

# CORRUPTION AND ANTI-CORRUPTION LEGISLATIONS IN NIGERIA: A CRITIQUE

N.A. Inegbedion, LL.M; BL  
Senior Lecturer, Department of Public Law  
University of Benin, Benin City, Nigeria

## Introduction

With the return of democracy, corruption has once again occupied the front burner in our national discuss. Corruption has never been any less important; but past military regimes have never afforded the nation the opportunity to genuinely address the problem. Due to repressive and draconian Decrees and Edicts muzzling a free press, past military governments in Nigeria have discouraged any serious attempt to expose or exorcise the scourge through the medium of a free press. An example of such repressive law is the *Public Officers (Protection Against False Accusation) Decree*.<sup>1</sup> The Decree sought to punish any person who makes an embarrassing accusation against any public officer whether such accusation is true or false.

To demonstrate its seriousness in enforcing the provisions of the decree, two Nigerian journalists were convicted for violating its provisions. In the face of such a law, it was indeed difficult for any Nigerian, especially journalists, to expose corrupt practices. Consequently, the vice grew in leaps and bounds. Indeed, the vice was elevated to an art when the expression, “settlement” was coined as an euphemism for corrupt practices by the general public especially during the regime of the maximum dictator, General Ibrahim Babangida. The regime of Ibrahim Babangida adopted the vice as an official government policy by buying cars for officers and men of the Nigerian Armed Forces without any legal basis for it. This policy was generally referred to as “IBB spirit” by the rank and file of the armed forces. Perhaps, the only justification for such a grandiose waste of government resources was to prevent a mutiny in the armed forces through the means of car gifts. The “IBB spirit” received judicial condemnation in the case of *The Nigerian Air Force v Ex-Wing Commander L.D James*,<sup>2</sup> where Onu JSC had this to say,

the court below preferred to believe the evidence of one of the accused persons of the usual practice in the armed forces of giving gifts in “IBB Spirit”. A gift in the IBB spirit given outside and in excess of lawful authority is clearly illegal, particularly procured in the instant case, through fraudulent means<sup>3</sup>.

A dubious attempt was made by that regime to address the problem when it set up the National Committee on Corruption and Other Economic Crimes under the chairmanship of a retired Justice of the Supreme Court, Kayode Eso. The Committee made far-reaching recommendations, including the setting up of an

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<sup>1</sup> No. 4 of 1984.

<sup>2</sup> (2002) 18 NWLR [Part 798] 298.

<sup>3</sup> At 324.

independent commission agency against corruption.<sup>4</sup> Of course, the report of the Eso Committee, revolutionary as it was, was never implemented. Considering the fact that that regime was itself steeped in corrupt practices, it is not surprising that the government never implemented the report. Viewed against the fact that General Ibrahim Babangida spent eight uninterrupted years as Nigeria's maximum ruler, the problem then becomes very enormous. The magnitude of the problem can then be better appreciated. This assumed an international dimension when in 2001, Transparency International, a Non Governmental Organization, in its yearly report, classified Nigeria as the most corrupt country in the world.

Though the country was just then emerging from a military dictatorship to a multi-party democracy, the damage had already been done. The administration of President Olusegun Obasanjo had the unenviable task of taking the shame and infamy of the Transparency International report. Later in this paper, we shall consider the efforts made by that administration to arrest the scourge.

The scope of this paper is to examine the previous attempts that were made at addressing the problem and why such attempts failed. This paper canvasses the view that such attempts could not have succeeded in view of the socio-political context in which such attempts were made. The paper then examines the current attempt at containing the problem and concludes that the current attempt will fail like its precursors unless the socio-political impediments are removed. But what do we really mean by the expression, "corruption" in its all-embracing signification? Is it a crime or is it a social phenomenon that has to be completely eliminated, or only curbed? An effort will be made to answer these questions anon.

### **Scope of Corruption**

There is no precise definition of what amounts to corruption that will be acceptable to all disciplines. It has been defined as,

An act done with intent to give some advantage inconsistent with official duty and the rights of others. The act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others.<sup>5</sup>

Corruption can also be viewed as the misuse of public office for private gain. It encompasses abuses by government officials such as embezzlement and nepotism, as well as abuses linking public and private actors such as bribery, extortion, influence peddling, and fraud.

