it has been acknowledged that apart from the political factors, the weak technical capacity is a key constraint to the government’s ability to move quickly and effectively on the reform agenda.

government expenditures by the ICPC and the EFCC. The “Due Process” mechanism is a government policy which is lacking in any formal legal enactment as a basis of operation. Its operation has also been criticized, as it was often used to keep persons that are in “opposition” to government position on issues from securing contracts.

5.6 International Support

Nigeria, as a member of the UN, A.U and ECOWAS is a beneficiary of all anti-corruption treaty and international instruments for member states of these organizations. This include; the UN Convention Against Corruption; the African Union Convention on Prevention and Combating Corruption; and the Protocol Against Corruption, adopted by the ECOWAS.⁷⁴ The New Partnership for Africa’s Development (NEPAD), African peer review mechanism is also aimed at combating corruption.⁷⁵

More importantly is the support of Transnational Corporations and Foreign Countries in helping African countries, especially Nigeria in dealing with proceeds of corruption laundered through them and lodged in banks in their countries. The assistance of countries like the United Kingdom, Switzerland, South Africa and other European Countries in the repatriation of proceeds of corruption, is not only a boast to the anti-corruption crusade but a preventive measure as it “chills” the corruption tendencies of public officials, especially when there is no readily available haven for their corruption loots.

The recent English Court decision on allegations of criminal and civil corruption in the prosecution of former President Frederick Chiluba of Zambia⁷⁶ is a laudable decision that gives a clear warning to African leaders that they will not be able to hide away their proceeds of corruption in foreign countries.

⁷⁴ M.T. Okorodudu Fubara, *A Legal Appraisal of Privatisation of Public Enterprises* (1988) p.19; Adamolekun, *Public Administration in Africa* supra. Pp.28, 159 and 139.

⁷⁵ O.A. Akanle, “Privatization: The Background and the Decree”; *The Gravitas Review of Business & Property Law*, 1988 at p.34.

⁷⁶ Dr.Aewale Banjo, “Africa: Still on the Anti-Graft Crusade” pp. 1-4 at <http://www.ai.org.za/print-monograph.asp?D=20>.

5.7 Civil Society Involvement

The writings of Bedford N. Umez⁷⁷ and Oliver de Sardan⁷⁸ earlier discussed in relation to the value systems in African societies, such as Nigeria, that promote corruption, reveal dimensions to the corruption problem that goes beyond the frontiers of legal normative propositions to the need for socio-cultural normative standards that will correct the existing value systems. Thus the civil society's involvement in the anti-corruption crusade must go beyond the formal engagement of government and its officers in good governance issues into the area of challenging the cultural practices and values that "communicate" or "facilitate" corrupt practices. In Nigeria, such currently permissible practices such as the giving and receiving of "gifts", conferment of chieftaincy, socio-cultural and religious titles and responsibilities on serving Public Officials and Political Office holders, and payment of expenses and underwriting of costs of activities of office holders and public official (such as endowment of public trust, library, book launch, socio-cultural activities, among others) must not only become socially unacceptable practice but must be prohibited

6.0 **OBSERVATIONS AND CONCLUSIONS**

6.1 Observations

Arising from the above analysis certain observations are clearly deducible.

- (i) Constitutional provisions that fosters constitutionalism, rule of law are not being effectively enforced in Nigeria, and there is the need for the various arms of government, especially the legislature and the judiciary to be alive to their constitutional duties.
- (ii) Electoral and Political Party system reforms are urgently required in Nigeria in order to address the issues of legitimacy, accountability and effectiveness of the government
- (iii) Legislative enactments that will domestic the international treaties, convention and protocol on corruption in Nigeria must be urgently passed by the National Assembly.
- (iv) The reforms of the Public/Civil Service and privatization should be implemented genuinely and not be window dressing policies.

⁷⁷ Noel Kututwa *supra*

⁷⁸ <http://mathba.net/news/?X=580210>, See also The Guardian Newspaper of Monday May 7, 2007.at page 59.

- (v) Accountability, transparency and responsiveness policies should be backed by legislative enactments in order to make them more enforceable.
- (vi) Clearly, the Nigerian value system that makes the officials and citizens prone to corrupt practices should be addressed with enlightenment campaigns and mass education of the public.
- (vii) Foreign countries should support Nigeria in its fight against corruption.

6.2 Conclusion

The roots of corruption are deeply embedded in the Nigerian society, thus uprooting it will require the application of all the available mechanisms of the constitution, good governance and international support. Combating and preventing corruption, has become a *sine qua non* for Nigeria's development, otherwise the Constitution and the government will become meaningless to the existence of the Nigerian citizenry. Corruption has become a cancerous growth that has gone from being benign to malignant in the Nigerian society, it is therefore necessary to rethink the boundary of our constitutional and governmental practices to evolve means to effectively contain, curtail and control corruption, so that it will not terminate the development and existence of the Nigerian nation state.