

STRATEGIES FOR WINNING WAR AGAINST POLITICALLY EXPOSED PERSONS IN NIGERIA

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Abstract

One major challenge to Nigeria's search for enduring socio-economic, political and technological development as well as efficient and productive utilization of allocated resources in the new millennium is the pervasive corrupt practices in the polity. The devastating effects of corruption in the nation have manifested in lopsided distribution of wealth, malfunctioning and decaying infrastructure and degrading living conditions among a great proportion of the citizenry. These have impacted negatively on all aspects of the developmental agenda. The country cannot but therefore respond to both domestic and international pressures to confront corruption with all possible strategies available. Ironically, the institutional mechanism offered by the Constitution for the fight against corrupt practices is itself not immune from the plague. Indeed, the creation of extra-legislative institutions saddled with the tasks of fighting corruption is itself an indictment of the constitutional framework and a pointer to the wide gulf of difference between the constitutional prescriptions and the practical realities in an emerging democracy preceded by long years of military rule marked by massive corruption and rule with impunity. The attendant result of such an oversight has been that the major culprits are either unnoticed, or not convicted. The recent reconceptualisation, and mainstreaming of Politically Exposed Persons (PEPs) to include individuals holding or having held positions of public trust, such as government officials, senior executives of government corporations, as well as their families and close associates has brought about mixed reactions. In Nigeria, such mixed reactions have trailed the release by the Economic and Financial Crimes Commission (EFCC) of a Graft Advisory List (GAL) of high profile cases involving Politically Exposed Persons, (PEPs). This article is part of the debate. It examines the challenges facing the anti-graft agencies and the strategies in mainstreaming Politically Exposed Persons in Nigeria's strategy in anti-corruption campaign. It explores the concept of Politically Exposed Persons in a thematic form, and highlights the challenges anti-graft agencies face in pinning down PEPs. The paper argues that the emergent strategy of Politically Exposed Persons (PEPs) is a vertical-horizontal accountability mechanism through which different agencies of government hold other governmental (and political) actors answerable to the law, and citizens, from below, hold their government officials answerable for their conduct. The mainstreaming and development of such a comprehensive international legal instrument against corruption, the paper posits has the potency of bringing about a high degree of global standardization and integration of anti-corruption measures against political corruption.

Keywords: Politically Exposed Persons, Corruption, Graft, Economic Crimes, vertical - horizontal accountability.

Introduction

The Punch newspaper recently broke the news that about N5tn in government funds have been stolen through fraud, embezzlement and theft. This kleptocracy reportedly occurs from May 6, 2010 when President Goodluck Jonathan assumed office till date. Surprisingly, no official denial has emanated from the presidency. Perhaps, this is a confirmation of the saying: Silence means consent.

The investigation was the consequence of the story was the President's decision to probe some sectors of the economy, particularly oil and gas and disclosures by some senior government officials. They include the Mallam Nuhu Ribadu-led Petroleum Task Force report, the Minister of Trade and Investment's report on stolen crude, the House of Representatives fuel subsidy report and investigations into the ecological fund, SIM card registration and frequency band spectrum sale.

The findings of these committees were too sordid to believe. Were the nation to be blessed with principled leaders, this president ought to be history by now for he would have taken the path of honour. Tender his letter of voluntary resignation for failing to lead the country on the right path. The parliament can even commence impeachment proceedings against him. Mr. President's current path of graft is an embarrassment to the black race.

Let us have an adumbration of his litany of financial transgressions: The House of Representatives raised the alarm that the N2.6tn the Federal Government paid for oil subsidy in 2011 could not be properly accounted for. A subsequent report by the President Committee on Verification and Reconciliation of Fuel Subsidy Payments, led by Mr. Aigboje Aig-Imoukhuede later revealed that in 2011, 197 subsidy transactions worth N232bn were illegitimate. In July, the House of Representatives Committee on environment discovered a tree seedling fraud worth N26bn awarded by the Ecological Fund office. A beam of searchlight equally shows that a 450MHz frequency that was valued at over \$50m was allegedly sold for less than \$6m (a difference of \$44m or N6.9bn) by the Nigeria Communications Commission (NCC). The investigation reportedly followed the delay in completing the exercise and the request by NCC for additional N1bn for the project in its 2012 budget. The commission should come out to affirm or deny this grievous allegation. In the same telecoms sector, the House of Representatives, earlier this year, commenced investigations into the N6.1bn SIM card registration project embarked upon by the NCC in 2011. The avoidable project which amounted to a duplication of the jobs of the mobile telecoms providers was discovered to be another conduit pipe for stealing billions of naira from the public till.

In October, Minister of trade and Investment, Dr Olusegun Aganga, in a letter to the President, revealed that 24 million barrels of oil worth \$1.6bn (N252bn) was stolen between July and September this year. According to Aganga, his signature was forged on the Export Clearance Permit that was used to export the crude oil from Nigeria. Mr. President has not done anything about this criminality, even when he has absolute powers over such issues. His government is bereft of direction and bemoans over matters that ordinarily could be averted. Dr. Ngozi Okonjo Iweala, the Minister of Finance and coordinator of the economy sometimes in May made a statement that government lost a fifth of its oil revenues to theft in April. This is despite the appointment of miscreants/sea pi rates by same government that area paid billions of naira to monitor the oil pipelines and territorial water.

The Ribadu report on the oil and gas sector put daily crude oil theft at an unbelievably high 250,000 barrels daily at a cost of \$6.3bn (N1.2tn): It also discovered among others that ministers of Petroleum Resources between 2008 and 2011 handed out seven discretionary oil licenses and that government lost \$183m (29bn) in signature bonuses via these shady deals, that three of the oil licenses were allegedly awarded under the current petroleum minister, Mrs. Diezani Alison-Madueke. What more as a renowned international audit and financial

advisory firm, KPMG, recently stated that Nigeria accounted for the highest number of fraud cases in Africa in the first half of 2012. All these stupendous grafts were perpetrated under a president that once told us he had no shoes. Could it be that he and his men are now venting their spleen of poverty antecedent on the nation's till or how come that the president has been so inept in arresting the unlimited lootocracy going on under his nose

Shortly before the 2007 general elections in Nigeria, Mallam Nuhu Ribadu, then Chairman of the Economic and Financial Crimes Commission (EFCC), came up with a list of politicians in the polity who, he said, could not be elected into public offices because of allegations of graft against them. Although a section of Nigerians cheered the move by Ribadu, the Supreme Court was not impressed. It quashed the move, thus, giving the blacklisted politicians to contest. In January 2010, his successor, Mrs Farida Waziri, in what Nigerians are viewing as a replay of the same drama, declared that her commission would not stand and watch politicians who the EFCC is prosecuting in Courts across the country, participate in the 2011 general elections. She made the declaration while receiving members of the National Steering Committee of the Anti-Corruption Revolution (ANCHOR) in her office and called on the electors in Nigeria to deny the so-called corrupt politicians a place of leadership in 2011. The anti-corruption czar had noted that 2010 would mark the beginning of clean general elections and stressed that the year would be "rough and tough for the corrupt" if the partnership with the populace was anything to go by.

What commenced as a simple appeal on morality in January 2010 later became a resolve to ensure that such politicians, as a matter of fact, stay away from the polls no matter their interests. The EFCC boss at the opening ceremony of a training programme on anti-money laundering/control of terrorist – financing organized by the United States Federal Bureau of investigation (FBI) for EFCC operatives and other law enforcement officers at the Commission's Training and Research Institute (TRI) had noted that in a bid to be able to participate in the forth coming elections, many politicians who are standing trials on allegations of various acts of corruption have devised means of delaying justice by acquiring unnecessary court injunctions to prolong their cases in courts. Waziri again called on all Nigerians to resist such politicians.

Again on August 25, 2010, she reiterated her determination to see through her threat to stop them positing "corrupt politicians have no place in public office". While hosting the Board of Code of Conduct Bureau (CCB) in her office, she maintained that she was empowered by the law to ensure that such politicians do not get to public office and stressed collaboration with the Nigerian Police force, Code of Conduct Bureau (CCB), State Security Service (SSS), and Independent National Electoral Commission (INEC) to enforce it. She posited that with the cooperation of these agencies, there is no way the corrupt will be elected in 2011. According to her, they will be working and that information will be made available and based on the security report, they will be stopped at the appropriate time.