Corruption arises in both political and bureaucratic offices and can be petty or grand, organized or unorganized. Though, corruption often facilitates criminal activities such as drug trafficking, money laundering and prostitution, it is not restricted to these activities.<sup>6</sup> Generally speaking the phenomenon of corruption, in its ordinary connotation, means debasing, tainting, spoiling, making

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<sup>4</sup> See Kayode Eso: "Nigeria and Corruption: Till Death Do Them Part?" edited by Kalu A and Osinbajo Y; in *Perspectives on Corruption and Other Economic Crimes in Nigeria.*( Federal Ministry of Justice, 1991) at247.

<sup>5</sup> See *Black's Law Dictionary*, 6th Edition, (1990).

<sup>6</sup> See United States Agency for International Development's definition on corruption.

impure, defiling, perverting, dishonesty, or bribery.<sup>7</sup> In a wider context, and flowing from the last definition, corruption will also mean taking into consideration external or extraneous factors in arriving at a decision. It can be said that such a decision reached is corrupted. It matters not whether; the decision maker derived any pecuniary or other benefits from such a decision. Thus, a judgment passed by a court, without considering the relevant factors is corrupted; an academic certificate issued, and which is not a true reflection of the students academic ability is corrupted; a contract awarded to a company by a body, knowing that the contractor lacks the ability to execute the contract is corrupted. An admission obtained without the relevant qualifications is corrupted. An undeserving favour obtained, to the detriment of another person is corrupted. Vote buying, hoarding of electoral or voting materials, electoral manipulation, alteration of electoral results, or imposition of electoral candidates, are all incidents of corruption of a political kind. Indeed, it is an all embracing and all pervasive phenomenon. A leading light in the legal profession in Nigeria, Afe Babalola SAN, captures the very essence of corruption in this thought provoking passage:

Corruption goes beyond the giving and taking of bribe. It encompasses any use of power by anybody for capricious or arbitrary use or any other purpose foreign to which it is meant. Corruption could take different forms namely; bribery, acceptance of favour, succumbing to undue influence, yielding to intimidation from a superior body. It includes corruptly influencing any constituted authority. It includes putting an incompetent person or setting up a mock interview or selection process when the minds of the members of the selection panel have been made up. Corruption in a University includes allowing a Vice-Chancellor, Pro-Chancellor, Registrar, Dean or any other officer to have discretionary list wherein children and wards of their friends and associates could secure an admission when they have indeed failed the JAMB examination or scored below the cut-off mark fixed for their department. It includes a lot more.<sup>8</sup>

It is contended that the phenomenon of corruption is more of a social problem than a legal one. Consequently, it is very doubtful if any meaningful progress can be made in tackling the problem legally without addressing the more important social aspect of the problem - the law can only be a reflection of the social values of the society. The problem has assumed a constitutional significance. The 1999 Constitution of the Federal Republic of Nigeria, recognizing the culture of corruption in Nigeria, enjoins the state to abolish all corrupt practices and abuse of power.<sup>9</sup>

## **Causes Of Corruption**

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<sup>7</sup> See *Chambers Twentieth Century Dictionary*, New Edition, 1983.

<sup>8</sup> *The Guardian*, Sunday, October 8, p 10.

<sup>9</sup> Section 15(5).

The government is the focus of power in most Developing countries, determining the level and nature of economic activity... The government is to a very significant degree, the economy. It is the greatest industrial and agricultural power. It is the biggest contractor. It is often the sole owner of natural resources...it is the largest employer and financier, it processes all dealings, private and public alike. Above all, it determines the rule of the game, the regulations with which all economic activities must comply; from interest rates, land tenure, service fees, import quotas, pricing, dividend policy remittance and foreign manpower. It is the great concentration of power-political, economic and bureaucratic, together with the accelerated pace of economic development, which provides such a fertile ground for corruption. Had power been more decentralized and the sources of economic activities more numerous, the level of corruption would have been lower. Where the bureaucracy is under constant pressure from numberless profit seekers...all clamouring for permits, contracts, certificates, import licences, and what have you, the temptation becomes overwhelming to jump the queue, to lubricate one's way, and to make certain of results.<sup>10</sup>

The above passage, quoted in extenso, best encapsulates the causes of corruption, especially in Nigeria. The over-concentration of power at the centre, accentuated by the long years of military rule, and which is very much against the spirit of federalism, has ensured that corruption thrives in Nigeria. Even where powers are diffused at the different levels of government, governmental role in the polity should be limited to the prescription of standards, or regulations for the operation of businesses. The direct involvement of government in economic activities is an invitation for corruption to thrive. Government has no business in business. In a recent survey conducted by the Movement for New Nigeria,<sup>11</sup> the movement identified inter alia, the following causes of corruption in Nigeria:

- ❖ A fundamentally flawed structure of the Nigeria Republic.
- ❖ The absence of functioning government systems in the Federation.
- ❖ Federal Government monopoly of the economy, over-concentration of resources at the centre, and a culture of unregulated informal economy.
- ❖ Excessive Federal involvement in corporate business enterprises.
- ❖ Inefficient contract awards, standards and procedures.
- ❖ Inadequate enforcement of existing laws, absence of the rule of law, and a culture of preferential treatment in the conduct of government business.
- ❖ Nepotism and tribalism in the administration of justice, running of government, and conduct of businesses.
- ❖ Political instability and frequent military intervention in government.
- ❖ Inefficient police force and police structure.
- ❖ Absence of civic education and civic responsibility in the populace.
- ❖ Late or non-payment of wages to public employees.

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<sup>10</sup> Eker, Vardja: "On the Origins of Corruption, Irregular Incentives in Nigeria" [1981] *Journal of African Studies* 174.

<sup>11</sup> See the internet at [http://www.nigerianlaws.com/frames/docs/Cr\\_Soc/AntiCorruptionAgenda.html](http://www.nigerianlaws.com/frames/docs/Cr_Soc/AntiCorruptionAgenda.html) for a detailed report of this survey.

- ❖ High levels of poverty, unemployment and under-remuneration or “slave wages”.
- ❖ Late or non-payment of contractors by the government.

While not discountenancing the role the law could play in the elimination of these causes, corruption is more of a social problem than a legal one. This assertion is further confirmed by the causes identified above, a lot of which are social rather than legal. For instance, while some of these causes could be solved through legal instruments, others have to be tackled through civic and formal education on the evils of corruption on the body polity. Thus, a solution to the problem has to be founded both in law and in civic education. Making laws to solve the problem without simultaneously tackling the civic cum social angle may be an exercise in futility, since the law cannot operate in a vacuum. However, it is the solutions proffered by law that is the main focus of this paper. This paper shall consider very shortly, the regulatory schemes set up to combat the incidents of corruption and whether these schemes have met the expectation of the lawmakers. But before then, it is necessary to look at the effects of corruption on the Nigerian state.

### **Effects Of Corruption**

The effects of corruption are so overwhelming that it could stagnate a nation. It poses a serious developmental challenge. In the political arena, it undermines democracy and good governance by subverting the electoral processes and governmental procedures. Corruption in elections reduces the legitimacy of government, accountability and representation in policy making. In the judiciary, corruption suspends the rule of law and erodes public confidence in the administration of justice. More generally, corruption erodes the institutional capacity of government, as institutional safeguards are disregarded, resources are siphoned off and officials are hired or promoted without regard to performance. Corruption also undermines economic development by generating considerable distortions and inefficiency.

In the private sector, corruption increases the cost of business through the price of illicit payments, the management cost of negotiating with officials, and the risk of breached agreements or detection. Although, it may be argued that corruption reduces costs by cutting red tape, emerging consensus holds that availability of bribes induces officials to contrive new rules and delays. Where corruption inflates the cost of business, it also distorts the playing field, shielding firms with connections from competition and thereby sustaining inefficient firms. Corruption also generates economic distortions in the public sector by diverting public investment away from education and into capital projects where bribes and kickbacks are more plentiful. Officials may increase the technical complexity of public sector projects to conceal corrupt dealings, thus further distorting investment. It also lowers compliance with construction, environmental or other regulations; reduces the quality of government services and infrastructure; and increases budgetary pressures on government.<sup>12</sup> Corruption is also the major source of brain drain in Nigeria. Nigerian intellectuals and professionals are

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<sup>12</sup> See USAID: What is Corruption?

forced, by the economic situation in the country, due to corruption, to seek refuge in more stable societies. The result is the loss of highly skilled manpower and the transfer of same to her competitors. This is in addition to the wasted funds deployed in training these fleeing categories of citizens. The result of this brain drain is that the economy suffers since these experts are not available for the development of the economy especially in the area of research and development.

