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FUNCTIONALITY OF CORRUPTION TO DEMOCRACY AND
NATIONAL DEVELOPMENT

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ABSTRACT

The Constitution of the Federal Republic of Nigeria, 1999 states that the constitution is supreme and a government can only legitimately come to power in the Federal Republic of Nigeria through democratic means. Democracy which is the popular mandate of the people is therefore the only legitimate means of governance in Nigeria. Unfortunately the democratic governments in Nigeria just like the military governments have respectively failed to deliver the dividends of democracy to the electorates. The common man in Nigeria expects national development, the respect for the rule of law and fundamental rights as enshrined in the Constitution. The question is, what is really the cause of the inability of the government to meet up to the aspirations of its peoples? It is apparent that on the list of the many sustainability challenges facing Nigeria as a country today, corruption enjoys a top position. It has been amply demonstrated that good governance is inextricably linked to strict observance of the basic principles of the rule of law and upholding the abiding tenets of constitutionalism. With what is obtainable in Nigeria, it is difficult to say that the government in Nigeria is a government of the people. From this perspective, constitutionalism double-edge relationship to democracy remains vital to the political understanding and regulation of the global age. The purpose of this paper is to examine the key words Democracy, corruption and its role in national development in Nigeria. It examined the nature of Nigeria's Constitution, Human rights. It further examined the concept of corruption and its impediments to development in Nigeria. It is revealed in this paper that corruption has been major impediments to national development and finally concluded that the problem of National Development in Nigeria is not that of the Constitution or any other laws enacted but with Nigerians themselves and offers suggestion on how best to enable sustainable development in Nigeria.

Keywords: Constitution; Corruption; Governance, Nigeria.

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1. INTRODUCTION

Nigeria as a country has reached a stage where it has become necessary for her to have well established system of government through its Constitution that will enable her to achieve national development, socio-economically, politically and technologically.⁴ But today, it may be very safe to say that every system of the government is all in confusion deprived of focus. Corruption has eaten deep into almost all facets of the system of government for instance, educational, health, industry, political, the economy sector in general among others. The sense of focus of the government has failed, the system of the government is no longer in line with the purposes for which it was adopted, despite the fact that the Constitution of the Federal Republic of Nigeria 1999 (as amended) was drafted for the purposes of not only realizing national cohesion and development but also achieving it.

The rule of law is a cornerstone of contemporary constitutional democracy as was underscored by its role in cementing the recent transitions from authoritarian or totalitarian regimes to constitutional democracy in places like Eastern Europe. The rule of law requires that the state only subject the citizenry to publicly promulgated laws that the state's legislative function be separated from the adjudicative function and that no one within the polity be above the law.

The three essential characteristics of modern constitutionalism are limiting the powers of government adherence to the rule of law, and protection of fundamental rights. In the absence of the rule of law, contemporary constitutional democracy would be impossible. However, it is not clear what precise characteristics the rule of law must possess to help sustain constitutional democracy, what specific role it must assume to ensure a working constitutional democracy or how it might ultimately contribute to the legitimacy of constitutional democracy. Although it is widely believed that the rule of law and constitutional democracy go hand-in-hand, closer scrutiny reveals that constitutionalism and democracy might not always be in harmony; resulting in a clash between the rule of law and democracy. This work is to examine Democracy, Corruption and constitutionalism in Nigeria with a view to see how it has helped Nigerians to attaining national development.

1.1 Conceptual Frameworks

(a) Democracy

Defining democracy has always remained a challenge, this is a concept that has been polemic and diversely understood yet the 'veneration' of constitutionalism. The word 'democracy' is derived from a combination of two Greek words 'demos' meaning people and 'kratia' meaning 'rule' or 'government'. Democracy is a government of the people, who participate in government either directly, or through representatives. Democracy is representative government.⁵ Black's Law Dictionary⁶ also defined democracy as government by the people either directly or through representatives elected by the people.

As far as democracy is concerned, it's different definition, revolve around what Abraham Lincoln referred to as 'government of the people by the people and for the people'. It is a political system characterized by the participation and government of the people through

⁴ Matazu, A.S.R. (el), "Good Governance, Corruption, Immunity and Accountability", in Governance structure and Development: The Role of Law, Nasir, J.M., Dakas, C.J.D. Angwe, B. (eds), Proceedings of the 41st Annual Conference of the Nigerian Association of Law Teachers, University of Jos, Jos-Nigeria, (2008) P.49

⁵ Ese M., The Nigerian Constitutional Law. 3rd edition (Ikeja: Princeton Publishing Company) 2012 pg. 38

⁶ Bryan A. Garner Black's Law Dictionary (9th Edition) 2004 pg 497

their freely elected representatives by the recognition and promotion of human and people's rights, including the rights of the opposition and the minorities.⁷ To be a true democracy, the government must be:

- A government made up of the generality or representatives of the people.
- A government formed and installed by the people.
- A government that exists for the welfare of the people.