That determination, perhaps, led to Waziri's visit in September to the office of the then Chairman of Peoples Democratic Party, Dr. Okwesilieze Nwodo, where she was believed to have sought his support on the venture and the subsequent publication of the list of politicians who, the commission deems not fit to contest election in 2011 in some national dailies. The list contains the names of 40 prominent politicians and over 60 business men and bankers. Some of those on the list include, Ayo Fayose, former governor of Ekiti State. He was arraigned before a Federal High Court in Lagos State since December 17, 2006, on a 51 – count charge of looting the state treasury to the tune of N1.2 billion. He was granted bail in 2007. Since then the case just simply faded off the court schedule. The plea was taken but according to EFCC, "the defense lawyer keeps filing frivolous applications for long adjournments to frustrate and prolong trial" (Agbo, 2001:18). Ironically, the judge allows it.

Buoyed up with his success, Fayose has since thrown his hat in the ring to contest for the senatorial seat of Ekiti State in 2011 under the Labour Party.

Others that have followed Fayose's foot prints include former governors Orji Kalu (Abia), Rasidi Ladoja (Oyo), Chimaroke Nnamani (Enugu), James ibori (Delta), Joshua Dariye (Plateau), Lucky Igbinedion (Edo), Boni Haruna (Adamawa), Atahiru Bafarawa (Sokoto), Abdullahi Adamu (Nasarawa) and Saminu Turaki (Jigawa). Also on the list are former five ministers, three serving members of the House of Representatives, and few serving senators, among others. Recently, it was learnt that the EFCC has seized 203 posh mansions worth N2 trillion Naira from a former Inspector – General of Police, Tafa Balogun, ex-convict Emmanuel Nwude, and 15 ex-governors and some politicians (Alli, 2010:5). To this must be added the fact that the assets which were seized following 46 forfeiture court orders would be managed by professional property managers to generate revenue for the Federal Government. Those who are affected have been reacting to the EFCC's claims. For instance, James Ibori's ex-special Assistant on media, Mr. Tony Eluemunor posited that the assets of former Governor of Delta State Chief James Ibori were frozen only in the United Kingdom. He also said Ibori has won all his cases against the EFCC and none of his assets had been frozen. In a statement, Eluemunor said that "Ibori's assets frozen amounted to about \$7million and not \$ 30 million as been widely claimed" (Andu, 2010:1).

This article therefore, seeks to explore the challenges politically exposed persons poses to in the Nigerian polity and the strategies anti-agencies can adopt to check mate their menace. In the subsequent sections, the paper examines the concept "Politically Exposed Persons" (PEP), outlines the debilitating impacts of PEPs on Nigeria's electoral process. It also highlights the role of the EFCC will play within the context of identifying the challenges PEPs poses and devise means of strengthening the fight against graft in Nigeria.

Clarification of Concepts

Politically Exposed Persons

There is no internationally agreed-upon definition of politically exposed persons. As a result, understanding who these "customers" are and how far the definition of PEPs should stretch is a difficult and politically sensitive topic (UNDOC and World Bank, 2007:25). Standard setters generally agree that PEPs are individuals who are, or have been, entrusted with prominent public functions, such as Heads of State or government (World Bank, 2007:25). The standards setters and a considerable number of jurisdictions also expect financial institutions to treat prominent public official's family and close associated as PEPs (UNDOC and World Bank, 2007:25). Attempts to provide increased clarity to the definition have resulted in some standard setters limiting the scope of the PEP definition to exclude domestic PEPs, family members beyond immediate family, junior or middle ranking PEPs. In some cases, countries have issued a limited list of positions that financial institutions are obliged to consider as politically exposed. Some of these restrictions may be designed to allow for greater efforts to be expended on more exposed PEPs (Limitations on Junior or middle – ranking). Flexibility on this issue also seems to make sense for each individual jurisdiction. At the same time, core definitions that are too restrictive (for example, including only immediate families and close associates) are likely to create loopholes, as evidenced on actual corruption cases (UNDOC and World Bank, 2007:25).

Specifically, the ACAMS International Glossary of key Money Laundering Terms and Acronyms (2001), the Wolfsberg Global Anti-Money Laundering Guidelines for private Banking (2001) and Swiss Federal Banking Commission (2001) define politically exposed persons as "individuals holding or having held positions of public trust, such as government

officials, senior executives of government corporations, as well as their families and close associates” (Wolfsberg, 2001:2)

While there is no global definition of a PEP, the Financial Action Task Force (FATF) (2005) issued guidelines in which the term politically exposed person was defined. The Revised Financial Action Task Force’s (FATF) 40 Recommendations define PEPs as individuals who are or who have been entrusted with prominent public functions in a foreign country for example Head of State or of Government, senior politicians, judicial or military officials. This definition is not intended to cover middle ranking or more junior individuals in the foregoing categories. The FATF document also says that business relationships with family members or close associates of PEPs involve reputational risks similar to those of PEPs themselves.

The Wolfsberg Group (2008) World Compliance (2008) Don Jones (2010) and World Check (2010) add that the term should be understood to include persons whose current or former position can attract publicity beyond the borders of the country concerned and whose financial circumstances may be subjected to additional public interest. In specific cases, local factors in the country concerned, such as the political and social environment, should be considered when deciding whether a person falls within the definition.

UNCAC (2003), FATF and The Third European Union Directives have stretched the definition of PEPs. The former defines PEPs as individuals who are, or have been, entrusted with prominent public functions, and their family members and associates. The latter adds that they are natural persons who are or have been entrusted with prominent public functions and immediate family members, or person known to be close associates of such persons. The under listed examples are intended to serve as aids to interpretation:

- . Head of state government and cabinet ministers
- . Influential functionaries in nationalized industries and government administration;
- . Senior judges
- . Senior party functionaries;
- . Senior and /or influential officials, functionaries and military leaders and people with similar functions in international or supranational organizations;
- . Members of ruling royal families;
- . Senior and /or influential representatives of religions organizations (if these functions are connected with political, judicial, military or administrative responsibilities (Wolfsberg Group, 2008:1).

Through these definitions did not specifically separate foreign and domestic politically exposed persons but have identified guidelines, in which the term politically exposed persons was defined. The interpretation of each of these layers varies from one country to another. Some jurisdictions focused only on foreign political figures. Some countries limit the definition to the national level, some include regionally politically exposed persons. While there might be slight variation of the five layers above, the expectations of an organization doing business with politically exposed persons are universally similar.

The United Kingdom Money Laundry Regulations (2007) define PEP as a persons who is or has, at any time in the preceding year entrusted with a prominent public function by a state other than the United Kingdom, a (European) community institution or an international budget or a family member, known close association of such a person

Section 312 of the USA Patriot Act, Foreign Corrupt Practices Act, United Nations Convention against corruption (2003) among others did not include middle ranking and junior individually in the categories in the above definitions. However, the term PEPs is not used in FinCen’s regulation. According to FinCen’s regulation, PEPs describes a person who

has been entrusted with a prominent public function, or an individual who is closely related to such a person. The Canadian Anti-money Laundering Regulation shows a large degree of overlap with the PEP definitions used in most other countries of the world; and is also comparable to the “senior foreign political figure” as outlined in the USA patriot Act.

The Canadian Act definition is:

Is a person who or holds or has ever held one of the following positions in or behalf of a foreign state. The list includes:

- a. Head of State or head of government
- b. Member of the executive council or government or member of a legislature;
- c. Deputy minister or equivalent rank
- d. Ambassador or attache or counsellor of an ambassador
- e. Military officer with a rank of General or above;
- f. President of state owned company or a state owned bank;
- g. Head of a government agency;
- h. judge
- i. Leader or president of a political party represented in a legislature; or
- j. Holder of any prescribed office or position (Wikipedia, 2009:1)

This definition includes any prescribed family member of such a person.

Although there is no global definition of PEP, most polities have based their definition on the FATF definition:

- Current or former senior official in the executive, legislature, administrative, military or judicial branch of a foreign government (elected or not)
- A senior official of a major foreign political party;
- A senior executive of a foreign government owned commercial being a corporation, business or other entity formed by or for the benefit of any such individual
- An immediate family member of such individual; meaning spouse, parents, siblings ,or children and spouse’s parents or siblings
- Any individual publicly known (or actually known by the relevant financial institution) to be close personal or professional associate.

