

INTEGRITY AND ANTI-CORRUPTION: THE ROLE OF YOUTHS AND POLEMICAL STRATEGIES FOR COMBATting CORRUPTION¹

If you have integrity, nothing else matters. If you do not have integrity, nothing else matters.²

PROEM

My brief is to talk about the issues of integrity and anti-corruption and the role that the youths should play in fighting corruption. In the presentation I have had a cursory examination of the meaning of integrity, the interplay between integrity and corruption, the causal factors of corruption, its impact on development, the means by which corruption can be tackled and the role of youths in fighting corruption.

Good morning distinguished audience of young Nigerians.

CONCEPTUAL ISSUES OF INTEGRITY

I have preceded this discussion with my favourite quote, whenever discussing issues of integrity. The word integrity conjures images of trust, honour, truthfulness, honesty, competence, reliability, fairness and commitment, et al. All these are attributes expected of not just any good institution, from the private to the public sector, but also of good leadership and good corporate governance.

Just as any business cannot succeed without integrity, no government can succeed without integrity. Even at the hardest of times, the

¹ I acknowledge reliance on a paper I prepared, that was presented at the Nigerian Bar Association Conference of 2015

² Alan Simpson

populace will support a Government that it believes has integrity. The absence of integrity can manifest either at the personal level or the structural level. While the former would connote an individual lacking in reliability, competence and commitment and cannot therefore be trusted, the later connotes a weak structure of corporate governance set up, either wilfully or negligently, without necessary integrity check and procedures. In all cases both have a revolving impact on each other.

In the public sector, it is the absence of integrity that breeds corruption. It is beyond pettifoggery that a structure without integrity, will collapse as a result of the corruption arising. The absence of integrity therefore feeds corruption.

CONCEPTUAL ISSUES OF JUSTICE

***To no one will we sell, to no one deny or delay right of justice.*³**

The fairness we talked about as a synonym for integrity must find expression in justice. Anti-corruption and integrity cannot exist in a vacuum. It must exist within the law and justice is the platform on which both concepts rest. Roscoe Pound had postulated that the law is a tool of social engineering. While justice is the base, integrity and anticorruption are part of the infrastructure.

The Nigeria challenges with justice has made me to precede this part of the presentation with a quotation from the Magna Carta to illustrate the point that the concept of fair and expedited trials dates back to several centuries and indeed it is certain that it predates the Magna

³ Chapter 40 of the Magna Carta

Carta and that the chartered merely expressed a long standing and human ideal⁴. Justice rests on transparency, adherence to laws, clarity, speed of disposal of trials and fairness. One cannot be sacrificed for the other. Just as expedited trials cannot be sacrificed on the altar of fairness, the reverse should also not be the case. The challenge of justice therefore is to find a middle ground where all the facets mutual co-exist and serve the needs of each other. Indeed the late Justice Chukwudifu Oputa had recognised this fact when he pointed out that justice must be done to all parties to case including the State. Consequently, interlocutory applications and any other thing that delays the trial may lead to injustice to the Prosecution and as such the canons of justice would not have been served.

The principles of the Magna Carta and the cardinals of justice must necessarily apply particularly to trials of corruption cases in Nigeria seeing the damage that corruption has occasioned to the system. It must be understood that corruption is the biggest killer disease in Nigeria. Outside of intellectual grandstanding about market distortions, Gross Domestic Product, Public Sector Quality and the interface with the private sector, all that the ordinary Nigerian is concerned only about are the basics of life and no more. In simple terms, it is corruption that has denied the citizenry of the basics of life.

It is also corruption that has led to the failure by the institutions of government to deliver the basics of life such as healthcare, good schools, good roads, food, et al. No matter the language and style in which it is couched, these are the basic important issues to the country.

⁴ Tom Bingham: *The Rule of Law*, Penguin Books Limited, 2011 pages 10-11. It is amusing that inspite of the fine ideals of the Magna Carta, it was annulled by the Pope within a few months, on the grounds that it was extracted from King John under duress, a concept which lawyers may perhaps find appealing.

Inevitably, this has led to heated discussions on the viability of the institutions of detection and prosecution of cases of corruption. The preponderance of public opinion appears to be that the detection mechanism is weak and over-burdened, whilst the judicial arm is ineffective. Professor Bolaji Owasonoye of the Nigerian Institute of Advanced Legal Studies confirmed in a study of existing trials of anti-corruption cases that as at 2014, the Economic and Financial Crimes Commission alone has a total networth of over N1.3 trillion as cases pending before trial courts⁵. If the figures from other anti corruption agencies are added, we would perhaps be looking at more than N2 trillion.

