IMPLEMENTING THE RIGHT TO DEVELOPMENT IN NIGERIA: GOOD GOVERNANCE AS AN APPROACH

By

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ABSTRACT

This paper examines the importance of good governance in the realisation of the right to development. Basically, the paper argues that corruption is a bane to good governance and consequently, to the realisation of the right to development. Thus, in line with international best practices and with or without the justiciability of human rights before domestic courts, good governance through the support of legislation and strong institutions of government lays an important foundation for the realisation of the human right to development in Nigeria.

1.1 Introduction

The raging poverty across the world and lack of inclusivity in decision making process ushered in a new vista of human right that seeks to balance global imbalances and to allow each and every individual, state, region, bloc and region the opportunity to participate to, enjoy and contribute to their development. Although the concept of development is fluid and capable of expansive interpretation, in case of the right to development, it is viewed as a synthesis of all existing human rights to be implemented together. This presupposes that all human rights in their civil, political, economic, social, environmental and cultural contexts need to be implemented in the same manner. At the same time, none of them, in line with the universality and interdependence of human rights, for whatever reason should be violated.[1]

But in implementing human rights generally, the legal system needs to be put into consideration. This implies that domestic legal systems bear the brunt of ensuring that human rights are respected, promoted and fulfilled determine how a human right may apply. Thus, in a state like Nigeria, which is purely dualist, a right like the right to development which is a child of treaty law[2], must first be domesticated.[3] Being a human

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[1] For instance the Preamble of the UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: http://www.refworld.org/docid/3ae6b36c0.html [accessed 18 January 2017].

[2] See Organization of African Unity (OAU), *African Charter on Human and Peoples' Rights ("Banjul Charter")*, 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), available at: http://www.refworld.org/docid/3ae6b3630.html [accessed 18 January 2017] Art. 22

[3] Constitution of the Federal Republic of Nigeria (1999) as amended (CFRN), S.12. See also ***Abacha v. Fawehinmi*** (2000) LPELR-14(SC).

right, it must also not conflict with constitutional and other extant laws within the legal system.[4] Where this is so, especially with regards to the constitution, the constitution would assume first place.[5] Thus, whereas, the right to development is expressly encapsulated in the African Charter on Human and Peoples' Rights as a human right, the Nigerian Constitution considers it, albeit, not expressly, as a fundamental objective of the state.[6] This being the case, the question arises, how the right to development should not remain a mere aspiration, considering its added value in the human rights praxis. This paper therefore argues that through good governance, which entails fighting corruption, the right to development can be effectively implemented and realized.

Thus, the first part of this briefly examines the concept of the right to development. The second part of the paper discusses good governance as an approach towards the realization of the right to development. The third part analyses the international dimension of good governance. The fourth part of this paper examines the problems of corruptions and efforts made to tackle it in order to establish good governance in Nigeria.

1.2 The Right to Development under the Nigerian Legal System[7]

The right to development is one of the most controversial concepts in modern human rights. Its controversy circles around its meaning, justiciability and implementation. Since the initial conception of the right to development, it remains enmeshed in politics, debates and resistance within diplomatic and academic circles. Ibhawoh describes this situation as "the politics and polemics of resistance" between the North and the South.[8] Ideology remains a driving force for this misunderstanding despite the fact that series of international discourses have tried to make all human rights, including the right to development indivisible, interrelated and interdependent.[9]

Scholars that have sympathy for the right to development describe it in exhilarating phrases to support their claim. For instance, Abi Saab argues that it is an enabling right,[10] while others consider it as a vector[11], synthesis[12] of existing rights. To Bedjaoui the right to development is "[t]he precondition of liberty, progress, justice and creativity. It is the alpha and omega of human rights, the first and last human right, the beginning and the end, the means and the goal of human rights."[13] Each of these permutations makes the right to development an explosive idea in the human rights discourse. For example, Sengupta notes that the right to development being a vector is only realisable if at least

[4] For instance, not conflict with the non-justiciable provisions of the CFRN. See CFRN Chapter II and S. 6(6) (c).

[5] CFRN S. 1(3).

[6] CFRN Chapter II.

[7] Most of the discussion in this part is drawn from an earlier publication by the author. See Magashi SB "Pinheiro v Ghana: A Misconception of the Right to Development?" *Human Rights Review* (2016) Vol 6. 387- 405.

[8] B Ibhawoh "The Right to Development: The Politics and Polemics of Resistance" (2011) 33 *Hum Rts Q* 76-104.

[9] Vienna Declaration Art 10.

[10] G Abi-Saab "The Legal Formulation of the Right to Development" in R-J Dupuy (ed) *The Right to Development at the International Level* (1980) 159.

[11] Sengupta (2002) *Hum Rts Q* 837-889.

[12] J Donnelly In Search of the Unicorn: The Jurisprudence and Politics of the Right to Development" (1985) 15 *Cal W Int'l LJ* 473 480.