The Wolfsberg Group (2008) PEPs definition applies to persons who perform important public functions for a state. This definition used by regulators or in governance is usually way general and leaves room for interpretations. For example ,the Swiss Federal Banking Commission in its guidelines on money laundering uses the term “*person occupying an important public function*”, the US interagency guidance uses *senior foreign political figures*” and the BIS paper customer due diligence for bank says “*potentates*”

In real life, it may be difficult to identify someone as PEP; this designation is chiefly aimed at preventing those who have been in a position of authority from making use of their plundering of state funds. Some countries have passed laws aimed at preventing “capital flight”, Nigeria for instance, prohibits its states Governors from holding bank account in other jurisdictions. But the likelihood is that of someone has amassed funds illegally, they will somehow find a way or ways of transferring them out of their country ahead of their own flight: Perhaps even as school fees or pocket money” for a child.

For our purpose, PEPs are individuals who are or have been entrusted with prominent public functions, including members of the executives legislature, judiciary, military administrative officers, appointed local and international officers representing their countries in domestic and international fora and celebrated political, banking and financial institutions and extra-ministerial appointees as well as members of their nuclear and extended families and close associates in a polity who are involved in grand corruption.

Theoretical perspective

The theoretical framework of analysis adopted in this article is the Marxist theory of Post-Colonial State. We shall elaborate on this by looking into the nature, and character of the Nigeria State and its mode of capital accumulation in the economy in general and the failure of anti-graft war in particular.

The State in the post-colonial periphery is a capitalist type of state, even though to some extent it is different from the state in advanced capitalist formations. According to the Marxist theory, the state is the product and a manifestation of the irreconcilability of class antagonisms (Lenin, 1984:10-11). This state, which arose from the conflict between and among classes, is as a rule, the state of the most powerful, economically dominant class, which by this means also becomes the politically dominant class and thus acquires new means of holding down and exploiting the oppressed (Jakubowski, 1973:41) Thus, according to Marx and Engels (1971:38) “the executive of the modern state is but a committee for managing the common affairs of the whole bourgeoisie”.

Therefore, contrary to the claim of Western liberal or bourgeois scholars, the state is not class neutral, rather, it is immersed in constant class struggle within and between the various institutional groups that make it a reality (Ezeani 2008).

The classical Marxist theory of the state has been further developed to take into consideration the peculiarities of the neo-colonial state (see Alavi, 1972, Saul, 1974 and Ekeke, 1986).

The main attributes of a neo-colonial state as seen by the Marxist theory include:

- The state as an instrument of class domination.
- The centrality of the state and its apparatuses as the main instruments for primitive accumulation especially by the dominant class and their foreign collaborators.
- The renter or extractive nature of the state.
- The unifying function of the post-colonial state (Alavi, 1972, Saul, 1974, Collins, 1976 and Ezeani, 2008).

As Ekeke (1986:12) rightly noted;

The difference between the two forms of capitalist state is thus: that whereas the state in the advanced capitalist formations functions to maintain the economic and social relations under which bourgeois accumulation takes place in the periphery of capitalism; factors which have to do with the level of development of the productive forces make the state, through its several institutions and apparatuses, a direct instrument for accumulation for the dominant class or its element.

This peculiar attribute of the neo-colonial state can be traced to the colonial epoch. The Colonial Governments in their bid to achieve their economic interests discouraged the emergence of a strong indigenous capitalist class. This they achieved by discriminating against African businessmen in the disbursement of bank loans, award of contracts and other business incentives. In the absence of indigenous capitalist class strong enough to establish hegemony over the state at independence, the neo-colonial state such as Nigeria became the main instrument of economic investment and economic development. Beside, the new indigenous bourgeoisie that inherited control over the neo-colonial state and its apparatuses had a very weak economic base, and hence relied on this control for its own capitalist accumulation (Ezeani 2008:4).

Critical to understanding this, is an appreciation of the nature and character of the Post-Colonial Nigeria. Many scholars such as Graf (1988), Diamond (1986) and Joseph (1996) have identified capitalist rent seeking, patrimonialism and prebendalism as the major characteristics of Post-Colonial Nigeria State. Some have even fancifully referred to the Nigerian State as a “rogue state” (Joseph, 1996). These characteristics have combined with one another, and with many others, in complex dynamics, to undermine the Nigerian State’s

capacity to discharge those fundamental obligations of modern state to its citizens, such as socio-economic provisioning, guarantee of fundamental human rights and freedoms, ensuring law and order and facilitating peace and stability as pre conditions for growth and development (Jega, 2002:36).

The unique nature of the Neo-Colonial State such as Nigeria therefore, has primarily on the fact that it combines that function of serving as a major instrument of capital accumulation with that being a direct instrument of class formation and domination. As Milliband (1977:109) puts it, *“The state is here the source of economic power as well as an instrument of it; state is a major means of production”*.

The Marxist theory of state is very significant to understanding and explaining the anti-corruption crisis in Nigeria. Applying the theory, it is argued that those who have presided over the state have tended to personalize power and privatize collective national resources, while being excessively reckless in managing the affairs of the nation. Indeed, the state has become the prime mover of capitalist development and class formation, with all the associated contradictions that this is wont to spew up.

Put differently, the criminal justice system in any polity reflects the socio-economic system in operation. That is, the criminal justice system in a capitalist society is a reflection of the capitalist mode of production operated by the polity. The anti graft agencies operating in Nigeria is operating in the interest of the rich and influential members of the Nigerian society. This confirms the thesis that he who controls the means of production equally dominant other aspects of human life. The rich and influential are the dominant members of the Nigerian society who benefit from dependent capitalism; and have also conspired to make the anti-corruption agencies operation in the society to reflect their interest. Also, there are equally corrupt. Sa’ad (2002:13) has posited as follows:

Clearly, then the turning of the state into a primary source of capital accumulation appears to account for the existence of corruption among the public servants in Nigeria. Corruption may be more outrageous at the top level of the public service, but in general the occurrence of corruption in Nigeria takes place across all levels of public service. The pervasiveness of corruption is as a result of turning state into a main source of private accumulation; it has at least two main effects on law, justice and state in Nigeria. The Nigerian Law Enforcement agents and Judicial Personnel and Socio-cultural units of Nigerian Society can hardly remain immune to corruption.

Similarly, Odekunle (1978:91-92) observed that:

Even if crimes by the powerful are discovered, the probability of arrest, prosecution, conviction or imprisonment is rather low. The benefit of doubt is given to those with wealth and prestige while money is available to them to hire well connected and influential lawyers to bribe character witnesses, to pay convicted since they are usually given the alternative of a fine.

According to Eme (2009) the Obasanjo government constantly withdrew billions of naira and spent same from the consolidated revenue account without the written or verbal expressed consent of the National Assembly. The government also consistently disobeyed judgments of the Supreme Court especially the order of the court to release over 38 billion naira of local government funds owed Lagos State government. Petroleum pump prices were increased 6 times during the tenure of the administration without due process. This arbitrariness also showed in the sudden hike of the Value Added tax (VAT) from 5 to 10 percent. All over the place it was one form of breach or another. The aftermath of these was a situation of insecurity, insensitivity, lack of transparency in public affairs, all, strong indicators of poor governance.

The May 14, 2005, launching of the Obasanjo Presidential library was also described as an abuse of power. The late Gani Fawehinmi said that the launching of the library as illegal and unconstitutional. About N6 billion was realized from individuals and corporate bodies at the event. The radical lawyer thereafter filed an action against the president at the Federal High Court, Abuja over the project; joined in the suit as defendants are the Economic and Financial Crimes Commission, EFCC, and Independent Corrupt Practices Commission, ICPC, and Code of Conduct Bureau.