Corruption also engenders the break down in law and order and political instability. Corruption has the capability to create institutional breakdown in the polity, leading to loss of confidence in the system; the end product is that citizens resort to self help in order to ensure their survival which can no longer be guaranteed due to institutional corruption. This could take various forms such as prostitution, kidnapping, armed robbery, fraud etc. Similarly, political corruption, such as the manipulation of the electoral process, could create political instability that could erode the ability of government to provide meaningful development in any nation. The manipulation of the electoral process could create ill-feeling by the aggrieved political parties, thus creating political tension in the country. Extra resources that could have been used for developmental purposes such as alleviation of poverty are again channeled to strengthen policing duties and the general maintenance of law and order.<sup>13</sup>

### **Regulatory Schemes On Corruption**

From the analyses above, there is no doubt that corruption is a hydra-headed monster that must be destroyed or at least substantially curbed if the nation is to record any meaningful and genuine progress in all spheres of positive human endeavour. In this respect, successive governments have deemed it fit to criminalize the act. The earliest efforts to arrest this malaise can be found in the two principal legislations on criminal law in this country, that is, the Criminal and Penal Codes applicable in the Southern and Northern parts of the Country respectively.

Under the Criminal Code,<sup>14</sup> offences relating to corruption and abuse of office in the public service can be found in sections 98-116. Section 98 has two subsections, while subsection (1) punishes abuse of official duty generally, subsection (2) penalizes corruption by any person employed in the public service. In either case, the accused person is liable, if found guilty, to be sentenced to a maximum term of seven years imprisonment. Commenting on this provision, Bairamian J in *Biobaku v Police*,<sup>15</sup> opined that:

The mischief aimed at by s.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

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<sup>13</sup> See generally, Movement for New Nigeria: "Anti-Corruption Agenda for the Federal Republic of Nigeria." See also Akanbi M.M.A: "The Effect of Transparency and Accountability on Nigerian Socio-Economic Development." Being a paper presented at the Maiden Lecture of the Polytechnic Lecture Series, Federal Polytechnic, Bauchi on 15th November 2001; Akanbi M.M.A: "The Place of Society in the Promotion of Transparency and Good Governance". Being a paper presented at the All Nigeria Judges' Conference 2001.

<sup>14</sup> Cap. 77 *Laws of the Federation of Nigeria 1990*.

<sup>15</sup> [1951] 20 NLR 30. See also the cases of *Isidola v. Police* [1958] NRNLR 42 and *R v. Ogbu* [1959] NRNLR 22.

service from the honest and impartial discharge of his duties, in other words, as a bribe for corruption or its price.

Section 114 deals with corruption by a judicial officer in the discharge of his duties. A conviction for this offence attracts an imprisonment of 14 years. Section 116 deals with corruption by a peace officer not acting judicially. This offence also attracts a 14-year imprisonment. Despite these provisions, incidents of corruption persisted in the Nigerian polity. In order to strengthen the law relating to corruption, the then Federal Military Government, promulgated the Criminal Justice (Miscellaneous Provisions) Decree No. 84 of 1966. This Decree, which applies to Lagos State only, repealed sections 98, 114-116 of the Criminal Code as they apply to Lagos. The main object of the amendment was to substitute a new section 98 for the repealed sections. The new section merely incorporated all the provisions of the repealed sections into one. In effect, no new offence was created, as the wordings of the law are the same as those contained in the repealed sections of the Code.

Under the Penal Code,<sup>16</sup> the relevant provisions on corruption can be found in sections 115-122 of the Code. The provisions of the Code on corruption are more lucid, wider and less technical than the Criminal Code provisions. Under section 115 the offence of gratification by public servants is created and violators are liable to a term of imprisonment ranging from 7-14 years. Section 116 punishes any person who receives gratification in order to influence any public servant to do or forbear to do any official act, or in the exercise of his official functions, to show favour or disfavour to any person. Section 117 deals with the abetment by a public servant of the offence mentioned in section 116. Whoever offers or gives or agrees to give any gratification whatsoever, whether pecuniary or otherwise in the circumstances and for any of the purposes mentioned in sections 115 and 116 shall be punished with imprisonment which may extend to three years or with a fine or with both.<sup>17</sup>

A look at the above provisions of the two Codes shows a serious attempt by the State, at least on paper, to arrest the incidents of corruption in our body polity. However, and in spite of these legislative efforts, the phenomenon rages on like a phoenix. Convinced that the solution rests with criminal legislations, various Nigerian governments, in their efforts to tackle the monster, have promulgated, passed or enacted some other legislation to complement the provisions of the two Codes in dealing with the problem. These legislations are:

*Public Officers (Investigation Of Assets) Decree No. 5 of 1966.*

This Decree empowered the Head of State to require public officers to declare their assets<sup>18</sup> and competent persons were appointed to verify such declarations. The Decree made provisions for a tribunal of inquiry, which had power to investigate whether a public officer had corruptly or improperly enriched himself

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<sup>16</sup> Cap. 89, *Laws of Northern Nigeria* 1963.