[13] M Bedjaoui *The Right to Development in International Law: Achievement and Prospects* (1991) 1177- 1182.

one aspect of all human rights is fulfilled and none of its other aspects is violated.[14] Accordingly, he defines the right to development as:

> the right to the process of development, consisting of a progressive and phased realisation of all the recognised human rights, such as civil and political rights, and economic, social and cultural rights (and other rights admitted in international law) as well as a process of economic growth consistent with human rights standards.[15]

From this definition, the right represents an underlying right, which lays the foundation for the realisation of other rights.[16] This is why the right to development has garnered serious opposition. Those opposed to the idea of the right to development dismiss such claims and in extreme cases regard the concept as a "disaster", "catastrophic", "dangerous" or a "total failure" to the human rights edifice for its vagueness, fuzziness and ambiguity.[17] In fact, others attack the UNDRD as being a "bad law, vague, internally contradictory, duplicating other already codified rights, and devoid of identifiable parties bearing clear obligations."[18]

Suffice to state that the right to development has polarised the human rights community.[19] Although, since the Vienna Declaration, the right has gained a reasonable level of identification and momentum in development practice of global institutions,[20] it may not be completely so in the academic, legal and diplomatic circles. The right is, in concrete terms, not a right per se in international law. It is best described as a product of soft laws because virtually all the legal instruments except the ACHPR, provide for the right are non-binding.[21] However, in development practice the right to development is gaining popularity so much so that some scholars argue that it has assumed the status of customary international law (CIL).[22] To many leading international institutions, supported and funded by developed countries, development is rather not to be viewed as a right per se, but that in carrying out any developmental agenda, a human right perspective should be added to it. Thus, instead of a right to development some scholars

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[14] Sengupta "The Human Right to Development" in *Development as Human Rights* 15-23.

[15] Ibid 20.

[16] Uvin argues that although this is a beautiful innovation, it is operationally meaningless. See P Uvin "From the Right to Development to Rights Based Approach: How 'Human Rights' entered Development Freedom" (2007) 17 *DEV PRAC* 597 599.

[17] Uvin *Right to Development* 589; Donnelly (1985) *Cal W Int'l LJ* 480; P Uvin *Human Rights and Development* (2004) 1.

[18] Uvin (2007) *DEV PRAC* 598; See also A Rosas "The Right to Development" in A Eide, C Krause & A Rosas (eds) *Economic Social and Cultural Rights: A Text Book* (1995) 247-256; AL Obiora "Beyond the Rhetoric of the Right to Development" (1996) 18 *Law and Policy* 355-418.

[19] Ibhawoh (2011) *Hum Rts Q* 78-81.

[20] Ibid 76-104.

[21] The UNDRD is the arrowhead legal instrument that is dedicated to the right to development.

[22] ME Salomon "Legal Cosmopolitanism and the Normative Contribution of the Right to Development" (2008) *LSE Law, Society and Economy Working Papers* 16/2008; SR Chowdhury & PJIM de Waart "Significance of the Right to Development: An introductory View" in SR Chowdury, EMG Denters & PJIM de Waart (eds) *The Right to Development in International Law* (1993) 7 7-23.

would rather have a rights-based approach to development (RBA).[23] For instance, Hamm opines that the right to development may not be used to stimulate discussion on how to strengthen and foster the justifiability of economic, social and cultural rights, because as it is, the right to development cannot function as a standalone right due to its vagueness and lack of legal obligation.[24] Thus, she advocates for a human rights-based approach to development, which should give priority to social and economic rights as a better option.[25]

The right to development has the character of adding value to the human rights discourse and possesses the potential to achieve development especially in third world countries. Writing on the added value of the right to development Shelton claims that:

> To the extent that the right to development is seen as a synthesis of existing human rights, it reintegrates the civil and political and the economic, social and cultural groups of rights. It brings together into a coherent whole the concept of human rights and rejects any notion that there must be a priority given to one set of rights over another. Each document of the United Nations on the right to development emphasises the indivisibility of human rights and the inextricable linkage between the civil and political rights and the economic, social and cultural rights. No notion of priority permits sacrificing one set of rights for another.[26]

Another "added value" of the right to development is that it breaks the traditional notion of human rights as a duty of States and introduces the international co-operation paradigm into it because States rarely implement existing human rights within their jurisdiction.[27] Shelton adds that "one valuable aspect of the right to development is that it encompasses a more broad-based legal obligation of States: the duties corresponding to the right to development are not exclusively domestic in nature but have an international component."[28] On his part Alfredson is of the view that the right to development and its implementation may serve as the "ultimate test" of the commitment of the global community to achieve the universality of human rights and the realisation of equal equality and opportunities for all.[29] He adds that it is unlikely "that respect for the previous generations of rights would solve the problems which the new right is supposed

[23] Uvin *Op cit* (2007) *DEV PRAC* 602.
[24] Hamm *Op cit* (2001) 23 *Hum Rts Q* 1010.
[25] Hamm *Op cit* (2001) *Hum Rts Q* 1010; See also Uvin *Op cit* (2007) *DEV PRAC* 597; Uvin *Op cit Human Rights and Development* (2004) 1.
[26] Shelton *Op cit* (1985) *Cal W Int'l LJ* 524-527.
[27] Ibid 526; and Alston *Op cit Harvard Human Rights Yearbook* 3-40.
[28] Shelton *Op cit* (1985) *Cal W Int'l LJ* 527.
[29] G Alfredson "The Right to Development: Perspectives from Human Rights" in LA Rehof & C Gulmann (eds) *Human Rights in Domestic Law and Development Assistance Policies of the Nordic Countries* (1989) 83 86.

to address" and he concludes, "that the benefits of the right to development probably outweigh [its] drawbacks."[30]