In the suit, Fawehinmi wants the court to determine whether it was abuses of power for Obasanjo a serving President to launch an Obasanjo Presidential library at Abeokuta, Ogun State on May 14 2005 and receive gifts of money for that purpose from federal government contractors and beneficiaries. He claims that this amounts to corrupt practices and abuse of power contrary to section 15(5) of the 1999 Constitution. This section provides that: "The state shall abolish all corrupt practices and abuse of power". According to him, it is also a flagrant disregard of the code of conduct for public officers contained in item I fifth schedule, Part I of the 1999 Constitution. It provides that: "A public officer shall not put himself in a position where his personal interest conflicts with his duties and responsibilities".

Fawehinmi is also seeking for a declaration that the composition of the board of trustees of the library being a private project of a serving President is both a violation of sections 15 (5) and 23 of the 1999 constitution. He claimed that Christopher Kolade, then Nigeria's High Commission in Britain, Governor Gbenga Danuel of Ogun State and Iyabo Obasanjo-Bello, then Ogun State Commissioner for health, who were all public officers are incompetent to serve Obasanjo's private business. He claims that Karl Masters, Vernon Jordan both from the United States and Richard Branson, from the United Kingdom were incompetent to serve as board members because they are foreigners.

The human right activist is equally asking for a declaration that the license which Obasanjo as Chairman of the Federal Executive Council approved for himself in 2003 the establishment of the Bells University of Technology to which the presidential library is affiliated is an abuse of power.

It is against this background that Fawehinmi is asking for the mandatory order directing the EFCC and ICPC to investigate all the contracts awarded by the federal government to all the donors at the launching since the inception of the Obasanjo's Presidency.

He wants these agencies to be mandated to take appropriate actions against the president and the donors within the provisions of the EFCC Act No 1 of 2004 and the ICPC Act of 2000. This he said includes for forfeiture of the entire project and the Olusegun Obasanjo Presidential Library Fund.

The civil rights groups noted that there was a fundamental flaw in the president's anti corruption crusade because it hypocritically defines corruption so narrowly, selectively and whimsical as to exclude what ever the president found it convenient to exclude.

The most illustration is the recent court judgment between the EFCC and James Ibori. James O. Ibori, former government of Delta State, has a reputation for winning cases. There is hardly anything wrong with that. The courts, as arbiters in disputes, are free to pronounce him guilty and order appropriate penalty. In doing so, however, the courts must clearly establish the basis for the decision, which must be in accordance with the laws of the land. This is to say presiding judges must be fair, and their conclusions should be convincing.

These are the areas the two major litigations that have seen Ibori in and out of court since 2003, failed to meet public expectation. In the case of theft against James Ibori, the court established that one James O. Ibori was convicted for theft of building materials in 1995 but could not say whether the convict was James O Ibori, the then governor of Delta State. It

was such a controversial and unconvincing judgment. Expectedly, it generated a lot of credibility problems for the judiciary.

The case of 170-count charges of corruption against Ibori during his eight-year tenure as governor has left a huge amount of controversy in its trail. First, Ibori objected to being tried by the Federal High Court in Kaduna. Rather he wanted the case transferred closer home in Benin. But the authorities did more than he asked for. They created a Federal High Court at his doorstep in Asaba Delta State. At the end, Ibori got the judgment he wants. He was acquitted on the 170-count charges. Many have criticized the judgment as the exact opposite of what the public thinks and knows about Ibori's material possession. Some have petitioned the appropriate authorities that the trial judge had compromised himself. He has subsequently been given a query.

It is clear that the anti-corruption agencies, as elements of the criminal justice system, operate corruptly. This corrupt practice perpetuates crime and criminality in the country. Corruption itself is a crime; but the most corrupt personnel often escape conviction. System corruption in Nigeria is an inherent problem which can best be understood within the context of the dependent capitalism. In this situation, the State is regarded as the major source of the accumulation of private property at all cost. Civil service is, therefore, taken by majority as a means not to serve but predominantly to enrich them. Bribery and corruption are probably the easiest means, among others, which one entices system.

Mainstreaming Politically Exposed Persons (PEPs) in Nigeria's Anticorruption Strategy

On October 26, 2010 the Economic and Financial Crime Commission sought extra judicial ways to stop corrupt politicians from being candidates in 2011 general elections. In a statement "the innocent need not be jittery" has generated a lot of panic in the political field of Nigeria. This came at a point when most of the PEPs who are being tried for various offences committed in office have dusted up their briefcases and declared their aspirations to run for elective office in 2011. They have tested the waters and concluded that the government does not have the political will to pursue their cases to judicial conclusion.

The list supposedly released by EFCC is not new. Tell Magazine published the same list in its cover story in June 2010 titled: "How the Judiciary Aids Corruptions". However, what caused the uproar was that the commission advised political parties not to choose those whose names are on the list as their candidates for elective positions in 2011 (see also the cover stories of the source, 2006, and 2007 and TELL, 2004). The updated list contains only 55 names of mostly PEPs and high profile civil servants who played active role in the pillaging of some Nigeria's ministries and extra-ministerial departments. The list is only a fraction of the over 1, 200 cases EFCC has in various courts in the polity, but the 55 cases touch Nigerians most because they involve looting of public purse to the tune of over ₦ 2 trillion (Agbo, 2010, Ande, 2010).

Number one on the list is Ayo Fayose, Former Governor of Ekiti State. He was arraigned before a federal high court in Lagos since December 17, 2006, on a 51 count charge for looting the state treasury to the tune of ₦1.2 billion. He was granted bail in 2007. Since then the case just simply faded off the court schedule. The plea was taken but according to EFCC, the defence lawyer keeps filing frivolous applications for long adjournments to frustrate and prolong trial. Ironically, the judge allows it. Buoyed up with his success, Fayose has since thrown his hat in the ringed contest for the senatorial seat of turbulent Ekiti State in 2011 under Labour Party.

Saminu Turaki, former governor of Jigawa State has been on trial since July 13, 2007 at a Federal Capital City high court, sitting at Maitama, Abuja for the alleged looting of his poor state to the tune of ₦6 billion during his tenure as governor. He was arraigned on a 32 count charge. Ebulient Adamu Abudulahi was the former governor of Nasarawa State. After eight years in office EFCC found after thorough investigations that he looted the treasury of

over N15 billion under frivolous subheads. He was charged to Federal High Court. Later on March 3, 2010 on a 419 count charge despite being charged to court on such heavy allegations. Abdulahi is confidently campaigning for a PDP ticket to go to the Senate in 2011 where he is expected to make laws for the good governance of the country, including anti-corruption laws for EFCC and ICPC. He resigned his position as the Secretary of PDP Board of Trustees because of the case but after watching the government attitude since then, he too is ready for 2011.

Attahiru Bafarawa, former governor of Sokoto State is on trial before a Sokoto high court on a 47 count charge of looting his State of an alleged N15 billion during his tenure as governor. But since the case was charged to court on December 16, 2009, nothing much has been heard about it.

Rasheed Ladoja, former governor of Oyo State is equally on trial before a federal high court in Lagos since December 2008 on a 33 count charge of looting an alleged sum of N6 billion during his troubled tenure as governor of the state. Prosecution witnesses are slated for cross examination in November. However, Ladoja appears much surer of himself now than he was in 2008: he has declared his intention to return to Government House, Agodi in 2011.

Another frustrating case for EFCC is that of Chimaroke Nnamani, former governor of Enugu State, who is currently a senator of the Federal Republic of Nigeria. He has been on trial before a federal high court in Lagos since December 11, 2007 on 105 count charge of looting the sum of N5.3 billion from the allocation of some selected rural local government councils in the state. Nnamani completed his maximum eight years as governor and is now one of the groups of legislators known as Absentee Senators in the Red Chamber of the National Assembly. In his case, Nnamani is working hard to dethrone his former political pupil, Governor Sullivan Chime of Enugu State in 2011. A lot of people feel that in a country with a sincere government and just judiciary, these politicians who are on trial for corruption should not venture into politicking until they have cleared their names.

The case of James Ibori, former governor of oil rich Delta State is getting to a head in Dubai, where he is awaiting extradition to Britain for trial on allegations of money laundering and other fraudulent activities. He escaped from Nigeria to evade arrest by EFCC and was arrested in Dubai. His two accomplices have been convicted and sentenced to various jail terms in Britain.