As I will argue later in the paper, the issue surrounding corruption (or anti-corruption) goes beyond law enforcement as well as the judiciary and that indeed outside of these two, there must co-exists several other institutional strands, otherwise we would be engaged in an exercise in delusion to assume that rectifying the judiciary, simpliciter, is the required panacea.

Consequently, it is necessary that this presentation considers the conceptual issues surrounding corruption, the causal factors for corruption and the means of controlling corruption, before examining the strategies for removing the bottle necks in the trial of corruption cases. Over and over again, in this presentation, the point is made that the causal factors tend to loop back into effects and typical of social issues, the line of demarcation between the two is thin. Whether occurring as causal factors or as an effect, once corruption can

⁵ Justice or Impunity: High Profile Corruption Cases, Crawling or going to Sleep,, stopimpunitynigeria.org

adequately be contained, it is beyond dispute that any Government will then be better positioned to deliver on its mandate to the citizenry. From 1999, the growth rate of the Nigerian economy has oscillated between 6% and 9% annually and this is in spite of the high level of corruption. Once corruption is controlled, there is good reason to therefore believe that the over 400% governance dividend associated with less corrupt countries can easily be achieved.⁶

After the discussions on the causes and control of corruption, the presentation would then focus on the trial strategies that could be used to fast track corruption cases

CONCEPTUAL ISSUES AROUND CORRUPTION

"For 40 years...Nigerian officials of every rank have systematically misappropriated public wealth. For 40 years, the gulf has widened between an impoverished general populace and the dominant class. Riven by ethnic, regional, and religious cleavages, by shifting partisan and factional divisions, and by continual civil-military tensions, Nigeria's dominant groups nevertheless constitute a class bound together by a shared taste for extravagant consumption and acquisition financed by access to state power."⁷

It is hardly surprising that a casual study of literature on corruption (and anti-corruption) throws up adjectival challenges devolving around the proper meaning to be attached to corruption. Individual definitions tend to be reflective of the paradigms from which the subject is

⁶ Ngozi Okonjo-Iweala: Corruption and Good Governance, page 8

⁷ Larry Diamond, *Class, Ethnicity, Democracy in Nigeria*, Syracuse, 1988, 31-41.

approached. For Instance, the respected Professor Rose-Ackerman held the opinion that:

Corruption is a symptom of something gone wrong in the management of the state. When institutions designed to govern the relationships between citizens and the state are used for the personal enrichment of public officials, then you have corruption and the provision of benefits to the corrupt.⁸

The limitations of this definition however is that it assumes that corruption is limited to the public sector, which is not the case. Thus Nigeria's Minister of Finance, Okonjo-Iweala defined corruption as:

The misuse of public office or public assets for private gains. It is also the misuse of these assets in a way that creates an unlevel playing field and which makes people feel that injustice has been done.⁹

The key strands in the foregoing definitions are first that corruption is an aberration, a deviation from accepted practices and norms. Second is that an injustice needs to have been perpetrated by the deviant behaviour. These of course lead to certain propositions and critical questions that are often overlooked. These questions lead back to the adjectival issues and are necessarily conceptual in nature, but within the framework of anti-corruption work should necessarily set the tone.

⁸ Ibid, page 1

⁹ Ibid, page 3

First, if the behaviour is not an aberration, then the activity is not corrupt. However deviant behaviour varies from society to society and in Africa where societal values may be tribal, standardisation of deviancy becomes difficult.

Second, if the deviant behaviour must be seen to be an injustice, the process becomes subjective as "injustice" itself is a function of perception and values.

Consequently, a working definition, for the purpose of this paper would be that corruption is the misuse of institutional assets and resources, whether public or private, for purposes proscribed by law, for personal gains. This definition recognises the deviant nature of the activity but recognises that no matter the level of aberration attached to the conduct, it must be proscribed by law, otherwise it cannot be considered as corruption. While a conduct may be considered morally reprehensible and therefore an aberration, the fact that it is not illegal does not therefore make it legally unacceptable. The dividing line here is between morality and law. Indeed it is possible to have a corrupt behaviour merely because the law says so, irrespective of the opinion of the society.

Johnson and Sharma¹⁰ have compiled a list of conduct and patterns of activity that characterises corruption and it reads like a scene straight

¹⁰ R. Johnson and S. Sharma, *About Corruption*, in R. Johnson (Ed) *The Struggle against Corruption: A comparative Study* (New York, Palgrave, 2004) at 2. The representative list includes bribery and graft, (extortion and kickbacks); kleptocracy, (stealing and privatising public funds); misappropriation (forgery, embezzlement, misuse of public funds); nonperformance of duties (cronyism); influence peddling (favor, brokering and conflict of interest); acceptance of improper gifts (speed money); protecting maladministration (cover-up and perjury); abuse of power (intimidation and torture); manipulation of regulations (bias and favouritism); electoral malpractice (votes buying and election rigging); rent seeking (public officials illegally charging for service after creating artificial shortage); clientelism and patronage (politicians giving material

of Nigeria, replete with corrupt conduct that some have criminal implications, but which we still accept as normal. While I am in total agreement with that robust list as each does disclose a facet of legal criminal liability attaching thereto, I still stand the ground, at least for the scope of this paper, that the Nigerian situation could still throw up additional instances of corruption and at best we, for lawyers, the corrupt conduct must also be legally prohibited.