1.3 Good Governance as a Method for the realization of the Right to Development

For the right to development to be effectively realised, good governance is an indispensable tool. In fact, development cannot take place without it. Human rights and good governance are mutually reinforcing and therefore a sum total for the right to development.[31] Generally, good governance entails strengthening democratic institutions, enforcing the rule of law, improving service delivery and combating corruption.[32] The Office of the High Commissioner for Human Rights (OHCHR) has also recognised the role of good governance for the realisation of human rights and contends "that transparent, responsible, accountable and participatory government, responsive to the needs and aspirations of the people, is the foundation on which good governance rests, and that such a foundation is a sine qua non for the promotion of human rights."[33] Moreover, the UNDRD enshrines that all persons "are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development"[34]

The World Bank has described governance to simply mean "the exercise of political power to manage a nation's affairs."[35] Its key components include but are not limited to transparency, responsibility, accountability, participation and responsiveness (to the needs of the people).[36] Unfortunately, as noted by the World Bank "underlying the litany of Africa's development problems is a crisis of governance".[37]

Corruption is one of the greatest challenges good governance and to the effective realisation of the right to development in Nigeria.[38] Any discussion about the right to development without a reference to corruption would be incomplete. It has eaten deeply into the fabric of the Nigerian society. The 2014 Transparency International Index puts Nigeria at number 136 out of 174 countries. Nigeria scored 27 out of 100 (100 indicating very clean and 0 indicating very corrupt).[39] This indicates that Nigeria is perceived as a

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[30] Ibid 86-88.
[31] See OHCHR *Good Governance Practices for the Protection of Human Right* (2007) 1-2.
[32] Ibid 9-26, 29-43 45-57 and 59-74.
[33] The Role of Good Governance in the Promotion of Human Rights Commission on Human Rights Resolution 2000/6466th meeting 26 April 2000. (adopted by 50 countries with 2 abstentions.)
[34] UNDRD Art 1.
[35] World Bank Report *Sub-Saharan Africa from Crisis to Sustainable Growth* (1989) 60-61.
[36] See OHCHR "Good Governance and Human Rights" available at: http://www.ohchr.org/EN/Issues/Development/GoodGovernance/Pages/GoodGovernanceIndex.aspx (accessed 25-09-2015).
[37] World Bank *Sub-Saharan Africa* 60.
[38] Report of the Global Consultation on the Right to Development as a Human Right "The challenge of implementing the right to development in the 1990s" in *Realizing the Right to Development* 49 61
[39] Transparency International CORRUPTION PERCEPTIONS INDEX 2014: RESULTS *Transparency International*:<https://www.transparency.org/cpi2014/results> (accessed 31-08-2015).

corrupt country. Muhammadu Buhari, the recently elected President of Nigeria has consistently maintained that unless it is "killed", corruption will kill Nigeria.[40]

Corruption denies the realisation of human rights because a few selfish people siphon resources earmarked for human development. Hence, no matter how well the human right to development is designed, it will be bogged down by corruption. There is a popular saying that "[k]eeping an average Nigerian from being corrupt is like keeping a goat from eating yam".[41] However, Achebe noted that it is misconceiving to draw such an analogy because a goat must eat yam to survive whereas "[a] Nigerian does not need corruption neither is corruption necessary nourishment for Nigerians."[42] Achebe therefore opined that it is the system that makes Nigerians corrupt because it is a profitable venture.[43] When corruption becomes an inconvenience, Nigerians will cease to be corrupt.[44] Thus, Nigerians like all other people of the world can be corrupt free. As eloquently captured by Hassan:

> Corruption has existed in all societies at all times in different manifestations. It knows no boundaries, and no society, rich or poor, industrialized or under-developed, is immune from it. Its practice varies only in degrees and in subtlety, but its effects nonetheless are the same in every State, namely, a varying combination of: loss of image and prestige of the State, weakening of the moral fiber of the people, lowering of ethical standards in governance, increased social instability and insecurity due to widening rifts between the 'haves' and the 'have-nots', and a particularly heavy economic burden on the poor and the weak. Today, corruption is widely regarded as a cancer in the international body politic.[45]

Simply, "corruption is the abuse of entrusted power for private gain."[46] Corruption gives undue advantage to persons in authority to short-change the government and the people and therefore unlawfully enriching themselves to the detriment of all others. Ogbwuegbu averred in ***AG of Ondo v AGF***[47] that:

[40] Punch Newspaper "We must unite to kill corruption – Buhari" *Punch Newspaper* 15th January 2015 : <http://www.punchng.com/news/we-must-unite-to-kill-corruption-buhari/ > (accessed 31-08-2015).

[41] See Achebe *Trouble with Nigeria* 38.

[42] Ibid.

[43] Ibid.

[44] Ibid.

[45] S Hassan "Corruption and the Development Challenge" (2004) 1 *Journal of Development Policy and Practice* 25-40; See also D Kaufmann "Corruption Matters: Evidence-Based Challenge to Orthodoxy" (2004) 1 *Journal of Development Policy and Practice* 1-24.

[46] Transparency International "How do you Define Corruption?" (2015)*Transparency international?* <http://www.transparency.org/what-is-corruption/#define> (01-09-2015).

[47] (2002) LPELR-623(SC).

> It is a notorious fact that one of the ills which have plagued and are plaguing the Nigerian nation is corruption in all facets of our national life. It is an incontrovertible fact that the present economic morals and or quagmire in which the country finds itself is largely attributable to the virus which is known as corruption.