Oriji Uzor Kalu, former governor of Abia State has been on trial at the Maitama High Court, Abuja, since June 11, 2007 on 107 count charge for looting God's own State of over N5 billion as governor between 1999 and 2007. He pleaded not guilty when he was arraigned but once he was granted bail his defence is working harder for the case not to be tried than to defend their client in open court. His lawyers raised preliminary objection against the charges and lost at the trial court. Next they proceeded on appeal to apply for a stay of trial. Kalu resigned from the Progressive People's Alliance, PPA as chairman of Board of Trustees and wanted to return to Peoples Democratic Party, PDP. Though welcome by the leadership of the party at the centre, Kalu met a strong opposition at the state level. Now, there is no way he would be able to run on the platform of the PDP if he is not presented by the state branch. It appeared as if members of the party in Abia have not forgiven the former governor for abandoning the party on the eve of the 2007 election. There is, however, another postulation that he probably was blocked because of his closeness to Ibrahim Babangida. Consequently, for him to realize his ambition, he returned to PPA and picked presidential nomination form for 2011 election. His corruption case in court is the least of his worried

There are other suspects on the list who are not PEPs. The chief executives of the banks that were taken over by Central Banks of Nigeria are on the list. So are the officers of Nigeria Football Federation who were investigated after the 2010 World Cup debacle in South Africa.

Expectedly, the polity is wash with politically generated noise at EFCC's advice to political parties to beware of these political liabilities. However, some well meaning Nigerians has expressed concern at the advice by the EFCC as they argue that it is outside the commission's mandate. According to the Nigerian constitution, only the court can bar people from contesting election. In other words, if the EFCC wanted the PEPs not to participate in the 2011 elections, the commission should have worked harder and convicted them of the charges filed against them. Then the parties would not have any alternative than to drop them. EFCC too acknowledges that it has no power to bar anybody from contesting election. That is why some people are accusing the commission of deliberate mischief.

Kalu described it as a return to tyranny. Willy Ezugwu Director-General of Kalu's Campaign Organization, described the list as adversary rather than advisory, and a confirmation of the re-enactment of the tyranny and oppression witnessed in President Olusegun Obasanjo era when everything possible was done to imprison those who were opposed to the third term agenda.

Similarly, Bafarawa, who is number 47 on the list, asked Frida Waziri, Chairman of EFCC to resign immediately for such ignorance of the layer. In the event that she fails to quit President Goodluck Jonathan should initiate the process of her removal from office in order approve that he did not ask her to frustrate democracy through the so called advisory list fumed Bafarawa. For somebody who claims a better knowledge of the law than Waziri Bafarawa has shown considerable reluctance for a quick trial of his case since 2009 when he was arraigned. He described what the EFCC has against the PEPs as mere allegations.

On its part, the PDP, on Tuesday October 26 calmed the frayed nerves of its members who were getting hypertensive about the list. Rufai Alkali, publicity secretary of the party told journalists that the National Working Committee of the party had met with EFCC on the issue of 2011 election over three weeks ago. He confirmed that the party would not work with the list and it will not be used to abuse the judicial process. We should be able to calm them down to let them know that the party will not go after their jugular like that. We want them to remain calm and continue with their normal activities as party men and women. He stated that EFCC had not written the party formally on the list.

The Supreme Court had in 2006 ruled in the case of Oyewole Fasawe and the attorney general of the federation that EFCC can not bar a person from contesting election. Justice Inumidun Akande held that "With regards to the investigation report of EFCC in Exhibit 2 attached. Prepared and submitted by EFCC to the President of Nigeria as averred in the affidavit. It has no probative value. This is because Section 5 of the Act and Section 6 of the Act set out the functions and special powers of the 2nd respondent (EFCC). The report as in exhibit 2 and submit same to the President of Nigeria as done in this case.

The designations "politically Exposed persons" date back to the late 1990s in what was known as the "Abacha Affair" .Sanni Abacha was a Nigeria dictator who organized with his family members and associates network of massive Kleptocracy from the government of Nigeria. It is believed that the amount stolen was in excess of several billions of dollars and that the funds were transferred to banks in the United Kingdom and Switzerland.

In 2001, in an effort to recover the money, the Nigerian government under former president Olusegun Obasanjo lodged complaints with several European agencies including the Federal Office of Police of Switzerland, which in turn, investigated close to sixty Swiss banks. In this investigation, the concept of politically exposed persons "emerged which was later included in the 2003 United Nations Convention Against Corruption.

The most illustration is the recent court judgment between the EFCC and James Ibori. James O. Ibori, former government of Delta State, has a reputation for winning cases. There is hardly anything wrong with that. The courts, as arbiters in disputes, are free to pronounce him guilty and order appropriate penalty. In doing so, however, the courts must clearly

establish the basis for the decision, which must be in accordance with the laws of the land. This is to say presiding judges must be fair, and their conclusions should be convincing.

These are the areas the two major litigations that have seen Ibori in and out of court since 2003, failed to meet public expectation. In the case of theft against James Ibori, the court established that one James O. Ibori was convicted for theft of building materials in 1995 but could not say whether the convict was James O Ibori, the then governor of Delta State. It was such a controversial and unconvincing judgment. Expectedly, it generated a lot of credibility problems for the judiciary. The case of 170-count charges of corruption against Ibori during his eight-year tenure as governor has left a huge amount of controversy in its trail. First, Ibori objected to being tried by the Federal High Court in Kaduna. Rather he wanted the case transferred closer home in Benin. But the authorities did more than the asked for. They created a Federal High Court at his doorstep in Asaba Delta State.

At the end, Ibori got the judgment he wants. He was acquitted on the 170-count charges. Many have criticized the judgment as the exact opposite of what the public thinks and knows about Ibori's material possession. Some have petitioned the appropriate authorities that the trial judge had compromised himself. He has subsequently been given a query. Adewuyi (2011) has looked at how *Ibori's Case Puts the Judiciary on the Spot*, arguing that it raises questions about the credibility of the judiciary in Nigeria and sincerity of the authorities on the war on corruption:

The former First Lady of Delta State of Nigeria, Theresa Nkoyo Ibori's sad demeanour as Judge Geoffrey Rivlin pronounced a five-year jail sentence on her at the Southwark Crown Court, last week, said it all. The case against Nkoyo included the fact that she paid the sum of N514 million (£2.2 million) in cash for a home in the high-class area of Hampstead two years into her husband's inauguration as governor. The court considered the conviction of the couple for petty theft in Wickes, a UK hardware store in 1991, eight years before Ibori became governor of Delta State. The court was also briefed of the conviction of Ibori for the fraudulent use of a stolen American Express credit card in 1992. The court was also inundated with how the United States, US, federal officials investigated Ibori's lodgment of the sum of \$1 million in a US bank in 1994. Far from the safety of the Niger Delta, where she and her husband, James held sway as lords of the manor that could not be touched by Nigerian laws because they had powerful political connections, Nkoyo was carted away to a London jail in handcuffs like a common felon. She was found guilty on two counts of money laundering done in connivance with her husband. Her conviction brings to three the number of persons convicted because of the financial impropriety of her husband during his reign as governor between 1999 and 2007. The same court had earlier convicted Udoamaka Okoronkwo, a mistress to Ibori, and Christine Ibori-Ibie, his sister. Each was sentenced to five years in prison. Ibori himself is in detention in Dubai, the United Arab Emirates, where he is awaiting extradition to the United Kingdom, UK, on charges of money laundering up to the sum of N4.73 billion (\$32 million). As the news of the conviction of his spouse came in last week, it was clear that the battle that Ibori had been waging against the judiciary was finally being lost (Adewuyi (2011:1&2)

The irony is that "back home in Nigeria, Ibori had escaped justice through some legal manoeuvring by his lawyers and controversial court rulings that gave him legal respite or outright clearance from allegations of corruption or criminal past". Though the Economic and Financial Crimes Commission, EFCC, arrested him and proffered charges against him after he left office in 2007, he was soon to be left off the hook and did not only walk the streets free but also became a power broker in the administration of late President Umaru Yar'Adua. He became a hard nut to crack for the EFCC, by virtue of the protection he received from Michael Aondoakaa, former attorney-general and minister of justice, who had stood against the cause of justice with his actions against the EFCC, which frustrated the body in the bid to

prosecute Ibori when he was arrested in late 2007 on the expiry of his term in office and the subsequent loss of immunity. That was partly political as the former governor played a major role in the election of the late president. But there are also allegations that the former attorney-general shielded Ibori for certain personal reasons (Adewuyi,2011)

Thus, the former Attorney-General And Minister Of Justice, Aondoakaa was the principal who held brief for Ibori as he worked to undermine the prosecuting powers of the EFCC, Independent Corrupt Practices and other Related Offences Commission, ICPC and Code of Conduct Bureau, CCB. This he did in addition to writing a letter to the Southwark Crown Court declaring that Ibori was not under any investigation in Nigeria. The implication of the prosecution and imprisonment of the three Ibori associates by the UK authorities is not only that Ibori himself might be going to jail as his extradition to the UK is completed, but has also have exposed the inadequacy of the Nigerian judiciary: What took the Nigerian law courts forever to handle was done and dusted by the UK courts in a few weeks bringing aberration to the Nigerian court system. It was as a result of this that, UK judge, Justice Christopher Hardy, publicly berated the Nigerian judiciary for selling its soul to men like Ibori during his submission at the Southwark Crown Court, when he remarked that "I want to make it absolutely clear that Nigeria's judiciary was usurped. Countries who are signatories to fighting corruption and money laundering must live to the full letter of their commitments".