IN DEFENCE OF CORRUPTION?

Surprisingly, at some point in time, a rational defence for corruption was provided on the grounds of economic efficiency arguments. “It was argued that bribes helped in lowering the cost of doing business, in clearing the market, in providing incentive bonuses and in distributing monopoly rents from a single agent to other officials who collude in sharing a bribe”¹¹. The argument being that bribes facilitated expedient ways of doing business in the face of restrictive and bureaucratic institutional bottlenecks. Some research has also shown a co-relation between high degrees of corruption and economic development.¹²

However in relation to the growth of the Asian tigers, in the study cited above, while there was clearly nepotism and cronyism, it also meant a clear distortion of procurement rules and with the attendant absence of transparency. However, these were accompanied by a certain level of “enlightened benevolence” on the part of the leaders. Such systems

favour in exchange for citizen support); illegal campaign contributions (giving unregulated gifts to influence policies and regulations).

¹¹ Ibid, Page 2.

¹²Johann Graf Lambsdorf: Causes and consequences of corruption: what do we know from a cross section of countries, in Susan Rose-Ackerman (ed): International Handbook on the economics of corruption.

could throw up a scenario where the procurement process is short circuited and a crime thereby committed but the end result as a result of the “enlightened benevolent dictator” means in better or at best equal results to what a transparent procurement procedure would have thrown up. Consider this example where the leader as a result of an extensive network of contacts pulls in the best contractors to build rail roads, hospitals, energy, etc and because he is in a hurry, awards the contracts without advertising. Assume too that because these contracts are awarded to his friends who share the same dreams and aspirations, they deliver effectively at prices far less (seeing that their crony is involved) than if they were bidding against others. The “enlightened benevolent leader” who is in a hurry has pulled off a great deal in record time. Should it be considered corruption? Legally, clearly the absence of the transparent bidding process or subjecting the procurements to waiver certificates of relevant procurement authorities means that the procurements are flawed and thereby corrupt. However, the time saved and the use of cronyism has delivered dividends to the country. But, we are lawyers and bound by laws and in so many countries of the world, by-passing the procurement system is corruption and a crime. In any case the transparency of the procurement structures assures the integrity of the system and as lawyers are wont to say justice must be seen to be done. Even where the procedure delays the results but justice is served, should we be happy with it? Finally the examples of the growth of some of the Asian countries, where corruption has helped grow the economies has been driven by exemplary leadership, which we cannot always assume will exist. After all the law is meant to ensure clarity and certainty in the affairs of men. We cannot assume motives of benevolence but we can

guide against it by building systems and structures within which all men must work and that is the beauty of the law.

In any case, we must always bear in mind that while this line of argument is certainly interesting, it however tends to focus on micro-economic rather than macro-economic impact of corruption. Even if it does have macro-economic impact as has been illustrated in some Asian Countries, where bribes are involved and the bureaucracy fast-tracked, the cost of the bribe just goes back into the businessman's cost of production and the market bears the brunt.

CAUSES OF CORRUPTION

Once again, adjectival issues come to the fore in defining what the causes of corruption are. This is hardly surprising given the conceptual issues attaching to its definition. It often appears that the causes of corruption are actually the consequences and the strands could be difficult to untangle. Even where accepted as causes, these are hardly ever of general application and it may be the case that in different countries, all or just a few of these causes would exist. However, it is generally considered that the following are the causative factors of corruption and they tend to be precursors of corrupt practices:

1. The size of the public sector – as earlier indicated, the early works of economists tended to be somewhat tolerant of corruption and saw it as a market mechanism for overcoming bureaucracy. This view has clearly changed, but it is acknowledged in certain quarters that the size and complexity of government gives rise to

corruption¹³. Thus where the government is large and sets up obscure and complex processes for licenses, approvals, award of contracts, et al, there is a tendency for corrupt practices to flourish as inevitably, businesses that desire quick turnaround time will inevitably look for short cuts and results. Bureaucrats in Government will also want to take advantage of the situation. Thus economists argue that corruption sets in as an undeniable market tool to correct the restrictions that government has unwittingly set up. Conversely therefore a simpler, smaller, less bureaucratic and more transparent structures of governance will inhibit corruption. To address this, it has often been suggested that privatisation of assets is a panacea that will reduce corruption and lead to a more effective structure of Government¹⁴.