Welfare of the people is a critical factor because sovereignty belongs to the people from whom government through the constitution derives all its powers and authority, the security and welfare of the people shall be the primary purpose of government and the participation by the people in the government shall be ensured in accordance with the provision.⁸ Democracy started in the ancient Greek City – states. Democracy is a government where all qualified adults in the country participate in the government directly, or through their qualified representative.⁹ Democracy is a government that allows representation of all the purpose and interest in a country. Democracy is government that allows the people to choose their leaders by way of election. It is an open government because government is a public affair or an everybody's affair and not the privilege of a few it permits and protects human rights.¹⁰ Some of the necessary conditions for the existence and growth of democracy includes the following:

- The existence of a Constitution, usually a written Constitution, which is based on the rule of law, and is the foundation of the rule of civil law.
- The observance of rule of law by all persons and authorities in a country.
- The holding of periodic free and fair elections.
- The existence of a party system in the country, either in the form of a two party system or a multi-party system.
- The existence of organized opposition to the government mainly in the form of opposition political parties, civil rights groups, non-governmental organization, labour union, students union groups and pressure groups.
- The existence of equal right of all eligible people to vote and be voted for.
- The existence of a free press and the right to freedom of expression.
- The guarantee and respect for fundamental human rights as entrenched in the Constitution.
- The existence and application of the doctrine of separation of powers and checks and balances in the government.
- The existence of an upright active and independent judiciary.
- Respect for minority peoples and other disadvantaged groups.¹¹

Britain has been generally cited as a case of democracy without a Constitution in ignorance of the fact that constitutionalism is as much known in Britain as it is in democratic countries with a written Constitution. Britain also has a Constitution, even if this Constitution is a customary or unwritten one. Constitutionalism and democracy are so related that “Constitutional Democracy” may appear to be a tautology.

Democracy is used to describe the system through which the governing representatives of the people are chosen, freely, out of the will of the people. As a system of government to exist, based on the people's own aspirations and programmes, not only in relation to their political rights but also in relation to their economic cultural, religious and sociological life. In

⁷Mangu, A.M., Constitutional Democracy and Constitutionalism in Africa, 3.

⁸ Section 14(2) (a-c) constitution FFRN 1999

⁹ Ese Mallami pg. 39

¹⁰ Ibid at page 39

¹¹ Ibid, page 40

Nigeria, Section 14(1) of the Constitution¹² provided that “the Federal Republic of Nigeria shall be a state based on the principle of democracy and social justice.” Furthermore, subsection (2)(c) provided for the means through which the country can democratize which must be in accordance with the provisions of the Constitution.

Constitutionally, there are two main means of selection of representatives, by election and or by nomination. In relation to the first means, the Constitution established by the provision of Section 153¹³ institutions responsible for conduction of election into the offices of the President, Vice President, Governor and Deputy Governor, including Elections into the National and State Houses of Assembly. To achieve the above, the Constitution establish Independent National Electoral Commission (INEC), and empowered it by the combine provisions of Sections 76, 78, 116, 132, 178, as well as the third schedule to the 1999 Constitution. Despite all these provisions put in place with the aim to achieve good governance through democracy, activities of some Nigerians have always negated this process, rendering it sometimes meaningless, through fraud, corruption and thuggery.

(b) CONSTITUTIONALISM

Looking much closer at the concept of constitutionalism in the Nigeria perspective, we may subscribe to the definition by Laden,¹⁴ when he viewed constitutionalism as a government limited by the law. This means (according to him) the Constitution is supreme and it binds every state authority established and exercising power under the Constitution including the powers to enact legislation,¹⁵ interpret the law and the enforcement of it. On the other hand, constitutionalism denotes a much more profound political process that transcends a simple adoption of a Constitution by a given country. It essentially entails the existence of a political culture in a given country that translates the Constitution into a living experience by both the government and the governed. In a nutshell, therefore constitutionalism is concerned about all the various dimensions of statecraft and governance – from the seemingly mundane to the great and vexing issues of political and economic management in a world that has increasingly become smaller.¹⁶ Wormuth understands constitutionalism as denoting a kind of government designed to protect the principles of liberty whether or not they are supported by public opinion or elected representatives.¹⁷ From the above, the following may be said to be the attributes of constitutionalism.

- Effective restraints upon the powers of those who govern.
- The guarantee of individual fundamental rights
- The existence of an independent judiciary to enforce these rights
- Genuine periodic elections by universal suffrage
- The enthronement of the rule of law as reflected in the absence of arbitraries and
- Equality of all before the law.

2. THE NATURE OF NIGERIA CONSTITUTION

By the provisions of Section 2 (1) and (2) of the 1999 Constitution Federal Republic of Nigeria, Nigeria is one indivisible and indissoluble Sovereign State to be known by the name “Federal Republic of Nigeria. The present structure of the Nigerian federation has been

¹² 1999 Constitution of the Federal Republic of Nigeria (as Amended)

¹³ *Ibid*

¹⁴ Laden M.T., Introduction to Jurisprudence. Classic and Islamic, (Lagos: Matthouse, 2006) p. 221.

¹⁵ *Ibid*

¹⁶ Oloka – Onyango, J. (ed.) Constitutionalism in Africa: Creating Opportunities, Facing Challenges. (Kampala: Fountain Publishers, 2001) p.3

¹⁷ Wormuth, F.D. The Origins of Modern Constitutionalism, 1949, p.3

described as “unitary-federation”¹⁸ the Constitution defines its “government” in the Nigerian context as including “the Government of the Federation, or of any State, or of a Local Government Council or any person who exercise power or authority on its behalf.”¹⁹ To this end, the Constitution of the Federal Republic of Nigeria is republican but modeled to operate a federal system of three levels of government.