The fight against corruption requires all hands on deck and the genuine implementation of extant laws. Importantly, it needs an unassuming application of section 13 of the Constitution which requires "all organs of government, and of all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply"[48] the provisions of the Constitution. This is essential in order to "abolish all corrupt practices and abuse of power".[49] This is conspicuously so if the forgoing institutions make "the security and welfare of the people" the core of their priorities over any other objective.[50] Emphasis should consequently be on making corruption difficult through clearly laid down rules and principles as well as through government's deliberate efforts

Corruption manifests itself in various forms and in Nigeria. Thus, the legal system takes care of some of its aspects whereas others remain only morally reprehensible and are largely dealt with within the quarters of public opinion. Adeniyi captures these various forms of corruption to include:

> Inflation/diversion of budgetary allocations, the demand and supply of bribes, inflation/unauthorized variation of contracts, payment for jobs either not done or poorly executed, overpayment of salaries and allowances to staff (including non-existent ones called 'ghosts'), brazen diversion of government revenue, violation of procurement regulations, non-payment/under payment of tax by private sector operators, compromised auditing of public and private sector institutions etc.[51]

1. 4 The International Dimension of Good Governance

Corruption is a global concern and its prevention is not left to states alone. At the UN[52] and AU[53] levels, treaties have been enacted to prevent corruption and allow for

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[48] Constitution S 14 (1).
[49] Constitution S 15 (5).
[50] Constitution S 14 (2) (b).
[51] O Adeniyi "The Atmosphere of Corruption" *Thisday* 3rd September 2015 online at: <http://www.thisdaylive.com/articles/the-atmosphere-of-corruption/219186/> (03-09-2015)
[52] United Nations Convention against Corruption UNGA 58/4 (adopted 31 October 2003 and entered into force 14 December 2005) (UN Convention against Corruption)
[53] African Union, African Union Convention on Preventing and Combating Corruption (adopted 11 July 2003. entered into force on 5 August 2006). Art 2 Provides:

international co-operation towards fighting it. Thus, in dealing with corruption, both the UN and AU systems requires an international collaboration "with each other and with relevant international and regional organizations in promoting and developing the measures" to tackle corruption.[54] The "collaboration may include participation in international programmes and projects aimed at the prevention of corruption," but nevertheless, the states are primarily responsible for dealing with it[55]. For instance, the UN Convention against Corruption enjoins each state party to "develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability."[56] States are also required to periodically evaluate "relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption."[57]

The AU system approach adds that to fight corruption, states must "promote socio-economic development by removing obstacles to the enjoyment of economic, social and cultural rights as well as civil and political rights" as well as "establish the necessary conditions to foster transparency and accountability in the management of public affairs."[58] Thus, fighting and combating corruption shall, in accordance with the AU Convention on Preventing and Combating Corruption be guided by the principles of "respect for democratic principles and institutions, popular participation, the rule of law and good governance.[59]Similarly, combating corruption requires respect for human and peoples' rights as enshrined under the ACHPR and other instruments.[60] This reinforces the interrelatedness and interdependence of human rights and development. Additionally, transparency, accountability, promotion of social justice and condemnation of corrupt practices are essential to curbing corruption and ensuring good governance.[61]

1.5 Right to Development and Good Governance in Nigeria

At the domestic level, the Nigerian legal system has never condoned corruption and has always treated it as a crime. Instead, it has tried to promote good governance in many

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"1. Promote and strengthen the development in Africa by each State Party, of mechanisms required to prevent, detect, punish and eradicate corruption and related offences in the public and private sectors.

2. Promote, facilitate and regulate cooperation among the State Parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption and related offences in Africa.

3. Coordinate and harmonize the policies and legislation between State Parties for the purposes of prevention, detection, punishment and eradication of corruption on the continent.

4. Promote socio-economic development by removing obstacles to the enjoyment of economic, social and cultural rights as well as civil and political rights.

5. Establish the necessary conditions to foster transparency and accountability in the management of public affairs."

[54] UN Convention against Corruption Art 5 (4).

[55] United Nations Convention against Corruption Art. 5.

[56] United Nations Convention against Corruption) Art. 5(1).

[57] UN Convention against Corruption Art. 5 (3).

[58] Arts 2 (4) and (5).

[59] African Union, African Union Convention on Preventing and Combating Corruption Art 3.

[60] Art 3 (2).

[61] Arts 3 (3)-(5).

ways. The Penal Code[62] and the Criminal Code[63] criminalise corruption. In addition to these two main criminal laws, other legislative measures have been undertaken to deal with the menace of corruption at different times in the past. These include Public Officers (Investigation of Assets) Decree,[64] Corrupt Practices Decree,[65] the Code of Conduct Bureau and Tribunal,[66] and Recovery of Public Property (Special Military Tribunals) Decree[67] amongst others. These efforts have not proved effective in fighting corruption in Nigeria. In fact, corruption has become more cancerous and seems to be defying legal solutions. As discussed hereunder, from 1999 to date, a number of strategies were deployed to deal with corruption through legislative and institutional mechanisms with little or no results. Most of these initiatives have focused mainly on its investigation and prosecution with little focus on preventing it.[68] Therefore, the problem lies not in the strategy but in the porous opportunities that allow corruption to thrive including government's direct or covert participation, condoning or inefficiency. Hassan further opines:

> The pre-conditions for a development strategy or plan to succeed, one might posit, are the existence of political will to raise the standard of life as the first principle of the State; the existence of a responsive administrative infrastructure which is disposed to, and capable of, implementing the political will of the government; people-oriented policies where the public interest reigns supreme; national participation to create space and opportunities for public knowledge, debate and input; broad ownership to ensure equity and justice spread beyond those who control the State; public monitoring to ensure there is no abuse or misuse, and that things are on the right track and proceeding according to plan and timelines; appropriate resource allocation to ensure the full implementation and timely completion of the plan; a bottom-up approach to incorporate the experience, wisdom and expectations of the bottom two-thirds of society, when the avowed goal is poverty reduction; and last but not least, a

[62] Applicable in northern Nigeria. Penal Code Law, Northern Region of Nigeria, 1963.
[63] Applicable to Southern Nigeria. See Criminal Code Act 1966 S. 98.
[64] No. 5 of 1966.
[65] No. 38 of 1975.
[66] The Code of Conduct Bureau and Tribunal Act 1990; section 3, part of the Third Schedule of the Constitution.
[67] Decree No. 3 of 1984; Amendment Decree, 1996; and also Tribunals (Certain Consequential Amendments, Etc.) Decree, 1999
[68] As is evident from the role of some of the institutions.

peaceful and secure environment where development goals may be pursued without security constraints.69

Therefore, to reduce corruption Hassan has encapsulated the formula for doing so as: "C(corruption) = M(monopoly) + D(discretion) - A(accountability)."[70] The explanation being that reducing corruption equals controlling and monitoring monopoly power, reducing discretion of public officials by promoting rule of law and transparency while also making accountability key in standards and practices.[71] It follows therefore that winning the fight against corruption should not be a one-way approach; it must be multi-dimensional. Hence, the key benchmarks of the right to development are essential in fighting corruption. These key elements include non-discrimination, accountability, transparency, and participation. All these elements are reflected in Hassan's thesis above. If these key elements are brought to bear in governance, the right to development could have been achieved and is therefore an indispensable tool for the fight against corruption.

In the recent past, two institutions, the Independent Corrupt Practices Commission (ICPC)[72] and the Economic and Financial Crimes Commission (EFCC),[73] in line with both the UN[74] and AU obligations to fight corruption have been established in Nigeria. While the former focused on fighting corruption within the public service, the latter's web was spread across all conceivable human endeavour. The ICPC Act established the ICPC[75] with the function of among other things dealing with corruption relating to public officers, which is defined by the ICPC Act as including "bribery, fraud and other related offences".[76] Sections 11-29 of the ICPC Act specify various corrupt practices, which the

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[69] Hassan *Journal of Development Policy and Practice* 32.

[70] Ibid at 34.

[71] Ibid.

[72] Corrupt Practices and other Related Offences Act 2003- CAP C31 LFN 2004 (ICPC Act)

[73] Economic and Financial Crimes Commission (Establishment) Act, 2004 (EFCC Act).

[74] Convention against Corruption Art 6 provides:
"1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as: (a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies; (b) Increasing and disseminating knowledge about the prevention of corruption.
2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.
3. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption."

[75] ICPC Act S3 (1).

[76] ICPC Act S 2. The functions of the Commission are contained in section 10 as follows:
"(a) where reasonable grounds exist for suspecting that any person has conspired to commit or has attempted to commit or has committed an offence under this Act or any other law prohibiting corruption, to receive and investigate any report of the conspiracy to commit, attempt to commit or the commission of such offence and, in appropriate cases, make its recommendation for prosecution or otherwise to the office of the Attorney-General of the Federation or of the State.
(b) examine the practices, systems and procedures of public bodies and where, in the opinion of the Commission, such practices, systems or procedures aid or facilitate fraud or corruption, to direct and supervise a review of them;
(c) instruct, advise and assist any officer, agency or parastatals on ways by which fraud or corruption may be eliminated or minimised by such officer, agency or parastatal;

ICPC may prosecute in the name of the AGF. It is important to mention that the ICPC was established in furtherance of the corruption objectives of the Constitution and international obligations, thereby exemplifying further the legislative technique undertaken by Nigeria to foster its development objectives. At the time it was established, the government of Ondo State instituted an action before the Supreme Court to seek the interpretation of the federal government's powers under the exclusive list of the Constitution to fight corruption as a crime.[77] The Supreme Court held *inter alia* that the national assembly was competent to make laws for the peace, order and good government of the federation and any part thereof.[78] Consequently, to guarantee the common good of all, the national assembly is empowered by the Constitution to make laws against corruption and abuse of office across the federation against any person in or out of authority.[79] The Supreme Court however noted that the power to legislate over corruption matters is concurrent and can be exercised by the federal and state governments.[80] Uwais CJN averred that the power of the national assembly to legislate on matters relating to the observance of the FODPSP, are not in contention:

> Therefore, it is incidental or supplementary for the National Assembly to enact the law that will enable the ICPC to enforce the observance of the fundamental objectives and directive principles of state policy. Hence the enactment of the act which contains provisions in respect of both the establishment and regulation of ICPC and the authority for the ICPC to enforce the observance of the provisions of section 15 subsection (5) of the constitution. To hold otherwise is to render the provisions of item 60(a) idle and leave the ICPC with no authority whatsoever. This cannot have been the intendment of the constitution.[81]

In addition to the ICPC, the EFCC has the mandate, albeit in a more proactive style, to fight corruption. The EFCC is more dogged in the fight against corruption because firstly, it is manned largely but not exclusively by members of the Nigeria Police force, unlike the ICPC which has a retired judge as its Chairman. By their training, police officers are specialised investigators and therefore unlike judges, have the capacity to detect corruption and related offences. Secondly, its scope of operation transcends beyond

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(d) advise heads of public bodies of any changes in practices, systems or procedures compatible with the effective discharge of the duties of the public bodies as the Commission thinks fit to reduce the likelihood or incidence of bribery, corruption, and related offences;
(e) educate the public on and against bribery, corruption and related offences; and
(f) enlist and foster public support in combating corruption."