Reflecting on the issue of the size of the public sector as a causative factor for corruption, Johann Lambsdorff has advised that a “more promising line of inquiry might focus on particular types of government expenditures and their potential to cause corruption”¹⁵as it will appear that redistributive activities of Government are the most vulnerable to corruption when compared to other government functions.

¹³ Ibid

¹⁴ M. Bokyo, A. Shleifer and R. Vishny (1996): A theory of privatisation, Economic Journal. Whether privatisation is the always the answer in such cases is debatable and in several developing countries including Nigeria, the process of privatisation itself is tainted with corruption.

¹⁵ Johann Graf Lambsdorff: Causes and consequences of corruption: What do we know from a cross-section of countries, fn 5, op cit, at page 6

2. Regulatory quality – Flowing from the above, there is a co-relation between regulatory quality and corruption¹⁶. Indeed most economists point to bad regulation and ill designed policies as the major causative factor of corruption.

This view assumes that irrespective of the size of the public sector, as long as regulatory structures and rules are complicated and bad, there is an incentive to be corrupt. The problem here is in determining what qualifies as good and bad in relation to regulatory rules.¹⁷

The point to be acknowledged here is that the complexity of rules and structures without transparency leads to individuals trying to circumvent same. Particularly germane is the study by Lambsdorff and Cornelius that shows that corruption is positively associated with the degree to which **“government regulations are vague and lax mostly as a result of their application rather than the burden of regulation”**¹⁸ and therefore proves conclusively that clarity in regulation might be unwelcomed but by the system **but may not necessarily** not lead to corruption.

3. Government structure – It is generally assumed that autocratic forms of government encourage corruption while democratic systems inhibit same. The validity of this postulation has been severally tested with remarkable results that suggest that

¹⁶ Ibid, page 6

¹⁷ This is because it may well be that some rules and regulations may be bad from a regulatory perspective but benefits the system in other ways.

¹⁸ Lambsdorff J. Graf and P. Cornelius (2000): Corruption, Foreign investment and Growth.

democracy simpliciter does not translate to less corruption and that it is necessary for the democratic system to be exposed to democratic practices and structures for an appreciable length of time¹⁹. The appreciable length of time here is not definite (50 years and above is a good starting point) but it must be understood that at face value because of the freedom of expression, short term democratic systems may appear to be more corrupt but this is not necessarily so.

On the contrary, in certain jurisdictions, the lesser freedom often associated with an autocratic structure means that discussions and issues of corruption are muted while in democratic structures, they are blown open and discussed. Consequently, a democratic platform may well present a façade of high levels of corruption, which may not always be the case, as a result of amplified discussion of the issue.

Applied to the Nigerian scenario therefore, an appreciable level of decrease in corruption might only start manifesting at a later stage but only so long as current anti-corruption efforts are sustained all through the transition period leading up to the manifestation.

Even within the established democracies, studies show that certain forms of democracy lend themselves to corruption²⁰. Parliamentary systems of government with less concentration of powers tend to have less corruption, while presidential systems

¹⁹ D. Treisman (2000): The causes of corruption: a cross national study, journal of public economics

²⁰ Lambsdorf, fn 5, at page 12

that tend to have strong executive powers are more corrupt. Clearly where there is a presidential system and the President has powers straddling the legislative and executive functions, the level of corruption peaks. The Nigerian situation seems to support the postulation as the level of corruption experienced between 1979-1983 and 1999-date, far outstrip the 1960 – 1966 parliamentary experience.

4. Level of centralisation of government – Where the structures of government are centralised, this inevitably leads to corruption²¹. Once again, a certain level of subjectivity may tend to creep into the postulation but it is without cavil that where structures of governance are centralised with weak local governments, the structure encourages corruption. The Nigerian scenario is a classic example with local governments starved of vital funds but “it requires little imagination that such a regime may be equally unattractive to investors and that similar adverse effects on welfare are quite likely to arise”²². In practical terms, the strong centralisation means that the citizenry is kept at a distance from government and therefore unable to exact any form of control or influence.

5. Culture and Values – from a sociological point of view certain societies and cultures tend to be more supportive of corruption than others²³. Societies, as a function of values, have different appreciation of corruption. What may be perceived to be

²¹ Ibid, page 15

²² Ibid

²³ Ibid, pages 17 -20

corruption in Europe for instance may not necessarily be similarly understood in Africa. However within the western model of corruption, countries with little acceptance of hierarchies tend to be less corrupt and vice versa. Consequently, tackling corruption in countries that have high degree of acceptance of hierarchical structures would requires a tops-down approach rather than a grass root movement approach.