<sup>17</sup> Section 18. See also ss.119-122.

<sup>18</sup> Section 3.

or another person while in office and the extent of such enrichment. The onus of proving that the enrichment was not unjust, lay with the public officer.<sup>19</sup>

#### *Corrupt Practices Decree No. 38 of 1975.*

This Decree provided that any person who corruptly receives or gives any gratification in order to induce himself or any other person to do or forbear from doing anything with regard to any matter whatever, was guilty of corruption. The Decree applied to public officers and other persons. It established a body known as the Corrupt Practices Investigation Bureau with wide powers. It also provided for the establishment of ad hoc tribunals for the trial of offenders under the Decree. One notable feature of this Decree is its application to all category of persons, irrespective of whether the person is a public servant or not. There is also no distinction between judicial and official corruption as is the case with the Criminal Code.

#### *The Code Of Conduct Under The Constitution*

Both the 1979 and 1999 Constitutions have provisions for code of conduct for public officers<sup>20</sup>. The Code of Conduct for public officers requires a public officer not to put himself in a position where his personal interest shall conflict with his duties and responsibilities. He must not ask for or receive 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 the discharge of his duties. The Code also requires a public officer to declare his assets three months after the coming into force of the Code or immediately after taking office. Thereafter, such declaration shall be made every four years or after the expiration of the officer's term of office. The Code further prohibits offering of bribe to a public officer<sup>21</sup> or operation of foreign accounts by any public officer.<sup>22</sup> However, a public officer may accept gifts or benefits from relatives or personal friends to such an extent and on such occasions as recognised by custom.<sup>23</sup> The Code established a Code of Conduct Tribunal with powers to try violators of the Code. The punishments that the Tribunal could impose are largely political in nature.<sup>24</sup> They include vacation of office or seat in any legislative house, as the case may be; disqualification from membership of a legislative house and from the holding of any public office for a period not exceeding ten years; and seizure and forfeiture to the State of any property acquired in abuse or corruption of office. The Tribunal does not have power to impose a fine or a term of imprisonment.

#### *Recovery Of Public Property (Special Military Tribunals) Decree*

This Decree was promulgated in 1984, but had a commencement date of December 1983. It took effect immediately after the collapse of the second

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<sup>19</sup> See also the *Recovery of Public Property (Special Military Tribunals) Decree* now Act under cap. 389 *Laws of the Federation of Nigeria 1990*.

<sup>20</sup> See Part 1 of the Fifth Schedule in both Constitutions.

<sup>21</sup> See para. 8 of Part 1 of the Fifth Schedule to the 1999 Constitution.

<sup>22</sup> See para. 3.

<sup>23</sup> For comments on this provision, see Akinseye-George, Y *Legal System, Corruption and Governance in Nigeria*(Lagos: New Century Law 2000) at 50.

<sup>24</sup> See para. 18(2).



republic via a military coup that brought Major-General Muhammadu Buhari to power. Its objective can be found from the long title which provided as follows:

An Act to make provision for the investigation of the Assets of any Public Officer who is alleged to have been engaged in corrupt practices, unjust enrichment of himself or any other person who has abused his office or has in any way breached the Code of Conduct for Public Officers contained in the Constitution of the Federal Republic of Nigeria.

Military officers headed the tribunals set up by this Decree, with retired judges as members. The Tribunal tried cases of corruption, which took place at any time from October 1979. The composition of the Tribunal drew criticisms from the Nigerian Bar Association (NBA), consequent upon which the Association resolved to boycott the Tribunals. Thus, the Tribunals suffered a credibility crisis right from inception. The NBA rightly felt that since military personnel headed the Tribunals, their impartiality could not be guaranteed, considering the command structure of the military that is unitary in nature. The military members were bound to defer to their military superiors in government. The unreasonable sentences handed down to the accused persons by these Tribunals confirmed the suspicion of the NBA. The Tribunal was empowered to impose a minimum sentence of 21 years imprisonment for every one million Naira corruptly acquired. Commenting on this sentence, Professor Nwabueze opined that:

There may be circumstances when imprisonment of 21 calendar years may be an appropriate punishment for official corruption. But a statutorily prescribed minimum term of imprisonment is objectionable because it takes away the discretion of the court or tribunal to tailor the term to the facts of each case, and in particular, to extenuating circumstances, if any. It is not enough that the sentence may be reduced by the Supreme Military Council in the light of the facts of each case. The military tribunal as the trial court, which heard the evidence and observed the demeanour of the witnesses, should not be denied a similar discretion.<sup>25</sup>

The proceedings of the Tribunal were taken to a ridiculous extent when the enabling law deprived persons convicted by the Tribunal the right of appeal.<sup>26</sup> Not surprisingly, General Ibrahim Babangida amended the Decree, which amended the term of imprisonment that may be imposed to a maximum of 21 years. The amendment also made judges chairmen of the Tribunals. Essentially, the Decree was targeted at the Second Republic politicians that corruptly enriched themselves. It is therefore not surprising that the tribunals became largely redundant after those trials.

## The Third Republic

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<sup>25</sup> Nwabueze, B.O: *Military Rule and Constitutionalism* (Ibadan: Spectrum Law Publishing 1992) at 216

<sup>26</sup> For further reading, see Akinseye-George, op. cit., Nwabueze, B.O: *Military Rule and Constitutionalism* (Ibadan: Spectrum Books, 1992) 208.

All said, and in spite of all the legislations considered above, the incidents of corruption continued unabated. It was business as usual. It is crystal clear from the above legislations considered that the country had sufficient laws to deal with cases of corruption, yet, Nigeria continued to decline on the anti-corruption index. Successive governments had the laws to deal with the problem, but in view of their involvement in the scramble, they lacked the political will and the moral authority to arrest the problem. Newspapers were replete with one financial scandal or the other involving high government officials. The situation continued to deteriorate until the advent of the 1999 Constitution that ushered in the Obasanjo Administration. In his inaugural address to the nation after he was sworn in as a democratically elected President, President Obasanjo did not make any pretensions about the enormity of the problem. He promised to tackle corruption head on and vowed that it will not be business as usual. Indeed in 1994, he had observed that:

Once you give free rein unchecked, unbridled and uncontrolled, the beastiality of man comes to the fore..The average African is not by nature more corrupt than the European or anyone else from any part of the world. He is no less democratic than anyone else. But others have institutions, laws, conventions and practices, which effectively discourage and punish corrupters and corruptees. Effective sanctions - moral, social, political and legal - are an essential part of the anti-dote against corruption, human rights abuse and all forms of anti-democratic tendencies.<sup>27</sup>

President Obasanjo's philosophy, as contained in the above speech, credible as it is, may not be totally correct. Nigeria has always had the institutions, laws, conventions and practices that discourage corruption. The reason why, in spite of these, the country is still grandiosely corrupt has to be located elsewhere. This paper has earlier identified some of those reasons, including the quality of leadership and the political will. Be that as it may, the President was determined to make a difference and this is manifested with the two very important steps taken by him to arrest the phenomenon. This paper shall now consider these steps.

#### *The Corrupt Practices And Other Related Offences Act 2000.*

This Act was beset with problems even before it was enacted into law. The National Assembly was never keen about this law. It took the Assembly about one year to pass this law for the President's assent. It was obvious that the Assemblymen were not comfortable with the provisions of the proposed law many of which were indeed draconian. Eventually, the honourable members had to pass the law due to persistent public pressure. Though this law is quite extensive in terms of detail, it cannot be said to be revolutionary. As noted above, there was the Corrupt Practices Decree No. 38 of 1975 which was essentially enacted for the same purpose but failed. There was also a feeble attempt by the

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<sup>27</sup> Obasanjo, O: *Corruption, Democracy and Human Rights in East and Central Africa* (Africa Leadership Forum 1994) at 56.

Babangida regime to promulgate a principal legislation on corruption through the Kayode Eso led National Committee on Corruption and Other Economic Crimes. The Committee submitted a draft anti-corruption legislation to the Federal Military Government and also recommended the setting up of an Independent Commission Against Corruption, similar to the Hong Kong Independent Commission Against Corruption (ICAC). The report of the Committee was never implemented by the Babangida regime.