It is from this observation that one understands how the judiciary in Nigeria has performed in the war against corruption, particularly in the last ten years. For instance, the leadership of the EFCC and ICPC had cried out severally that the judiciary was frustrating the anti-corruption war through a slow system of legal process and indiscriminate injunctions granted accused persons .According to Farida Waziri, head of the EFCC, laments the challenges faced by the agency through the courts:

If I take someone to court, and the court grants bail, it's EFCC. If I seize his passport and he exercises his fundamental human rights, and gets his passport back, it's EFCC." Nuhu Ribadu, her predecessor, had a similar experience. He said then, "It is only the poor that go to prison. It is high time we brought the rich who are criminals to justice. They have money and use their money to buy their way out.

This is a view shared by Mustapha Akanbi, retired justice and pioneer chairman of ICPC, who complained about the attitude of judicial officers in the efforts to fight corruption. According to him, in a speech to the House of Representatives Committee on Anti-corruption and Ethics in 2004, he noted that that "the judiciary had frustrated his work, and that: state judges who are handling these cases are not committed to this cause as some of them have their loyalty in the state level and this has made our work difficult" ,Akanbi noted.

Yet, judges are not the only ones to blame for the delay in prosecution of cases on corruption, realizing that lawyers also introduce legal technicalities to delay cases, knowing full well that the courts, being already congested, may have to give long dates in order to accommodate other cases. In an apparent frustration, the EFCC started canvassing for a special court to try corruption cases. For instance, Ibori's counsel argued that:

He could not be tried in Kaduna, that not being the jurisdiction under which he committed the offence for which he was arraigned. To enable his case to be heard in Delta State, a federal high court had to be created in Asaba, the state capital. And so in December 2009, the court, sitting in Asaba, declared that he had no case to answer in the 170 counts of corruption charges the EFCC brought against him. Marcel Awokulehin, the trial judge, raised so much dust by his judgment, when he declared that the EFCC's case was unnecessary and inappropriate. Developments like this raised doubt about the sincerity of the Nigerian authorities in battling corruption. That is also because the case of Ibori is not an isolated one. Peter Odili, former governor of Rivers State, got a

perpetual injunction restraining the EFCC from arresting him. Encouraged by that feat, Ayodele Fayose, former governor of Ekiti State, also went to court to seek a similar order.

There are suspicions that some of the judges may have been compromised. Hence the sincerity of anti-graft agencies and the judiciary is defeated when the trial process can be bastardised to suit the whims of the accused. This underscores a recent comment by Wole Soyinka, Nobel laureate, in New York:

Today, Nigerian judges can be bought for two a penny. We know cases where judges have been bought for half a million naira'. And just before you think that was a harsh judgment on the judiciary, the Nigerian Bar Association, NBA, in a swift reaction, last week, declared that the Nigerian judiciary was composed of shady figures that were perverting the cause of justice. In a report released on the records of the Nigerian Judicial Council for the last seven years, it stated that 80 per cent of judges in the Nigerian courts are indolent. While Soyinka lamented that the Nigerian judiciary had become such a willing tool in the hands of moneybags since the return to civil rule in 1999, the NBA called for the input of lawyers in the composition of the Bench in order to stem the rise of corrupt judges into the body (Soyinka cited in Adewuyi, 2011:2).

Though, the problem is not with the Nigerian judiciary as an institution but with the men and women who hold brief as judges and justices. As the problem goes beyond the alleged corrupt judges, on the other side of guilt, is systemic:

In its bid to rid the country of corruption, the Nigerian government rests wholly on outdated laws that enable cunning judges and lawyers get away with underhand dealings in thwarting the cause of justice. The Evidence Act that was handed down to the country by Britain at independence is still being used in Nigeria without amendment. Our laws are archaic that is enabling corrupt judges to explore it for gain. Our laws must be fine-tuned to meet the demands of the modern day. The Money Laundering Act provides for a fine of not more than N250, 000 for anybody convicted of violating the law. The same law prescribed not less than two years and maximum of three years prison term for the offence. "What that means is that if an individual is convicted of embezzling N10 billion, he is only allowed to pay N250, 000 and serve a jail term of not more than three years. That is after a long trial where the government may have spent N10 million to get justice. This is part of the weaknesses of our law. The EFCC has over 60 cases of this nature that are yet to proceed beyond the plea stage. It is not only the Money Laundering Act that is outdated. The Evidence Act is as old as independent Nigeria. Thus, the way it is interpreted by various law courts, which for instance, limits the use of electronically sourced information by prosecuting agencies undermines the effectiveness of Nigeria's anti-graft bodies. The British have since reviewed their laws to even try rabble-raising, terrorism and seditious statements made on social networking sites like Facebook and Twitter while Nigerian laws cannot yet admit electronic mails as evidence. The Evidence Act has been awaiting amendment before the National Assembly for about five years without success. So what is the anti-graft agency doing to ensure that its effort does not go in vain? (Tell Magazine Monday, February 14, 201)

It is because of these anomalies that "the rest of the world does not believe that Nigeria is serious in the struggle against corruption, as the political will seems to have been lost since the exit of (former EFCC boss Nuhu Ribadu).

Challenges

The major challenges facing the EFCC's Advisory List is the court. The Supreme Court had in 2006 ruled in the case of Oyewole Fasawe and the Attorney-general of the federation that the EFCC can not bar a person from contesting election. Justice Inumidun Akande held that "with regards to the investigation report of EFCC in Exhibit 2 attached, prepared and submitted by EFCC to the President of Nigeria as averred in the affidavit, it has

probative value. This is because Section 5 of the Act and Section 6 of the Act set out the functions and special powers of the second respondent (EFCC). The functions do not include power to prepare the report as in Exhibit 2 and submit same to the President of Nigeria as done in this case” (Eme, 2012:12).

The Supreme Court also ruled that INEC lacked the power to disqualify a candidate from contesting election on the basis of EFCC list. In the case of INEC and Atiku Abubakar, the court held that “section 137(1) of the 1999 Constitution does not confer on INEC the power to disqualify any candidate from contesting election, either expressly, or by necessary implication. Moreover, there is nowhere in the constitution where any such power is conferred on INEC to disqualify any candidate” (Eme, 2009).

Atiku and his close associate Fasawe won their cases because in my opinion, the Supreme Court justice wanted to cut ex-president Obasanjo to size, having smelt victimization. It was a political judgment. But whether or not it was political; it is a judgment of the apex court in the land and it is a law on its own.

Related to the above is the challenge the 1999 Constitution poses. Nigerians are not in a hurry to forget the constitutional crisis and tenure elongation caused by the EFCC’s advisory list in 2007. Acting on the list INEC barred certain candidates from participating in the elections. In Kogi State; it stopped Prince Abubakar Audu who the candidate of the All Nigerian Peoples Party (ANPP), it stop the candidate of the Action Congress in Adamawa, Alhji Ibrahim Bapetal. The story was repeated in many other states.