Similarly, cultures and societies where impersonal, as opposed to family, values are more important tend to be less corrupt²⁴. The assumption is that a closer affinity to the family lends itself to nepotism and corruption.

6. Geography and history – it has been established that the “abundance of natural resources, high levels of corruption amongst neighbouring states and a large distance to the world’s major trading centers significantly increase corruption”²⁵. Apparently the abundance of natural resources for some reason leads to and creates opportunities for rent seeking and corruption. Studies show these to be particularly true of countries like Nigeria, with its abundance of resources in the energy sector.

As to the geographical factors, proximity to a corrupt country means that a spill over of values from that country could affect and influence values. A typical example here is the relationship between Nigeria and Ghana and some other West African

²⁴ Ibid, page 21; see also A. Ades and R. Di Tella (1996), The causes and consequences of corruption: a review of recent empirical contributions.

²⁵ Ibid

Countries. It is argued that once Nigeria sorts out corruption, it will have a multiplier effect on the whole West African sub region. One bad practice in one country within the West African region has a nasty habit of resurfacing some of the other countries.

Historically too, countries that tend to have a fairly recent colonial heritage tend to be more corrupt than others. This may be a function of the fact that western forms of governments were imposed on these colonies and after independence there has been a dis-connect between the citizenry and the government. The government is still seen as an alien contraption necessary only for what can be milked from it. Technocrats and political office holders see themselves as representatives of constituencies for the purpose of sharing the national cake and consequently, nepotism in sharing offices and jobs set in. In a seminal research conducted and published in the 1970s, which I would recommend for policy makers to understand why corruption has taken root in Africa, Professor Peter Eke²⁶ postulated the theory of two publics and argues that the experiences of colonialism in Africa has led to two publics, instead of one as is the case in North America and Europe. On the one hand, there is the moral primordial public in which primordial ties, groupings and sentiments influence the conduct of the public. On the other hand, there is an amoral civic public tied to the strictures of modern governance. Consequently, the civic public sees the structures of governance as a foreign imposition and one to be taken advantage of. It explains why the one who steals a goat

²⁶ Colonialism and the two publics in Africa: A theoretical statement. *Comparative Studies in Society and History*, Vol. 17, No. 1. (Jan., 1975), pp. 91-112.

from the village is ostracised by his tribesmen, but is celebrated if he steals billions of Naira from Government. The assets and resources of the Government are considered as that of no one. It also explains why if you put a tribal union and a local government authority side by side we find that:

“to put your fingers in the till of the local authority will not unduly burden your conscience, and people may well think you are a smart fellow and envy you and your opportunities. To steal the funds of the Union would offend the public conscience and ostracise you from society”²⁷

EFFECTS

The preceding part of this paper looked at the causes of corruption, especially within Nigeria and as is consistently stated, some of these causal factors are and could be considered to be the consequences of corruption. Poverty is generally considered to be a cause of corruption but on careful scrutiny, it is actually a consequence of corruption or at best a chicken and egg situation is produced with a cyclical effect between causes and consequences. In discussing the consequences of corruption, this cyclical effect clearly manifest but as long as we clearly appreciate the negatives inherent in corruption, whether a factor is causal or a consequence, the presentation would have served its purpose.

1. Inequality of income – Corrupt societies tend to wipe off the middle class as the rich get richer and the poor get poorer. As a result of

²⁷ Ibid, quoting the studies of Wraith.

corruption, the variables that account for private wealth tend to be concentrated in the hands of a few to the detriment of the majority thereby weakening the societal structure. Once this happens, the cyclical impact sets in and since there only a few powerful individuals, they tend to get more corrupt since power and resources are concentrated in their hands. This is clearly what is happening in Nigeria with the gradual erosion of the existence of a middle class from the 1980s.

2. Productivity measures – since corruption impedes economic activities, it will naturally inhibit the effective utilisation of the factors of production. This naturally will lead to a decline in DDP and economic growth.

Clearly income and corruption are intertwined and corruption definitely lowers GDP per head and impoverishes the general society.

Paradoxically, while studies on effect of corruption in African countries shows a negative impact on GDP levels, in certain Asian countries, corruption actually increased growth and rationalised this on “the stable exchange of government promotional privileges”²⁸.

However the basis for corruption lowering the GDP is simply because the absence of corruption is a sine qua non to effective utilisation of the assets of production. Its absence can therefore be equated to

²⁸ M. T. Rock and H. Bonnett (2004): The comparative politics of accounting for the East Asian paradox in empirical studies of corruption growth and investment

an important factor of production and therefore would lead to better yields.

3. Investment - From the point of view of investment, the adverse consequences of corruption is that it reduces the capital stock within the economy. Capital being a vital factor of production therefore means that economic activity will be negatively affected.