A Republican Constitution may be defined in the words of Abraham Lincoln, as one which establishes a “government of the people by the people for the people.”²⁰ In other words a Republican Constitution implies that the sovereignty of a state is not formally vested in an hereditary monarch but remains with the people; the government is that of the people and not of a monarch, and since every government must have a head, he is appropriately styled President.²¹ This is the kind of Republican Constitution Nigeria is said to have.

In a republic, it is for the people to choose the kind of government they want to have, and the Constitution is the means by which they do this.²² To this effect Nigerians through their representatives choose the kind of government they wanted and this can be inferred from the 1978 Constituent Assembly which saw into being the 1979 Constitution, upon which the 1999 Constitution was largely based, with just little adjustment in some areas.²³

By nature, the Nigeria Constitution is rigid, and if looked into critically as a result of a combination of many factors (political, social, geographical, and economical) which operates at the time of its adoption, it’s not static which eventually not only makes it necessary but imperative for a Constitution, no matter how rigid it is, to have an amendment process.²⁴ Amendment is a term tersely defined to mean “to change or modify²⁵ for better, to alter either by modification, deletion or addition.

The Nigerian Constitution prescribed a special amendment process, and specified the people or authorities competent to initiate or carry out an amendment; it also spells out the details of the process by which the amendment can validly be carried out.²⁶ By the Constitution, an amendment may be initiated by the legislature and carried out as prescribed by the Constitution.²⁷ The Constitution provided that an Act of the National Assembly for the alteration of this Constitution must be by vote of at least two third majority of all the members of that house, and approved by resolution of the houses of assembly, of not less than two-thirds of all the states of the Federation.²⁸ Although an Act of the National Assembly altering certain entrenched provisions of the Constitution, approved motion for the amendment “shall not be passed by either House of the National assembly, unless the proposal is approved by the votes of not less than four-fifths of all the states of the Federation.”²⁹

The 1999 Constitution of Nigeria recognized and provided for six types of amendments which are, the creation of states, the adjustment of states boundaries, the creation of local

¹⁸ Udenwa A., Op cit. 4

¹⁹ Section 318 of the 1999, Federal Republic of Nigeria

²⁰ Nwabueze, B.O. *Constitutional Law of the Nigerian Republic*, (London: Page Bros Norwich Ltd. 1964) P. 133

²¹ Ibid

²² Ibid , page 102

²³ This is also the view of Professor Aduba in J.N. Aduba “Independent e of the Judiciary under 1999 Constitution: A Critique.”, *CJLJ, Vol 5, No. 5, 1-19*, where he compared between the 1979 Constitution, 1995 Drafted Constitution, and the 1999 Constitution Federal Republic of Nigeria.

²⁴ Aihe, D.O. and Oluyede P.A., “*Cases and Materials on Constitution Law in Nigeria*,” (Ibadan: University Press Ltd., 1979) p.68-69

²⁵ Yadudu, A.H. the Amendment Process Under Nigerian Law and Constitutions: Trends, Issues, Dilemmas and Processes in Nigeria Issus in the 1999 Constitution, I.A. Ayua, D.A. Guobadia. A.O. Adekunle, (eds.), (Ibadan: NAILS Intac Printers Ltd 2000), 302

²⁶ Ewelukwa D.I.O., “The Amendment Process under the 1999 Constitution,” Op cit, p.326

²⁷ Ibid, p. 327, see Section 9 of the 1999 Constitution Federal Republic of Nigeria

²⁸ Section 9(2) of the 1999 Constitution, Federal Republic of Nigeria

²⁹ Ewelukwa D.I.O., “The Amendment Process under the 1999 Constitution,” Op cit, p.328

government areas the adjustment of local government boundaries, the alteration of the vital or entrenched provisions of the Constitution and the other changes in the Constitution.³⁰

A Constitution whether, among others, written or unwritten, rigid or flexible, unitary or federal has two basic nature. These are first and foremost an expression of the will of the people³¹ or a given political unit, in terms of every provision contained in the Constitution. Secondly, the Constitution is a social contract between the government or an entity on one hand and the people governed on the other hand. It is a contract between those who hold public offices and the people on the second hand and it is also a social contract between and among the various ethnic groups who make up the state or country on the third hand.³²

3. THE SUPREMACY OF THE CONSTITUTION

The Constitution of the Federal Republic of Nigeria provided that, "this Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.³³ And if any Law is inconsistent with the provisions of the Constitution, this Constitution shall prevail, and that law shall to the extent of the inconsistency be void."³⁴ The above provision may be considered as the Supreme law clause. It provided that the Constitution is supreme and that the provision of any law that is inconsistent with the Constitution is void, this provision does not only make the Constitution the highest law in the country but also supreme; this clause is very important because Nigeria is a federal state.³⁵ Powers are divided both vertically and horizontally, and each arm and or level of the government is limited to the powers apportioned to it by the Constitution.