[77] ***AG of Ondo State v. AGF & Others*** (2002) LPELR-623(SC).
[78] *Ibid*
[79] *Ibid*
[80] *Ibid*
[81] *Ibid*

public officers, as is the case with the ICPC. It is not clear where the dividing line between the role of the ICPC and the EFCC is located. To add to this possible duplication, the Nigerian Police Force is still involved in the prosecution of corruption-related matters such as bribery.[82] The Supreme Court has expressed the opinion that the powers of the ICPC (and by extension the EFCC) to prosecute are "co-extensive" with those of the Police.[83] This kind of duplication contributes to the lack of effectiveness of fighting corruption in Nigeria.

Ordinarily, the EFCC should be a department of the Nigeria Police Force and the ICPC a department under the Ministry of Justice. However, because of the mutual suspicion and compromise that were experienced in the past with these institutions of government, the need for independent bodies was put forward. Above all, judicial corruption hinders the prosecutorial approach to fighting corruption. The judiciary, which should be seen as the arrowhead in this fight, is being accused of complicity, delay or frustrating corruption cases.[84] At times, the judiciary has handed down sentences that are not capable of deterring corruption in Nigeria. [85]

In spite of the insignificant successes recorded in securing conviction of corrupt officials in Nigeria, there are many other cases that are still pending in the courts, which are yet to be concluded.[86] However, these cases have been running in the courts for years without any hope of them being concluded. Arguably, the Nigerian approach to corruption has always been that of cure and not prevention and that is why the attention is placed more

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[82] BBC Nigerian Farouk Lawan charged over $3m fuel scam 'bribe' <http://www.bbc.com/news/world-africa-21294154> (accessed 31-08-205). Farouk Lawan's case was interesting. A legislative panel was constituted by the House of Representatives to look into a fuel subsidy scam which saw the rise of subsidy payments from 250 billion naira in 2009 to over 1 trillion Naira in 2010. Interesting revelations were found and the committee was about to round up its investigation and submit its report when suddenly a video clip was released featuring the Chairman of the Committee, Farouk Lawan receiving a bribe from one of the beneficiary oil marketers involved in the fuel subsidy regime. That marked the end of that report which would have resulted in the prosecution of many oil marketers in Nigeria.

[83] ***AG of Ondo State v. AGF & Others*** (2002) LPELR-623(SC).

[84] This is a general belief expressed by most Nigerians including the author of this dissertation.

[85] For instance, Cecilia Ibru, a former Bank Chief Executive, was convicted on a three-count charge of authorising loans beyond her credit limit, rendering false accounts and approving loans without adequate collateral. She was sentenced to only six months imprisonment while her assets, worth 191 billion Naira (almost a billion US dollars), which she siphoned through her selfish activities, were forfeited. O Coker "Plea bargaining: a developing trend in the criminal justice system" (2010) *International Law Office* available at:
<http://www.internationallawoffice.com/newsletters/detail.aspx?g=58dbee89-846d-44dd-aed4-a91dc5680bcd> (accessed 31-08-2015). Similarly, a former Inspector General of Police, Tafa Balogun, was sentenced to only six months after entering a plea bargain for stealing over 16 billion Naira (around 800 million US dollars). BBC "Nigerian ex-police chief jailed" 22 November 2005 <http://news.bbc.co.uk/2/hi/africa/4460740.stm> (accessed 31-08-2015). John Yusuf, a former Director at the Police Pensions Board admitted to stealing two billion Naira (over 100 million US dollars) and was sentenced upon conviction to 2 years imprisonment or an option to pay 750 thousand Naira (less than four thousand US dollars). The Punch Newspaper "Nigerian Wonder: N27bn pension thief gets N750,000 fine" *The Punch Newspaper* 29 January 2013 available at: <http://www.punchng.com/news/nigerian-wonder-n27bn-pension-thief-gets-n750000-fine/ > (31-08-2015). However, in the last case, the National Judicial Council acted swiftly by suspending the judge who gave the unreasonable sentence, for failing to exercise his discretion judicially and judiciously, for 12 months without pay. TVC News "Nigeria's NJC Suspends Judge Over Pension Scam Judgment" available at:
http://www.tvcnews.tv/?q=article/nigerias-njc-suspends-judge-over-pension-scam judgment#sthash.rBjgDm5Q.dpuf (accessed 31-08-2015).