Corruption affects the capital stock from both a domestic and off-shore perspective. Local businessmen will be wary of investing while off-shore investors and FDI will be stultified as foreign businesses are wary of corrupt jurisdictions.

The World Bank in a study in 1997, looked at the different types of corruption and concluded that the nature of corruption determines the adverse consequences to be experienced. It noted that:

There are two kinds of corruption. The first one is where you pay the regular price and get what you want. The second is one where you pay what you have agreed to pay and you go home and lie awake every night worrying whether you will get it or someone is going to blackmail you instead²⁹.

From a sample of 39 industrial and developing countries, the World Bank shows that that at given level of corruption, countries with more predictable and less opportunistic corruption had higher investment rates³⁰.

²⁹ World Bank (1997): World Development Report 1997

³⁰ Ibid

4. Public Sector – In the presence of corruption, the public sector tends to get rotten. Recruitment and appointments are made on the basis of nepotism and kickbacks. Inevitably, public officers now proceed to create unnecessary bottle necks in order to extort money.

Within the public sector too, budgets tend to get distorted with fiscal indiscipline being the order of the day. As a result of corrupt tendencies, policy formulation will end up preferring wrong projects and contractors.

Invariably, outside of even preferring wrong firms and projects, the quality of the public sector is affected. It must be noted that the strength of any government and of development rests on the civil service. Politician may come and go, but the civil servant is at the behest of policy formulation and implementation and one quality is eroded in that sector, it adversely affects development.

5. Private sector – the interplay between the private sector and the public sector is a very interesting and one tends to believe that the private sector fuels and feeds off the corruption within the public sector. Private sector entities are ultimately at the receiving end of demands for bribes even where they don't offer unsolicited ones.

As a rule of thumb, one can be sure that corruption will and does distort international trade. This distortion extends to human capital and it has been noted that "corruption is a form of rent seeking

behaviour where human capital is allocated to redistributive tricks rather than productive activities”

Within the context of the macro economy, corruption end up creating a shadow economy and reduces the effectiveness of government. This happens through the populace operating off the books in order to survive corrupt policies and structures. An underground economy is thereby created, with under reporting and tax evasion being rampant. Public officers especially law enforcement officers and regulators would habitually receive bribes to overlook breaches of laws and regulations.

6. Insecurity – As a result of the distortion of the structures of government by corruption, the level of insecurity in corrupt a corrupt country tends to be significantly higher than in less corrupt countries. The reasons are not farfetched since corruption leads to wrong choice of projects and massive diversion of public funds that would have been utilised for security. In any case, since corruption grounds the economy, with the resultant unemployment and allied problems, security agencies face a nascent pressure and are unable to effectively cope since they are themselves adversely affected.

CONTROL

“...corruption of public office is essentially a political problem; as such, any effort to control the problem must include a large political component. The use of law in any scheme of control will be effective only as a contributing tactic in a more comprehensive political strategy.... The efficacy of law in social

engineering is contingent on the synergy of social, economic and political forces within the arena of operation. In the absence of such supportive synergy, the law, regardless of its apparent relevance and merit, will in practice be ignored with impunity. ... uncritical faith in legal instrumentalism and the lack of attention in the past to the wider context of corruption were responsible for the failure of previous anti-corruption measures.³¹

Given the causative factors identified earlier in the presentation, tackling those same causative factors should minimise corruption. One may aspire for eradication but contemporary history and politics tends to suggest that the best any country can do is minimise corruption to the barest level as criminal tendencies will always exist within any society.

Further, in order to effectively tackle corruption, five essential pillars, must co-exist at the same time. There must be a political will, a strong law enforcement approach, an effective and fast tracked process for adjudication of corruption cases, adequate legislative structures and an effective media / civil society organisations. These five chords of one strand must co-exist at the same time as the absence of one will lead to the failure of the structure. Anti-corruption is a value chain in this context.

The Nigerian scenario represents a classic society where family and tribal values supersede national interests with strongly imbedded

³¹ Paul Ocheje: Law and Social Change: A Socio-Legal Analysis of Nigeria's Corrupt Practices and Other Related Offences Act, 2000

hierarchical structures. Further, it has a colonial heritage with the citizenry consequently seeing the government as an alien contraption which ab initio was an imposition of a foreign power. In this case therefore, an effective anticorruption approach would be to strengthen the five pillars above and thereafter adopt a tops- down approach.³²

FAST TRACKING ANTI CORRUPTION TRIALS

The kernel of this presentation is to prescribe remedies for fast-tracking the trial of anti-corruption cases. There is no cure all remedy to this, in my humble opinion. I had quoted Professor Paul Ocheje above to reaffirm my opinion that resolving the legal issues without more is not good enough. Recall the foregoing hypotheses of a strong judicial system being one of the five strands for successfully combatting corruption. May I caution that at all times, there must a strategic approach to the implementation of any of the remedies I am suggesting. I would also recommend the work of Professor Owasonoye in this regard³³.