4. HUMAN RIGHTS

Human Rights are some of the basic rights that everyone has to be treated fairly and not in a cruel way, especially by their government.³⁶ A lot of factors led to the entrenchment of Human Rights provisions into our Constitution, one of which is the heterogeneous nature of the country and the fear of the minorities, that their survival would be threatened in a country dominated by the three major tribes (the Hausa Fulani, the Igbo, and the Yoruba).³⁷ The Willinks Commission was constituted to enquire into the fears of the minorities and find a means of allaying their fears. The Commission prepared and submitted a report recommending the insertion of Human Rights into the provision of the Constitution. The fact is that the minorities played a very important role at that time to make sure that the provision on human rights are entrenched in the 1960 Independent Constitution of Nigeria. In the subsequent Constitutions, Nigeria have retained the provisions on Human Rights with minor alteration in arrangement, nomenclature and amplification were they are deemed fit, but they still remains civil and political in nature, rather than being economic and social rights.³⁸ For instance the Independence Constitution of 1960 and the Republic Constitution of 1963 has the rights

³⁰ *Ibdi*, page 331

³¹ See for instance the declaration in the preamble to the 1999 Constitution.

³² Ese Malemi, *the Nigerian Constitutional Law*. Pg. 15 – 16.

³³ Section 1 (1) of the 1999 Constitution Federal Republic of Nigeria

³⁴ Section 1 (3) of the 1999 Constitution Federal Republic of Nigeria

³⁵ Umoh. G, (2005) *Nigeria's Federalism and the Division of Powers Under the 1999 Constitution*, Uyo: Modern Business Press Ltd., 15-16.

³⁶ Hornby, A.S. *Oxford Advanced Learner's Dictionary of Current English*, 8th Edition (Oxford University Press)Pg.734

³⁷ Toro, T., *The Domestic Application of Taxation by Nigeria in Nigeria Legal Rights Monitor, Vol. 3 No. 13*, (1997) p. 22

³⁸ Aduba. J.N, "Human Rights and Social Justice in Nigeria: Issues, Dilemma and Options", in *Perspectives on Human Rights*, Vol. 12 Published by Federal Ministry of Justice, Lagos p 221.

summarily referred to as "inhuman treatment" as opposed to the altered version under the 1979 and 1999 Constitutions, which read the "right to dignity of human person".³⁹

On a close examination of the 1999 Constitution, it provides for two regimes of human rights in two ways.⁴⁰ The first is that rights under Chapter II of the Constitution, which are non-justiciable in character, while the second category is that of justiciable Fundamental Human Rights under Chapter IV of the Constitution. The provision in Chapter IV of the Constitution are justiciable to the extent that the rights are realized by seeking for redress from the appropriate authority if there is a breach or likelihood of breach of any of the rights.⁴¹ These rights are right to life,⁴² right to dignity of the human person which includes prohibition of torture, inhuman or degrading treatment, slavery, servitude or forced labour,⁴³ right to personal liberty,⁴⁴ rights to protection of privacy and family life.⁴⁵ Other rights included the rights to freedom of thought, conscience and religion,⁴⁶ to freedom of expression and press,⁴⁷ and right to fair hearing and fair trial.⁴⁸ The only rights upon which some limitations are placed is with regard to non - citizens of Nigeria and it relates to rights to freedom of movement,⁴⁹ and the right to freedom from discrimination.⁵⁰

The same Constitution in Chapter II, provided for another set of rights under the title of Fundamental Objectives and Directive Principles of State Policy. These rights are non-justiciable, and a significant innovation of the 1979 Constitution based on an idea probably borrowed from India.⁵¹ The important symbolic and ideological innovation represents an explicit acknowledgement of the ends of government and responsibility of the state to the citizens.⁵² The ideological significance of the provision lies in the affirmation of the economic stability, social justice, security and the welfare and well being of the citizens as the primary goal of government, thereby portraying government as an agent for attainment of common good, and as being a responsive, responsible and accountable government.⁵³

5. CORRUPTION AND THE LAWS

There are many definitions of corruption as there are different writers depending on the perspective from which each look at the term. There are different opinions about the perception of the concept of corruption. First and foremost, it has been observed by Andrig and Fjeldstad that "corruption is a complex and multifaceted phenomenon with multiple causes and effects as it takes on various forms and functions in different contexts."⁵⁴ As noted earlier, corruption has been defined by various scholars based on their different idiosyncrasies. According to *Taiwo*

³⁹ Okoye, F., The 1999 Constitution and the Provision of Human Rights in Nigeria, *Legal Rights Monitor*, Vol. 3, (1997) No 13, 3-4

⁴⁰ *Issues in the 1999 Constitution*, Op Cit, p 185

⁴¹ Ibid

⁴² Section 33 of the 1999 Constitution

⁴³ Section 34 of the 1999 Constitution

⁴⁴ Section 35 of the 1999 Constitution

⁴⁵ Section 36 of the 1999 Constitution

⁴⁶ Section 37 of the 1999 Constitution

⁴⁷ Section 39 of the 1999 Constitution

⁴⁸ Section 40 of the 1999 Constitution

⁴⁹ Section 41 of the 1999 Constitution

⁵⁰ Section 42 of the 1999 Constitution

⁵¹ Akande. J.O, Fundamental Objectives and Directive Principles of State Policy within the frame work of a liberal Economy in *Nigerian: Issues in the 1999 Constitution*, Op Cit, p 220

⁵² Alemeka. E.E.O, Fundamental Objectives and Directive Principles of State Policy within the Framework of a Liberal Economy in *Nigerian: Issues in the 1999 Constitution*, Op Cit, p 119

⁵³ Ibid

⁵⁴ J C Andrig and O. Fjeldstad, "Corruption: A Review of Contemporary Research Report" (2011) chr Mchelson Institute of Development Studies and Human Rights, p.4.