Immediately Atku won his case against his exclusion, the next thing we saw was that the candidates who were excluded from the 2007 elections went to the tribunal one after the other and the tribunals cancelled the elections, ordering INEC to conduct rerun polls in which those it disqualified must be allowed to participate. All the sitting governors won the rerun elections. This is exactly the source of the constitutional logjam we have today whence some governors want to spend five, six years in office for a single term.

The political parties are equally posing another danger. In 2007, INEC and EFCC worked hand in hand. In 2010, it is with the parties the anti-graft agency is liaising with. The parties should therefore exercise their rights and moral responsibility by excluding persons who are still being prosecuted in the court by EFCC. Since it was INEC that the Supreme Court chided in 2007; it is posited that the parties are protected this time around because it is an internal matter. This thesis, as persuasive as it sounds, it is not fool-proof.

First, our justice system presumes you innocent until you are proved guilty. The burden of proof is on the prosecution. So if your party disqualifies you from contesting for say governorship because EFCC is prosecuting you, what happens if it fails to prove its case in court? It means that you have been unjustly denied your chance of being voted governor. For now, though you are presumed innocent. So it would be wrong for a party to exclude you because of an advisory list from the anti-graft agency.

Second, in the Chibuike Amaechi case in 2007, he won the governorship primary of the Peoples Democratic Party but based on an EFCC right, Obasanjo said his candidacy had “k’leg” and dropped him, replacing him with Celestine Omehia as the PDP’s candidate. Again, the Supreme Court ruled that the PDP is out of order for dropping Amaechi based on the EFCC indictment. It said Amaechi was the lawful PDP candidate in the governorship election and declared him governor, even though the man did not even print a poster or campaigned for election. What this tells us again is that no party can disqualify a candidate based on EFCC indictment. It has to be a court of law.

Furthermore, identifying Political exposed Persons can be a difficult undertaking, particularly if the customer fails to provide relevant information or even gives false information. Despite all the banks’ efforts at recognizing PEPs, it is a fact that they do not have all vital powers, means or information at their disposal to detect such individuals. Banks

are restricted in what information they can obtain. They must rely on the information they are given by clients and that can be gleaned from business documents or from the media. In particular, when close associates or families of PEPs open a business relationship with a bank, it is often impossible to establish that relationship a “PEP relationship” on the basis of the limited information to the banks. This equally creates another challenge for anti-corruption agencies and election management body.

Recently, the Global Witness (2010) accused a British High Street bank of accepting millions of pounds in deposits from corrupt Nigerian politicians, raising serious questions about their commitment to tackling financial crime. By taking money from corrupt Nigerian governors between 1999 and 2005, Barclays, Nat West, RBS, HSBC and UBS helped to fuel corruption and entrenched poverty in Nigeria. What is so extraordinary about this story is that nearly all these banks had previously fallen to the United Kingdom banking regulator, the Financial Service Authority (FSA), in 2001 by reportedly helping former Nigerian dictator, Sanni Abacha funnel nearly a billion pound through the UK. These banks were supposed to have tightened up their systems but as this report now shows, a few years later, they were accepting corrupt Nigerian money again.

Furthermore, the role of foreign banks and their regulatory bodies presents another challenge for exposing PEPs. In a 40 page report released on October 10, 2010, Global Witness said that five leading banks in the United Kingdom failed to adequately investigate the source of tens of millions of dollars taken from two Nigerian governors accused of corruption. According to the report, “banks are quick to penalize ordinary customers for minor infractions but seem to be less concerned about dirty money passing through their accounts” (Global Witness, 2010:2). The report goes on to posit that “large scale corruption is simply not possible without a bank willing to process payments from daily sources, or hold accounts for corrupt politicians” (Global Witness 2010:4).

Global Witness acknowledged that in accepting the money, Barclays, Nat West, Royal Bank of Scotland (RBS) and HSBC, as well as Switzerland’s UBS, might not have broken the law, but noted that the Financial Services Authority (FSA) must do more to prevent money laundering through British Banks.

The FSA needs to do much more to prevent banks from facilitating corruption. As yet, no British Bank has been publicly fined or even named by the regulators for taking corrupt funds, whether willingly or through negligence (Global Witness, 2010:6). This is in stark contrast to the United States, where banks have been fined hundreds of millions of dollars for handling dirty money.

Finally, there is a challenge of a comprehensive PEP compliance solution. Though the World-Check has a database of hundreds of thousands of PEPs; there is always this problem of compliance obligation. Significantly, it is not just the sheer number of profiles of PEPs data base that counts, but also the system’s ability to identify and critically assess PEP risk. According to World Check (2000) more than 75 per cent of the world leading Financial Intelligence Units (FIUs) have access to World-Check PEP risk intelligence. World-Check emphasizes quality, rather than quantity and sets out to aid organizations in identifying and mitigating actual PEP risk, rather than merely “ticking the boxes” and confirming the position of PEP. Thousands of new profiles are added to the World-Check PEP database each month, whilst older ones are constantly updated as new public source data becomes available.

Strategies against Politically Exposed Persons in Nigeria

The explanation given by Ibrahim Lamorde, chairman, Economic and Financial Crimes Commission (EFCC), when he appeared last Thursday before the Senate Committee on Drugs, Narcotics and Financial Crimes to defend the agency’s 2013 budget, has continued to elicit controversy.

Lamorde had, like his Predecessor, Farida Waziri, said the ineffectiveness of the EFCC should be blamed on the level of connection of the “thieves” who use their ill-gotten wealth to drag the cases against them.

According to him, “Unfortunately, these are people who have the resources to drag these cases indefinitely and perpetually. That is when we have established a very strong assets forfeiture unit.

“The first thing we do now is that we try to recover and confiscate the assets of individuals that we are investigating because it is only when you deprive them of their resources that you will be able to force them to stand trial. Once they have access to their resources and assets, they will use it to continue to delay and drag some of these trials.”

Before she exited the office, Waziri had regaled Nigerians with the story of how the corrupt politicians exploited the loopholes in the nation’s judicial system to evade prosecution or caused the cases to prolong indefinitely.

Waziri alluded to the fact that corrupt officials bribe lawyers to help frustrate their prosecution, and that the legal profession is to blame for the EFCC inability to make any mark in the war against corruption

“Let us ask why the cases are still pending. I say often that the process of judiciary is slow. If a corrupt person pays you half of what he has stolen, what should you do? They take it and look for a way to keep on prolonging the case,” she said.

The former EFCC boss had therefore made case for a special court to be established to handle corruption-related cases.

Although many Nigerians believe the agency is just existing in name without actually bringing to book the alleged looters of the nation’s treasury, Lamorde claimed he has spent about N500million to prosecute cases against corrupt individuals. He admitted before the Senate that no high profile case has been successfully prosecuted.

The EFCC boss disclosed that the commission recorded no less than 200 convictions that were mainly advance fee fraud (419) and yahoo-yahoo suspects.

“The truth is no case has been concluded. I don’t think it is correct to say that whether the charges framed are not properly done or the prosecution is not putting the case properly. Of course the fact on ground is that no case has been concluded,” he said.

A pundit who spoke on condition of anonymity to BusinessDay said there was the need to urgently look into the complaints raised by Waziri and Lamorde, adding that both of them cannot be shouting in vain. According to him:

You might term their complaints as mere excuses, but you must also look into what they are saying to see if there is any substance in it. Have you wondered why none of these high profile cases have not been successfully prosecuted? It is most probably because those involved have stolen so much and can afford to hire the best lawyers who will use technicalities to prolong the cases. If you don’t solve the fundamental problem that has been identified, the foundation will remain faulty and the nation will continue to move in circles in the anti-corruption war (Agomuo, 2012:44).

Tony Momoh, chairman, Congress for Progressive Change (CPC) was reported as saying that corruption cases in the country have become political. According to Momoh, political decisions have made it difficult for justice to prevail since there is hardly any case that would not be influenced one way or the other. According to him, there is a difference between a country of law and a country with law. A country of law is one in which everybody is subjected to the same law. On the other hand, a country with law is that in which there are laws and nobody regards laws in the books (Agomuo, 2012:44).