SPECIAL COURTS V. SPECIAL RULES OF PROCEDURE

There is no pettifogging the fact that if there were Special Courts, it would serve a useful purpose, even if it is that of decongestion and no more. The airwaves and newsprint has been wash in the past years about how Special Court would resolve the issues around delayed trials of corruption cases. I beg to differ. We must be strategic and ask why

³² Lambsdorf, op cit, fn 5.

³³ Op cit, fn 3

there are delays in the trial of corruption cases in the ordinary courts and if were honest, the basis is the use of interlocutory applications and the applicable rules of procedure by the courts. Severally, corruption cases have gone to the Supreme Court and back, more than once, on procedural issues that have absolutely nothing to do with the substance of the case. Who is then to say that even where Special Courts are created, that they won't be equally hamstrung. It would mean that when creating the Special Courts, there must also be in place special rules of procedure otherwise, it would serve only to decongest the normal courts by some small margin.

Assume however that the Special Court would come with special rules of procedure, then the next logical question is through what mechanism would the court be created?. Which National Assembly, using the Nigeria expression, would have the "liver" to pass a law that would consume its members first? The passage of any legislation setting up a Special Anti-Corruption Court, with or without special rules of procedure would be almost impossible as the political class would not agree to such. This is not a surprise. It is human nature. Which man would deliberately and wilfully set out to cause grievous bodily harm to himself?

In my opinion, A Special Court with Special Rules of Procedure is the way to ago. This can achieved more easily via the exercise of administrative powers than using the route of legislation. Every Chief Judge or Justice has the powers to create divisions and issue practice directions. If the State Chief Judges and that of the Federal High Court, were to create an anti-corruption division with special rules of procedure attaching thereto, we would by the use of administrative

fiat, have created a Special Anti-Corruption Court with special rules of procedure and this in my humble opinion is the way to go. I hope the Nigerian Bar would take this up with the various Chief Judges of the various tiers of courts.

A STRATEGIC APPROACH TO PROSECUTION

I have always admired the mental resilience of Prosecutors in Anti-Corruption Agencies. It must take a superhuman being to prove the hundreds of charges that seem to accompany every corruption case, since each offence and the necessary ingredients have to be separately proved. Surely we must applaud the capacity of these superhuman prosecutors. However is the Judge also superhuman? Assuming that the prosecutor is capable of proving the necessary ingredients of hundreds of charges, what about the judge? Surely, it would take a Judge with equally super human capacity to wade through the charges and all the ingredients establishing each offence.

For strategic reasons, I believe prosecution and charges should be kept simple. Simplicity produces the best results in my opinion and in most cases, there is no need to reinvent the wheel, but to be a little bit more imaginative.³⁴ It may well be that prosecutors are grandstanding or yielding to political pressure, but simple cases that should have led to convictions are being blown away. Even where there are multiple offences committed, I would suggest that it be split, into several trials.

³⁴ An apocryphal story is told of the cool war era that illustrates the effectiveness of simplicity. The Americans and Russians needed to develop a pen that could write in space since the absence of gravity meant that conventional pens would not function there. While the America spent millions of dollars on research and finally developed the pen that could write in specie, the Russians when faced with the same problem, simply furnished their astronauts with a pencil which does not require gravitational pull to write. The point being that most times the answers to problems are right there in our faces and may not require so much money and effort

This may look expensive, a wastage of public funds because of the multiple trials, but it would mean that the prosecution can wear down the defence easily and in any case once it gets a conviction in one trial, the outstanding ones would be easily disposed of.

SANCTIONS FOR MEMBERS OF THE BAR

Surely, within the ambit of the rules of professional conduct, there are rules for sanctioning members of the bar. In the several cases that Professor Owasonoye³⁵ observed, most of these cases were delayed as a result of frivolous interlocutory applications by defence counsel. It is not unusual to find that in a case of corruption involving high profile trials, the first approach of the defence counsel is to file an interlocutory application, loose, proceed to the court of appeal, loose again and proceed to the Supreme Court, while the substance of the matter remains, in spite of clear provisions in the EFCC Act that stay of proceedings should not be entertained. The Bar must sanction such conduct.

LIMITING THE SCOPE OF APPEALS

Why must every single legal contention, go all the way to the Supreme Court? We need to review the appellate structure of Nigeria so that only certain issues go all the way the Supreme Court. This may be by law or rules of procedure, as in the case in other jurisdictions.