Soon after it became law, the Act was again embroiled in another controversy when the constitutionality was called into question. In a suit filed by the Ondo State Government at the Supreme Court, the Government challenged the power of the Federal Government to legislate on corruption. This case is now reported in *Attorney General of Ondo State & Ors. v. Attorney-General of the Federation & Ors.*<sup>28</sup> In a landmark judgment, the court upheld the constitutionality of the Act. The dictum of Uwais CJN, is quite instructive:

It is incidental or supplementary for the National Assembly to enact the law that will enable the ICPC to enforce the observance of the Fundamental Objectives and Directive Principles of State Policy. Hence the enactment of the Act, which contains provisions in respect of both, the establishment and regulation of ICPC and the authority of the ICPC to enforce the observance of the provisions of s.15 subsection (5) of the Constitution. To hold otherwise is to render the provisions of item 60(1) idle and leave the ICPC with no authority whatsoever. This cannot have been the intendment of the Constitution.<sup>29</sup>

In view of the challenge of the constitutionality of the Act, the Commission set up under the Act to investigate cases of corruption,<sup>30</sup> could not properly function and had to await the decision of the Supreme Court on the issue before putting its acts together. After overcoming the legality crisis, the Commission soon found itself unwittingly embroiled in another crisis that again threatened its very existence. Shortly after the Supreme Court decision, the Commission commenced investigations on some public officers including the leadership of the National Assembly pursuant to its powers under the Act.<sup>31</sup> Suspecting that the move by the Commission to investigate its leadership was at the instigation of the Presidency, the National Assembly passed a new law scrapping the Act and substituting a new one with it. The new Act sought to prescribe different criteria for the appointment of the Chairman to the Commission. Rather than a retired judge being appointed as the Chairman as prescribed by the old law, the new one prescribed a serving judge as the Chairman of the Commission. Again, the new one drastically reduced the sentences that may be imposed for any violation of the offences created therein, contrary to the old one.

The general feeling of the public then was that the new law was made in bad faith in order to frustrate the efforts of the Commission, which were geared towards the investigation of alleged corruption leveled against the leadership of the National Assembly.

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<sup>28</sup> (2002) 9 NWLR [Part 772] 222; (2002) 27 WRN 1 (S.C).

<sup>29</sup> at 305.

<sup>30</sup> See s.3 of the Act.

<sup>31</sup> See s.6 of the Act.

The President, not surprisingly, refused to give his assent to the new law as required by the Constitution. He hinged his refusal on an existing court order, which restrained him from giving assent to the law. Indeed, earlier, a Federal High Court, sitting in the federal capital, Abuja, had restrained the National Assembly from passing the new bill into law pending the hearing of a substantive motion brought by some aggrieved members of the National Assembly. The National Assembly purportedly overrode the President's veto, when about two weeks to the end of their tenure, they passed the new law with two thirds majority of those present, in spite of a subsisting court order restraining them from doing so. Expectedly, the same Federal High Court declared the law illegal since it was passed in violation of a subsisting court order, thus saving the original legislation. Another judge of the Court, Ukeje CJ, also declared the new Act illegal on another ground. The Chief Judge of the Federal High Court held that the Act was illegal since the necessary two-thirds majority required to override the President's veto was lacking. The judge held that what was necessary was the two-thirds majority of the whole house and not that of those present at the proceedings.<sup>32</sup>

The Act is a 71-section statute dealing with different aspects including the offences created therein, evidence and criminal procedure.<sup>33</sup> Some of the offences created by the Act include,

- ❖ Accepting gratification, which attracts seven years imprisonment.<sup>34</sup>
- ❖ Giving or accepting gratification through agents and which is punishable with seven years imprisonment.<sup>35</sup>
- ❖ Counseling offences relating to corruption and which also attracts seven years imprisonment.<sup>36</sup>
- ❖ Fraudulent acquisition of property that attracts seven years imprisonment.<sup>37</sup>
- ❖ Fraudulent receipt of property punishable with three years imprisonment.<sup>38</sup>
- ❖ Where the property is a chattel or postal matter, it attracts seven years imprisonment.<sup>39</sup>
- ❖ False statement or returns is punishable with seven years imprisonment.<sup>40</sup>

Apart from the jail term prescribed by the Act, the accused person shall also pay a fine of five times the amount corruptly received and also forfeit the gratification.<sup>41</sup> An attempt to commit any of the offences created by the Act also attracts the same punishment prescribed for the offence attempted.<sup>42</sup> In all cases, prosecution must be concluded within 90 working days except good grounds exist for the delay.<sup>43</sup>

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<sup>32</sup> See the detailed judgement in *The Punch* Newspaper of Monday 9th June 2003 at page 61.

<sup>33</sup> For a detailed analysis of the provisions of the Act, see Akinseye-George, op. cit. See also Atsegbua, L A and Odigie, D U: "An Overview of the Offences and Penalties Created by the Anti-Graft Act" [2000] 1 *Nig Contemp LJ* 65. See the powers of search and seizure vested in the Commission under ss. 27-38 of the Act.