Osipitan, to be corrupt is to fail to follow accepted standard of behaviour or the willingness to purposely act dishonestly or illegally for personal gains.⁵⁵ *Agomo* defines corruption as a conduct, or action that is morally degenerated, depraved, spoiled or tainted or is inconsistent with the rules and principles of morality.⁵⁶ While *Azinge*, in his own view sees corruption as the involvement in illegal, dishonest or wicked behaviour which is destructive of the moral fabric of the society.⁵⁷ He further added that corruption comes in many forms and guises. According to him, the most common features of corruption are giving and receiving bribes, inflation of contracts, kickbacks, exercise of undue influence, sexual harassment by public officials of female employees, applicants and staff seeking promotion, abuse of public property and diversion of official stationery, leaving government offices during office hours for private interest, paying money to obtain party nominations, treating of voters, misuse of official vehicles, obtaining estacodes for trips that are not undertaken, awarding contract to personal or private companies or relations' companies without abiding by due process, lodging government fund in private account in anticipation of interest to be yielded, judicial corruption, over invoicing and under invoicing in banks, operations of illegal foreign accounts, tax evasion and avoidance, aiding and abetting smuggling by public officers who are expected to prevent it, misappropriation and embezzlement of funds, sales of adulterated food and hazardous drugs, importation of unsafe second hand or obsolete cars, awarding certificate of occupancy to two persons in respect of the same parcel of land, hiding away files to obstruct proceedings or in anticipation of gratification, under payment of duties at the port, falsification of results of election, leaking examination question papers before examination and paying invigilators not to disturb cheating during examinations.⁵⁸

In a language corroborative of the above view, *Lanre, Ojo*, and *Seyi* add that elements of corruption include offer to pay less custom duties at the ports or check points, purchase of forged certificates, petroleum bunkering, election rigging, sale of admission into educational institutions, compulsory sale of handout to students, award of marks to undeserved students, illicit relationship with the students of the opposite sex, perversion of judgment for reward, appointments against civil service rules, improper award of licenses and land allocations, conversion, siphoning and stealing of public funds, misapplication and misappropriation of public funds, uncivilized modes of dressing in public, falsification of voters' register, illegal importation and exportation of goods etc.⁵⁹

According to *Yagboyaju*, political corruption is described "as any act of a public official, civilian or military, aimed at changing the normal or lawful course of events especially when the perpetrator uses position of authority for the purpose of a personal or group interest at the expense of the general public interest."⁶⁰ He analyses further that abuse of office covers such practices such as ethnic and personal misuse of the office for accumulation of wealth, unauthorized sale of government property, illegal hoarding of essential and critical commodities, favoritism, nepotism, purchase of loyalty by an illegitimate or illegal regime through inducement or victimization of critics and opponents.

To some people corruption is synonymous with bribery. In the Nigerian case of *Biobaku V. Police*⁶¹ *Bairaman J.* defined corruption "as the receiving or offering of some benefit as a reward or inducement to sway or deflect the receiver from the honest and impartial

⁵⁵ Prof. Taiwo Osipitan et al, "Structuring Measures Against Corruption for Suitable Development" April 23-26 (2002) in NALT Proceedings of 38th Annual Conference, LASU, p, 331

⁵⁶ C.K Agomo, "Evolving a Moral Society in a Corrupt Nation" 21 January 2001 a paper present at a Conference Organised by Network for Youth Development Transparency Project in Lagos. P.5

⁵⁷ Epiphany Azinge, "Corruption in Political Parties and Political Process." 25-29 (2001) paper presented at National Conference on Problems of Corruption in Nigeria at Chelsea Hotel, Abuja. P.1

⁵⁸ Ibid, pp.3-4

⁵⁹ Lanre Ade-Ojo and Seyi Leigh, "The Battle Against Corruption in Nigeria, How Serious " Justus Sokefun (ed), Issues in Corruption and the Law in Nigeria (2002) pp. 147-148

⁶⁰ D.A Yagboyaju, *Issues in Public Policy in Nigeria* (2008) p.29

⁶¹ (1951) 20 N.L.R. 30

discharge of his duties in other words as a bribe for corruption or its price. As observed by *Perekedou J.F.*, the Nigerian offence of corruption is known and referred to in the United Kingdom as bribery. Bribery is specifically prohibited under the bribery Act 2010, which was passed into law on 8 April 2010 and came into force on July 1st, 2011. It is an offence under Section 1 of the Act for a person to offer, promise or give a financial or other advantage to another person where that person intends the advantage to bring about the improper performance by another of a relevant function or activity, or to reward such improper performance, or where the person knows or believes that the acceptance of the advantage offered, promised or given, in itself constitutes the improper performances of a relevant function or activity. The Act, therefore, covers bribery in both the public and private sectors.⁶²

Also in China, as noted by *Perekedou*, corruption is seen and prescribed more from the perspective of bribery, so that the relevant provisions of the Chinese Criminal Code revolve around it. The first of such legislations was in 1952 when the People's Republic of China enacted the Ordinance of Punishing Corruption, which is similar in provision with Article 43 of the Criminal Law 1979.⁶³