REVERSING THE ONUS OF PROOF

³⁵ Op cit, fn 3

The structure needs to be revamped so that the evidential burden of proof must change. Granted that there are constitutional provisions for a presumption of innocence, it is possible to reverse the burden of proof or to ease it in such a manner that serves the needs of justice. Perhaps the usage of reverse onus is misleading and we should be looking at easing of onus of proof. Cases of corruption are totally different from accepted modes of crime and we must do the needful when faced with it. Several jurisdictions have contended with this and resolved that it is rather a common sense approach rather than asking for an overhauling of the law. Assume that a traffic police stops a driver and believes that the driver has no driver's license. Is it not common sense to ask for the driver to produce the driver's license than for the traffic police man to prove that the driver does not have a license?

In *Attorney General v. Lee Kwong-Kut*³⁶, an appellate court considering the constitutional provisions of fair hearing and the presumption of innocence held that in trials of corruption cases, a requirement for easing the burden of proof is not unconstitutional³⁷. Many jurisdictions have adopted this system and it has worked admirably well³⁸. Every country has its peculiar challenges and if we all believe that the greatest impediment to the growth of Nigeria, is corruption, then we must all agree to take unusual and draconic steps towards righting the wrongs.

PLEA BARGAIN

³⁶ (1993) 1 HKPLR 72

³⁷ Ibid

³⁸ For a discussion on reversing the onus of proof, I would recommend reading *Legal Provisions to Facilitate the Gathering of Evidence in Corruption Cases: Easing the burden of proof*, by Nihal Jayawickrama, Jeremy Pope and Oliver Stolpe

Most jurisdictions have adopted plea bargain to expeditiously resolve trials. In Nigeria however, it has assumed a bad name and some have argued that it is unknown to Nigeria Jurisprudence and I submit that proponents of this view are wrong and do not understand what is at stake. Plea bargaining is known to Nigerian law and is nothing more than compounding an offence, which is allowed³⁹.

I suspect that the problem is that there is no legislative structure outside of perhaps Lagos State for the compounding of offences and consequently a wide latitude of discretion comes into the process. It would therefore serve expedited trials, if there were a Federal Statute defining the parameters for plea bargaining. This would streamline the process and sufficiently serve the needs of the country. With such a legislation, the wild swing between absurd plea bargain in the Lucky Igbenidion matter and the record breaking figures in the Cecilia Ibru case would not exist⁴⁰.

THE ROLE OF YOUTHS

Youth is a spark which can either burn or lighten the country⁴¹

The role of the youth in fighting corruption is indispensable. Recall my discussion on the mutual co-existence of factors for minimising corruption. The youth are the drivers of the enlightenment process and must fit into the structure of non-governmental structures that serve as pressure points. Since they form the bulk of the population, they would

³⁹ The EFCC Establishment Act allows it to compound offences.

⁴⁰ The recovery of \$1.3 billion from Cecilia Ibru remains a watershed in law enforcement and I doubt if any Law Enforcement agency anywhere in the world can match this single recovery. We would be uncharitable to ourselves and the EFCC in not recognising this fact.

⁴¹ Quoted by Govindragan Suresh

and should hold the government accountable and pressure for change in policies. In addition the following areas would be areas that the youth can and should fit in.

Education and Sensitisation

The youth need to know corruption. It is not enough to mouth the word, we must understand its ramifications and the legal structures guiding it. This is the only way of reacting successfully to corruption. Beyond cavil. Knowledge is power and you can only fight what you know. Knowledge of the issues would allow creativity and flexibility in understanding and effectively fighting corruption

Have the right values. It is rich not to be corrupt

In a land where miracles and testimonies are celebrated, it is necessary that the values of the youth is the right one. Instead of waiting for their own brand of miracles, the youth can say that "as for me, I will not be corrupt" and the chain effect of that will be a corruption free generation. Our concern with material wealth could be done away with in favour of a value system of reliance on hard work.

Have the right role models

The youth need to pick the right role models in life. This is the driver for life and the determining factor for conduct. Thus with the right role model, the youth will strive to keep away from corruption

Say no to corruption at the professional level

Apart from the personal level, the youth need to encourage and also say no at the professional level. Whether within institution or in business of any sort, we need to have integrity because it pays.

POSTSCRIPT

If there is anything on which Nigerians agree on, it is the fact that corruption is undesirable and need to be tackled. For reform agencies, this is a tidal wave on which to ride and while public expectations tend to lean towards unrealistic immediate results, it may be possible to harvest low hanging fruits by using administrative fiat for the Special Courts. All other can then follow.

It may take longer to minimise corruption but an understanding of the causal factors are indispensable and it is from this context that the discussion of this paper should start. At best, I have presented a skeleton and I hope together, we can put flesh to it in the course of discussions of the paper.