[86] Many cases involving former governors are still pending. These include those of Attahiru Bafarawa, Bukola Saraki, Sam Egwu, Adamu Aliero, Danjuma Goje, Abdullahi Adamu etcetera.

on investigation and prosecution. To complicate the fight against corruption, the Nigerian Constitution has bestowed immunity on the most likely persons culpable in corruption incidences. These include the President, the Vice-President, Governors and their deputies.[87] Hence, no civil or criminal proceedings shall be instituted or continued against the aforementioned public officers.[88] Similarly, these officers may neither be arrested nor imprisoned as well as there is a restriction against issuing any court process requiring or compelling their appearance in court.[89] In essence, none of the aforementioned can be prosecuted or arrested during the subsistence of the tenure in office.[90]

Nevertheless, a Code of Conduct Bureau[91] and a Code of Conduct Tribunal[92] have been established under the Constitution to check and determine the legitimacy of sources of assets of public servants in Nigeria. The Bureau is the administrative body that receives, examines and retains custody of asset declarations made by public officers in Nigeria.[93] The Bureau also has the power to receive complaints about non-compliance with or breach of the provisions of the Code of Conduct law and in appropriate circumstances refer any breach to the Code of Conduct Tribunal.[94] The Tribunal has the adjudicatory power to punish defaulters.[95] The efficacy of these institutions, coupled with proliferation of others with similar mandates, has seemingly not helped in decreasing corruption. This is coupled with the institutional capacity of the Bureau to handle the broad spectrum of the entire Nigerian public service efficiently to determine breaches. As an example the Nigerian legal system prohibits public servants from owning and operating personal foreign account.[96] The Code of Conduct Bureau is to ensure compliance with this prohibition. Recently, the President of the Nigerian Senate was arraigned before the Code of Conduct Tribunal for amongst other things, allegedly operating a foreign account whilst a public servant.[97] The Tribunal has the power to order a guilty public office holder to vacate their seats; or disqualify them from holding office for a period no longer than ten years or even to seize or ask the officer to forfeit their property to the state if acquired in abuse or corruption of office.[98]

As a preventive mechanism, through the doctrine of separation of power, no single arm of government has exclusive control over government resources.[99] Thus, it does not allow only the executive arm of government to determine solely the distribution and utilisation

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[87] Constitution S 308 (3).
[88] Constitution S 308 (1) (a).
[89] Constitution S 308 (1) (b) and (c)
[90] Constitution S 308.
[91] Established under Constitution S 153 (a).
[92] Code of Conduct Bureau and Tribunal Act, 1991 S. 20.
[93] Constitution Third Schedule Part I section 3 (a-c).
[94] Constitution Third Schedule Part I section 3 (d).
[95] Code of Conduct Bureau and Tribunal Act S 23.
[96] Code of Conduct Bureau and Tribunal Act S 7.
[97] I Nnochiri "Saraki Docked, Pleaded not Guilty to Corruption Charges" *Vanguard Newspaper* 22nd September 2015 available at: <http://www.vanguardngr.com/2015/09/saraki-docked-pleaded-not-guilty-to-corruption-charges/> (accessed 22-09-2015).
[98] See Code of Conduct Bureau and Code of Conduct Tribunal Act S 23 (1) (a)-(c).
[99] Constitution S. 4, 5 and 162.

of the nation's resources. The executive arm is disempowered from expending any monies without legislative approval. Furthermore, the legislature exercises oversight over the activities of the executive and judicial arms of government. In which case, these arms of government annually present and defend their budgets prior to the promulgation of an Appropriation Act. All expenditures of government are ordinarily supposed to be within the Appropriation Act. Unfortunately, no one oversees the expenditure of the legislature. Sadly, because of corruption, monies have been spent arbitrarily without legislative approval. An example of this is the situation whereby government-generating institutions only remit to the federation account the balance of what they have realised after having made unapproved expenditures.[100] To buttress this, a former Governor of the Central Bank of Nigeria (CBN) made an allegation against the Nigerian National Petroleum Corporation (NNPC) for not remitting over 20 billion US dollars accruing from Nigeria's oil sales.[101] The Governor was suspended until the end of his tenure for making a corruption allegation of such magnitude to the public.[102] However, the Accountant General of the Federation ordered an independent audit, which revealed that the NNPC had actually expended huge amounts of money without initial approval by the national assembly. The report further revealed shady practices against extant laws.[103] These kinds of illegal expenditures continue unhindered to loot the government coffers.

In 2007, a preventive approach was initiated through the Fiscal Responsibility Act (FRA).[104] The FRA seeks to compel all public institutions to remit government accruals into the federation account. To ensure compliance, the FRA established the Fiscal Responsibility Commission and granted it power to sanction non-compliance.[105] However, the commission does not have the power to prosecute violators. The FRA provides instead that if a person has committed any punishable offence under the FRA,

[100] Federal Government of Nigeria "Investigative Forensic Audit into the Allegations of Unremitted Funds into the Federation Accounts by the NNPC" available at: <http://www.vanguardngr.com/wpcontent/uploads/2015/04/Audit-Report-on-NNPC.pdf > (accessed 03-09-2015).

[101] Federal Government of Nigeria "Investigative Forensic Audit into the Allegations of Unremitted Funds into the Federation Accounts by the NNPC" available at: <http://www.vanguardngr.com/wpcontent/uploads/2015/04/Audit-Report-on-NNPC.pdf> (accessed 03-09-2015).

[102] Federal Government of Nigeria "Investigative Forensic Audit into the Allegations of Unremitted Funds into the Federation Accounts by the NNPC" available at: <http://www.vanguardngr.com/wpcontent/uploads/2015/04/Audit-Report-on-NNPC.pdf> (accessed 03-09-2015).

[103] Federal Government of Nigeria "Investigative Forensic Audit into the Allegations of Unremitted Funds into the Federation Accounts by the NNPC" available at: <http://www.vanguardngr.com/wpcontent/uploads/2015/04/Audit-Report-on-NNPC.pdf> (accessed 03-09-2015).