Furthermore, it has been suggested that there is a relationship between culture, gift giving practices and bribery in Nigeria. While some scholars support, some do not support this view. According to Smith, there is a link between various accounts of bribery and gifts practices in pre-colonial, pre-Fulani Jihad and post Fulani Jihad in Northern Nigeria.⁶⁴ *Brownsberger*, also observed that two related customs have often been seen as corrupt when they appear in a modern context; gift-giving as an expression of goodwill and respect towards partners and consensual leaders, and tributes...⁶⁵ *Ekpo*, supporting that gift-giving is associated with bribery argued that in Nigeria, corruption is a continuation of traditional gift-giving practices. He stressed further that it is plausible to suggest that corruption in Nigeria derives the legitimacy from the tradition of gift-giving.⁶⁶

Akinseye-George is of the contrary view. He argues that the abuse of the legitimate cultural practice of gift-giving by individuals is by no means indicative of the venality of the practice. He cited the practice of using different languages to describe gifts and bribes to illustrate the cultural condemnation of bribery. For examples, the Yorubas use the word “*egunje*” (an involuntary or cursed gift extorted from the given by a rapacious official) to express disapproval for bribery. Similarly, the Hausas of the Northern Nigeria use derogative imageries such as “*hanci*” which means (eating of nose) or “*tsoshiyarbaki*” which means “plugging of mouth” to distinguish involuntary gifts (bribe) from other forms of gifts.⁶⁷ It is apparent that gift-giving is practiced by many ethnic groups in Nigeria. Such gifts exchanges usually take place at occasions like child christening, marriages, and celebration of traditional festivals. Below are meaning of some types of corruption.

(a) Systemic Corruption

Endemic or systemic corruption is when corruption is an integrated an essential aspect of the economic, social and political system when it is embedded in a wider situation that helps sustain it. Systemic corruption is not a special category of corrupt practice but rather a situation in which the major institutions and processes of the state are routinely dominated and used by

⁶² J.F Perekedou, “ The Efficacy of the Legal Regime for Combating Corruption in Nigeria” in O.A Fatula (ed) Perspectives on Criminal Law and Criminal Justice (Afric Law Centre, 2015) p. 119

⁶³ Ibid, p. 120

⁶⁴ M.G Smith, “Historical and Cultural Conditions Among the Hausa” (1964) Comparative Studies in Society and History, vol 6 no.2 at pp.164-194.

⁶⁵ Brownsberger, “Development and Government Corruption in Nigeria Materialism and Political Fragmentation in Nigeria” (1983) Journal of Modern African Studies, vol 21 No 2 at p.216

⁶⁶ M.U Ekpo *Bureaucratic Corruption is Sub-Sharan Africa; towards a Search for Causes and Consequences* (Washington University Press of America, 1979) at pp. 164-165.

⁶⁷ Y. Akinseye George, *Legal System, Corruption and Governance in Nigeria*. (New Century Law Publishers Ltd, 2000) at p. 7

corrupt individuals and groups, and in which most people have no alternatives to dealing with corrupt officials. Some of the countries where systemic corruption occurs are Nigeria, Kenya, Bangladesh, Cameroon, and many others.⁶⁸

(b) Sporadic (Individual) Corruption

This type can be seen as the opposite of systemic corruption. Sporadic corruption occurs in irregular way and therefore it does not threaten the mechanisms of control nor the economy as such. It is not crippling but it can seriously undermine morale and sap the economy of resources.⁶⁹

(c) Petty Corruption

Petty corruption refers to the modest sum of money usually involved, and has also been called “low level” and “street level” to name the kind of corruption that people can experience more or less daily in their encounter with public administration and services like hospitals, schools, local licensing authorities, police, taxing authorities and so on.⁷⁰

(d) Electoral Corruption

This type manifests situation where there is purchase of votes with money, premises of office or special favour, coercion, intimidation, and interference with freedom of election. Corruption in office involves sales of legislative votes administrative, or judicial decisions or governmental appointment. Disguised payment in the form of gifts, legal fees, employment, favours to relative, social influence, or any relationship that sacrifices the public interest and welfare, with or without the implied payment of money is usually considered corrupt. This is sometimes referred to as election fraud, election manipulation or vote rigging. Is illegal interference with the process of an election either by increasing the vote share of the favoured candidate, depressing the vote share of the rival candidates or both.⁷¹

(e) Political Corruption

Political corruption is seen as any act of a public official, civilian or military, aimed at changing the normal or lawful course of events especially when the perpetuator uses such position of authority for the purpose of a personal or group interest at the expense of the general public interest.⁷²

(f) Judicial Corruption

Judicial corruption May be seen as any form of perverse act perpetuated by holders of judicial offices including magistrates and other persons acting in judicial capacity in performance of their duty or in relation to the performance thereof.⁷³ Corruption by judicial officers and their subordinate and administrative staff take any of the following forms: bribe taking, gratification grating of injunctions in breach of the principles governing the grant, refusing to grant an injunction without a just cause, frivolous adjournments of cases, speedy trial of undefended suits, delayed trials of suits at the instances of court, delaying the insurance of certified copies of judgments in order to delay appeal, filing proof of service of court processes without effecting a service, refusal to file proof of service after the service of a court

⁶⁸ K.O. Fayokun, “Corruption, and Subversion of the Constitution: Whither Nigeria” Seminar Paper Presented at the Faculty of Law, Seminar Series (Unpublished) 3/11/2016, page 18, Obafemi Awolowo University, Ile-Ife, Nigeria.