<sup>34</sup> See s.8

<sup>35</sup> Section 9

<sup>36</sup> Section 11.

<sup>37</sup> Section 12.

<sup>38</sup> Section 13.

<sup>39</sup> Section 14.

<sup>40</sup> Section 16.

<sup>41</sup> Section 20.

<sup>42</sup> Section 26(1).

<sup>43</sup> Section 26(3)

### *Economic And Financial Crimes Commission*

This Commission,<sup>44</sup> though, not directly set up to combat corruption, is also very useful in the fight against the scourge. The Commission was set up in 2003 and has recently charged some alleged advance fee fraudsters before the courts.<sup>45</sup> The Commission has power to investigate all cases of financial crimes. Thus, fraud committed in all financial houses comes within the purview of the Commission. Such cases as inflation of contracts or corrupt enrichment will also amount to financial or economic crime that may be subject to the investigation of the Commission.

### **Conclusion**

Corruption is a serious problem that must be tackled before any meaningful development can take place in any country. While poverty is a contributing factor to corruption, endemic corruption enhances and spreads poverty - it is a vicious circle. The enactment of the Corrupt Practices and Other Related Offences Act and the establishment of the Economic and Financial Crimes Commission are two very important steps by the current administration to arrest the scourge. It is about three years now since the establishment of the Anti-corruption Commission; yet, the Commission has not been able to successfully prosecute any single case of corruption under the Act. The inability to prosecute is not because the incidents of corruption have reduced, indeed such incidents have grown in leaps and bounds. Rather, it is because of the several obstacles placed before the Commission by the very people to be investigated by it.

Thus, Nigeria finds herself with a good legal instrument that should ordinarily tackle the problem, but is unable to do so because of the human factor or what can be derisively referred to as the "Nigerian factor." This situation re-enforces the belief earlier expressed in this paper that the problem is more of a social one than legal. The solution lies in a complete re-orientation of the Nigerian psyche on the evils of corruption. All hands must be on deck to achieve that.

There must be a conviction by all and sundry that corruption, just like Acquired Immunity Deficiency Syndrome (AIDS), Severe Acute Respiratory Syndrome (SARS), cancer and other diseases, is deadly and is a catalyst for the economic ruination of any country. It is only then that the laws against corruption can begin to be effective; whether or not such laws are draconian. Without the co-operation of the leaders and the led, the Anti-corruption Act, like its precursors, is doomed to failure. The Chairman of the Anti-corruption Commission himself best encapsulates the point being made as follows:

Equally so, the Nigerian Anti-Corruption Act is not entirely dissimilar to the legislations in Singapore, Botswana and New South Wales, all of which have succeeded in reasonably reducing the level of corruption in their countries. And this is where the role of the people

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<sup>44</sup> Set up under the *Economic and Financial Crimes Commission Establishment Act 2002*. A similar legislation passed by the Nigerian National Assembly to check corruption by making it difficult for corrupt people to hide or launder their ill-gotten wealth is the *Money Laundering Prohibition Act 2003*.

<sup>45</sup> For a detailed report on some of the fraudsters currently facing trial, see *The News* May 26th 2003 and June 2, 2003 editions.

comes in. No anti-corruption programme can succeed and no society can promote transparency and good governance unless all members of the community demonstrate a strong will to fight corruption to a standstill. There has to be a strong determination, a total commitment and the strength of character on the part of each and all, to eliminate or reduce corruption to a tolerable level...<sup>46</sup>

This writer finds the above quote very apt in Nigeria. Already, there are signs that the Corrupt Practices and Other Related Offences Act is failing. Public officers flaunt their ill-gotten wealth; yet, no notable public figure has been successfully prosecuted. Rather than attempt to eliminate the social factors contributing to the crime of corruption, the government is interested in apprehending offenders. Little or no effort has been channeled to the civic education aspect of the solution earlier canvassed in this paper; neither has public functionaries occupying positions of leadership been transparent in the performance of their public duties. Perhaps, all these explain why the Act has achieved very little success at curbing the problem. It is submitted that the Act, like its precursors, will fail unless both the leaders and the led show a genuine commitment at eliminating or at least, reducing, to its barest minimum, incidents of corruption.

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<sup>46</sup> Akanbi, M.M.A: "The Place of Society in the Promotion of Transparency and Good Governance". Being a paper delivered at the All Nigeria Judges Conference 2001.