[104] Fiscal Responsibility Act, 2007 (as amended).

[105] Fiscal Responsibility Act of 2007 S 1 and 2(1) & (2). Section 2 (1) provides:

"(a) inspect all offices of the corporations, be given access at all times thereto and all available information it may require with regard to revenues generated/operating surplus and all documents and records in respect thereof;

(b) Compel any person or government institution to disclose information relating to public revenues and expenditure;

(c) Cause an investigation into whether any person has violated any provisions of this Act;

(d) Enforce remittance of operating surplus of corporations to the Consolidated Revenue Fund of the Federation and publish same at the commencement of every fiscal year;

(e) Sanction revenue diversion, failure to remit collections, delayed remittance and revenue consumption without appropriation and related corrupt practices."

the commission shall forward a report of the investigation to the Attorney-General of the Federation for a possible prosecution.[106] By this provision, the Attorney-General is at liberty to decide whether or not to prosecute.[107]

With a new government in place, which won election on the mantra of change and a resolve to fight corruption, new strategies are being introduced, different from what has been the norm. This time around, the government is trying to tighten avenues of corruption even without reference to the FRA. The FRA and the Commission it established are duplicative of the roles of the Revenue Mobilisation and Fiscal Allocation Commission (RMFAC).[108] The RMFAC has been empowered to monitor, revenue accruals and disbursement; review revenue allocation formulae and principles; advise government on suitable efficient fiscal methods; and determine the remuneration of political public office holders including heads and members of the legislature, executive, and judiciary.[109] The RMAFC was not imbued with sanction power, which affected its efficiency to monitor the accruals into the federation account. But instead of empowering the RMAFC powers of sanction, new institution was established (The Fiscal Responsibility Commission). Simply, an amendment of the RMAFC to give it this power in addition to its existing powers would have been more appropriate.

To ensure compliance with extant laws on government accruals and to ensure transparency and accountability, all revenues are to be paid into a treasury single account (TSA) maintained by the CBN in line with the Constitution.[110] The new government for the first time has instructed all government institutions to abide by this constitutional provision. It has also put in place an anti-corruption advisory committee of eminent Nigerians, mostly legal academics and criminologists, to advise it on the best possible ways of tackling corruption especially since the old ways of doing so have not been successful.[111] Achebe opined:

> The trouble with Nigeria is simply and squarely a failure of leadership. There is nothing basically wrong with the Nigerian character. There is nothing wrong with the Nigerian land or climate or water or air or anything else. The Nigerian problem is the unwillingness or inability of is leaders to rise

[106] Fiscal Responsibility Act S 1 (2).
[107] See Constitution S 174.
[108] Constitution Part I of the Third Schedule S. 32; Revenue Mobilisation, Allocation and Fiscal Commission Act, 2004
[109] Constitution Part I of the Third Schedule S 32 (e).
[110] Daily Post "Buhari orders revenue-generating agencies to operate Treasury Single Account" *Daily Post* 9th August 2015 available at: <http://dailypost.ng/2015/08/09/buhari-orders-revenue-generating-agencies-to-operate-treasury-single-account/ > (03-09-2015).
[111] Thisday "Buhari Constitutes Advisory Committee on Anti-corruption" *Thisday* 10th August 2015 available at: <http://www.thisdaylive.com/articles/buhari-constitutes-advisory-committee-on-anti-corruption/217092/ > (accessed 03-09-2015).

> to the responsibility, to the challenge of personal example underway to which are the hallmark of true leadership.[112]

Due to the failure of existing courts to dispose corruption cases in an effective and timely manner, the new government is making a move to establish special court to fight corruption. This move is supported and strengthened by the newly enacted Administration of Justice Act seeks to, among other things, harmonise criminal procedure practices in the country and ensure speedy trial and disposition of criminal cases by ensuring that criminal cases are heard on a daily basis. In the interim, there is a proposal to select a number of judges who are perceived not to be corrupt to try corruption cases. Unfortunately, this is a misconceived proposal arguably, because any judge that is not eventually selected may be seen as a corrupt judge and therefore this proposal will tarnish the image of the judiciary. Preferably, the establishment of special courts, with new judges' should augur better for the proposed fight against corruption. However, since the new government is still in its infancy, only time will tell the successes of these endeavours.

1. 6 Conclusion

This paper argues that through good governance the right to development could be realized in Nigeria. The paper further contends that the Nigerian legal framework has laid proper foundation for this to be achieved. However, certain issues hamper its effective realization. Importantly, Nigeria's corruption fighting institutions need to be further strengthened. The legal system needs to reduce multiplicity of its laws as shown in the case of the EFCC and the ICPC. Furthermore, there is need to ensure coordination and co-operation in our governance superstructure. Likewise, our judiciary needs to be strengthened and reinforced for this challenge. Importantly, government must expand the scope of participation of the populace so as to allow them to contribute to and enjoy their development. Where possible, sensitization of the public on the role of the arms of governments in their various roles of checks and balances in order that the public can check them to check themselves for good governance will be desirable. Above all, credible election is a panacea for good governance in the sense that, the citizenry can choose those that will promote their mandate of good governance and in turn afford the Nigerian state to fulfill its obligations under the right to development thesis.

[112] Achebe *The Trouble with Nigeria* 1.