⁶⁹ Ibid at p.19

⁷⁰ What is Petty Corruption available at <https://www.quora.com/what-is-petty-corruption> , accessed on the 21st of April, 2019 at 6.25 am

⁷¹ <https://en.m.wikipedia.org/wiki/lect...accessed> on the 21st of April, 2019 at 6.29 pm

⁷² Yagboyaju D.A., Issues on Public Policy in Nigeria, *op. cit*

⁷³ Ilias L., “Judicial Corruption in Nigeria: A Revisit” *Journal of Public and International Law*, Vol. 1 , February (2005), P. 41.

process, assumption of jurisdiction where there is want of same, declining jurisdiction of frivolous grounds, tampering with court exhibit, descending into the arena of conflicts, disclosing the contents of court process to a party who is absent from court, succumbing to undue influence from peers and superiors, sexual harassment of litigants of the opposite sex, embezzlement of public funds, coming late to court without any just cause and so on.⁷⁴

6. CORRUPTION AN IMPEDIMENT TO NATIONAL DEVELOPMENT IN NIGERIA

It is apparent that corruption is a cankerworm that has eaten deep into the fabric of the society at all levels. It has caused decay and dereliction within the infrastructure of government and the society within the infrastructure of government and the society in physical, social, and human terms. Corruption is a form of dishonest or unethical conduct by a person entrusted with a position of authority, often to acquire personal benefit. ... Government, or 'political', corruption occurs when an office-holder or other governmental employee acts in an official capacity for personal gain.⁷⁵ It is apparent that on the list of the many sustainability challenges facing Nigeria as a country today, corruption comfortably enjoys a top position. According to Fayokun,⁷⁶ Nigeria is said to lose up to 40% of its oil revenue in corruption. Accusations of corruption are frequently made against government institutions and several individuals in positions of authority.

In a country where corruption thrives the poor suffer from it most. The poor pay a higher share of their income on bribes than the rich in Nigeria. The burden corruption places on the poor get reinforced by the fact that they are more dependent upon public services than the rich. Also corruption engenders unemployment in the country. It is obvious that corrupt practices undermine the effectiveness and the flow of foreign investments by serving as easy or convenient excuse for refusing to give grant or aid unless foreign personnel are allowed to handle the project.⁷⁷

Psychologically, since moral values and ethics are meaningless to corrupt persons, they are fond of engaging themselves in different forms of undesirable scandalous, infamous, unethical, antisocial and criminal acts capable of tarnishing their names and debasing their personalities. Corruption increases public expenditure while it decreases its quality and productivity. For example companies raise mark up on their bids in order to include kickbacks for public officials presiding over procurement decisions and other counterparts demanding bribes throughout the process. The contractors use materials of inferior quality reduced quantity to reduce cost on the assignment in order to gain and champ their invested funds. Since everyone involved in the project benefits from kickbacks no one speaks up at the cost of the beneficiaries, who have to kickback for public officials presiding over procurement decision and other counterparts demanding bribes through the process.⁷⁸

Corruption practices have violated public trust and erode social capital. It has distorted incentives, undermined institutions and it is been used to distribute wealth and power to the undeserving, it has crippled the rule of law and stunted economic growth and political development. Over the past few years, Nigeria has gained unprecedented global attention on account of its sordid record in corruption. For example, in 1991, Nigeria was ranked the second most corrupt country in the whole world, by the Transparency International (T.I.). In year 2000,

⁷⁴ Ibid , p.42

⁷⁵ <https://en.wikipedia.org/wiki/Corruption> Accessed on the 18th August, 2017.

⁷⁶ K.O. Fayokun, "Corruption, and Subversion of the Constitution: Whither Nigeria" Seminar Paper Presented at the Faculty of Law, Seminar Series (Unpublished) 3/11/2016, page 1, Obafemi Awolowo University, Ile-Ife, Nigeria.

⁷⁷ P. Adeyombo "Corruption in Nigeria: Its Concept, Classification, Consequences and Cures" in O.A. Fatula (eds) *Pe4spectives on Criminal Law and Criminal Justice* (Afribic Law Centre 2015) P. 160

⁷⁸ Ibid. p. 161

it emerged the most corrupt country in the world.⁷⁹ While it may not be possible at present to protect any society completely from corruption, Nigeria has persistently suffered from the overwhelming effects of corruption. Nigeria's high tolerance for corruption has led it to having very high rates of poverty, conflict, insecurity and diseases. Citizens complain of poor wages, poor security, poor services, weak institutions and even weaker checks and balances mechanisms in government institutions.

Corruption has led to crippling mismanagement of substantial revenue by different administrations in Nigeria. For example, in 2012 alone, over US\$100 billion (N15.7) of oil revenue accrued to Nigeria are not accounted for by any government department over the mismanagement of vast revenue. A decade ago, it was estimated that approximately US\$ 20 billion is lost to corruption in Africa each year.⁸⁰ Corruption is the most serious development challenge to Nigeria. Corruption is driven by official tolerance for illicit enhancement, concentration of wealth and economic power in the hands of a few, blending of political and economic interests. Corruption undermines democracy and good governance in Nigeria. It is also a threat to the security of human lives and thousands of lives are lost annually in Nigeria due to poor road and transport infrastructure, poor health care services and poor security and social services generally as a follow up effect of corrupt parties in government. Corruption is believed to be prevalent in Africa and Nigeria in particular due to the absence of strong institutional and legal frameworks to combat it.⁸¹

In Nigeria, there are in existence several institutions and a large body of legislation aimed at addressing the problems of corruption. This large body of legislation and several institutions notwithstanding, corruption remains a cankerworm that has eaten very deep into the fabric of the country. With corruption, there can be no real democracy and sustainable development, nor political stability. Corruption is not peculiar to Nigeria or the black race. Both developing and developed countries engage in it, only the levels of involvement are different and the applicable modes of sanctions vary from one country to another.

7. CONCLUSION

The judiciary as an arm of the government cannot alone do the magic, the democratically elected arms of the government both at Federal, State and Local Government levels are not helping matters, and it is difficult to day, with what is obtainable, that the government in Nigeria is a government of the people. The judiciary in Nigeria on its part is ready to ensure that the provisions of the Constitution are maintained, and that the people have not only their say, but including their ways. This as it was in the words *Musdapher J.S.C.*, in the case of *A.G. Abia State v. A.G. Federation* on the fundamental role of the judiciary, when he observed that:

“The Judiciary especially the Supreme Court in particular, is an essential integral arm in the governance of this nation; it is the guardian of the Constitution charged with the sacred responsibility of dispensing justice for the purpose of safe guarding and protecting the Constitution and its goals. The judiciary when properly invoked has a fundamental role to play in the structure of governance by checking the activities of other organs of the government and thereby promoting good governance, respect for individual rights and fundamental liberties and also ensuring the achievement of the good goals and intendments. It is the duty of the courts to keep the government

⁷⁹ A. Joshua “Corruption, the Rule of Law and Nigeria’s Nascent Democracy” in O.A. Fatula (eds). *Perspective on Criminal Law and Criminal Justice*. Afribic Law Centre. 2015 P. 147

⁸⁰ *Ibid at page 1-2*

⁸¹ *supra*

faithful to the goals of democracy, good governance for the benefit of the citizen as demanded by the Constitution.”

It may therefore be concluded that the problem of National Development in Nigeria is not that of the Constitution or any other law enacted that has the blessing of the Constitution. It is also not the problem of Democracy in Nigeria, but it is the problem of the Nigerians themselves, particularly those elected into offices of the government and public servants who handles matters of corruption with no sense of care. In their efforts towards fighting corruption and corrupt practices, they are so good in playing lip-service to matters of corruption. There can be no sustainable development without tackling corruption. There are no silver or gold bullets to fighting corruption. Many countries globally have made significant progress in curbing corruption. However, practitioners are always on the lookout for solutions and evidence of impact.

8. RECOMMENDATIONS

There should be unbiased effective law enforcement. This is essential as it will ensure that the corrupt are punished and it will break the cycle of impunity, or freedom from punishment or loss. Successful enforcement approaches should be supported by a strong legal framework, law enforcement agencies, independent and effective court system. Civil society groups can also support the process by initiating campaign at various level of the government.

- There should be reforms which will focus on improving financial management and strengthening the role of auditing agencies, with this method, it will enable the Nigeria to achieve greater impact than public sector reform in curbing corruption. One of such reforms is the disclosure of budget information, which prevents waste and misappropriation of resources. For example; Transparency International Sri Lanka⁸² promotes transparent and participatory budgeting by training local communities to comment on the proposed budgets of their local communities. Same can be applied here in Nigeria.
- There should be governmental openness, freedom of the press, transparency and access to information. Access to information increases the responsiveness of government bodies while simultaneously having a positive effect on the levels of public participation in a country.
- Strengthening citizens demand for anti corruption ad empowering them to hold government accountable is a sustainable approach that helps to build mutual trust between citizens and government. For example, community monitoring initiatives have in some cases contributed to the detection of corruption, reduced leakages of funds, and improved the quantity and quality of public services. Create pathways that give citizens relevant tools to engage and participate in their governments. Identify priorities, problems and find solutions.
- The government should strategize on how to close all access to international financial system right from the Local State and Federal level. Without access to international financial system, corrupt public officials throughout the world and Nigeria particularly would not be able to launder and hide the proceeds of looted state assets. There is the urgent need for major financial centre to put in place ways to stop their banks and cooperating offshore financial canters from absorbing illicit flows of money.

⁸² How to Stop Corruption available at <<https://www.transparency.org/feature>> Accessed on the 24th of August, 2017.

- Any corrupt official prosecuted and found guilty should be made to pay stringent fine, confiscation of their assets in addition to the jail term. Punishing corruption is a vital component of any effective anti-corruption effort.
- There should be Social Security system for citizens by which government provides sufficient employment for the employable, providing and improving minimum standard of living for the people generally. There should be government political will to fight corruption without fear or favour and the judiciary should also embrace the federal government gesture to fight corruption by appointing the incorruptible judges to the bench.

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