Chudi Eke, a public analyst, has blamed the ineffectiveness of EFCC on the lack of will on the part of government to fight the corruption monster. The rigmarole in the EFCC is

the handiwork of the Federal Government. Who are the people in the commission's net, are they not politicians who dine and wine with Abuja? All the ex- and serving governors accused of corruption, have they been prosecuted? Why is it that nobody has been jailed here? Look at James Ibori, the man was living like a king here until he was extradited to the United Kingdom where human beings do things in the right way. We saw how a judge acquitted him of over 70 charges in one day, what are we talking about. The thing that makes the shrew smell is inside the shrew, it is an adage and aptly fitted into what we are seeing in this country.

Recommendations

Anti-corruption crusades are driven by institutions and not individuals. Larry Diamond argues in his write-up on controlling endemic corruption that what is required to fight corruption is overlapping institutions designed to ensure autonomy and effectiveness. Such institutions must be equipped to be insulated from politics and must also be controlled by law. Institutions must be designed to outlive individuals that manage them. Presently, anti-corruption institutions do not have the necessary expertise to carry out their duties effectively. The EFCC for instance has a lot of work concentrated on it. Before now, some anti-graft agencies like the EFCC played controversial role in the electoral process. Success of the anti-graft effort seems to be predicated on individuals rather than institutions. The result is the limited success that we have recorded and difficulty in coordination among institutions. In order to avoid such controversial role in future four key things are central to a successful anti-corruption crusade. They are as follows: concise and coherent anti-corruption policy, Independent and effective anti-graft institutions and enabling legal framework and public involvement against actors involved. To achieve these standards the under listed are necessary:

The recently passed the Freedom of Information Act to strengthen public scrutiny of public officers' actions should be made flexible so that it will build public confidence and also act as a major deterrent to corrupt activities. It will promote of the culture of *clean government*. The National Assembly should enact law to unbundle the EFCC and create specialized institutions and court for prosecution and asset recovery. The EFCC should confine its work on just investigation to ensure efficiency

The National Assembly should enact the Proceeds of Crime Act to broaden the powers of the anti-graft agencies. This law will become the broad legal umbrella, under which the anti-corruption crusade is prosecuted. The National Assembly should endorse the separation of the offices of the Attorney General and the Minister of Justice by the Constitution Amendment Committee to separate the Office of the Attorney General and that of the Ministry of Justice to ensure efficiency and perception of fairness. The National Assembly should pass into law the Ethics in Governance Act

Government must have to define the content and goal of its anti-corruption policy. As a matter of principle, anti-corruption policy must enjoy popular support, must be effective and most importantly must address the peculiarities of the environment for which it is formulated. For the policy to enjoy the support of the public, government must be seen to practice what it preaches. This would entail the adoption of *clean government* (zero corruption). Transparent and ethical management of government resources would necessary engender public confidence and support for government. Here Government has a major role to play. Criminalizing corruption is not enough! The law must ensure transparency. Declaration of asset publicly should be the norm and not the exception. The system must be programmed in a way that it is difficulty for public officers to hide anything regarding their finances. Family members of public officers should also be made to undergo public scrutiny. The law should ensure seamless collaboration amongst agencies and not contradictory roles. The law has to be clear on who does what, defines nature of cooperation and limit

unnecessary interference by coordinate agencies. Strengthening institutions as argued above requires legislation. This will call for a review of the existing legal framework especially as it regards to anti-graft institutions.

Finally the paper proposes a stakeholders' Session on the instance of the EFCC to review the laws establishing the various institutions of anti-corruption and work out the necessary legal design needed to strengthen them.

Moral appeal does not win anti-corruption war. It is only the law that can make the process succeed. Our avowed commitment to the rule of law can only succeed if we rid the country of corruption. We cannot afford to lose this opportunity.

Conclusion

Over the years, the way in which corruption, especially, political corruption has been operationalised, and its benefactors conceived have had several implications for the Global Programme against Corruption. The attendant result of such an oversight has been that the major culprits are either unnoticed, or not convicted. The recent reconceptualisation, and mainstreaming of Politically Exposed Persons (PEPs) to include individuals holding or having held positions of public trust, such as government officials, senior executives of government corporations, as well as their Families and close associates has brought about mixed reactions. In Nigeria, such mixed reactions have trailed the release by the Economic and Financial Crimes Commission (EFCC) of a graft advisory list (GAL) of high profile cases involving Politically Exposed Persons, (PEPs).

All over the world, governments seriously desirous of tackling the menace of corruption usually adopt a holistic strategy which encompass some or all of the under listed benchmark. Enacting enabling laws which clearly define what corruption is and spell out punitive measures establishing an executive agency, which is transparent in its operations and is subject to the rule of law. The Punch newspaper recently broke the news that about N5tn in government funds have been stolen through fraud, embezzlement and theft. This kleptocracy reportedly occurs from May 6, 2010 when President Goodluck Jonathan assumed office till date. Surprisingly, no official denial has emanated from the presidency. Perhaps, this is a confirmation of the saying: Silence means consent.

The investigation was the consequence of the story was the President's decision to probe some sectors of the economy, particularly oil and gas and disclosures by some senior government officials. They include the Mallam Nuhu Ribadu-led Petroleum Task Force report, the Minister of Trade and Investment's report on stolen crude, the House of Representatives fuel subsidy report and investigations into the ecological fund, SIM card registration and frequency band spectrum sale.

The findings of these committees were too sordid to believe. Were the nation to be blessed with principled leaders, this president ought to be history by now for he would have taken the path of honour. Tender his letter of voluntary resignation for failing to lead the country on the right path. The parliament can even commence impeachment proceedings against him. Mr. President's current path of graft is an embarrassment to the black race.

Creating by law the enabling environment for whistle blowing (FOI), Enhancing the judicial process such that existing laws processes and procedures do not hamper the dispensation of justice, plugging all socio-economic loopholes within the system by eliminating bottlenecks and increasing access to social goods and services. Gradually reducing incentives for corruption prevailing in society through institutional reforms, combating poverty developing manpower and empowering citizens, Putting up efficient and effective well co-ordinate polices and programmes to combat poverty, create wealth, develop manpower and empower the youth through job creation.

References

- Adebayo F. & Adewuyi, O. (2011) Ibori's Case Puts the Judiciary On the Spot, *Tell Magazine* February 14, 2011
- Adekeye, F. (2009) "In the Bosom of Fraud Nigerian Government Keeps Quite over the fate of Public Officials Allegedly Bribed by Foreign Companies Now facing trial abroad". *Tell* No. 8. Feb. 23 Pp. 32.
- Agomuo, Z. (2012), "The Waziri-Lamorde Complaints Any Substance? *Business Day*, Thursday 29, November, P. 44.
- Aiyetan, D. (2009) "A Spark of Sleaze: Some very Drastic Action by the Presidency is expected to follow the Unearthing by investigators of the Alleged looting of Public Funds at Nigerian Electricity Regulatory Commission". *Tell* No 8 Feb 23 Pp. 24-25.
- Ajero, C. (2005) "Above the law?", *Newswatch*, June 6, pp.14-22.
- Alavi, H. (1972), "The State in Post Colonial Societies: Pakistan and Bangladesh, *Newleft Review*, 74, (July / August).
- Andrei, S. & Vishny, R.W. (1998) *The Grabbing Hand: Government Pathologies and their Cures*, Washington DC: World Bank
- Asobie, H.A. (2012a), "The Corruption Perception Index 2012, (1)" *The Guardian*, Thursday, 27, P. 62.
- Asobie, H.A. (2012b), "The Corruption Perception Index 2012, (2)" *The Guardian*, Friday 28, P. 61.
- Aturu, B. (2008) "Standing Rule of Law on its head: A Critique of Yar'Adua's Basic Mantra". *Vanguard*, Dec. 27, Pp. 1-5.
- Aziken, E & Agande (2012), ... As Federal Government Dismisses TI rating:, *Vanguard*, December 6, P. 8.
- Committee on Banking Supervision (2001) "Customers Due Diligence for Banks, Based: Bank for International Settlement, Basel: Swiss Bank.
- Corruption", in *Nigeria's Struggle For Democracy And Good Governance: A Festschrift for Oyeleye Oyediran*, ed. Adigun Agbaje, Larry Diamond, Ebere Onwudiwe, (Ibadan: Ibadan University Press.
- Diamond, L. (2004). "Building a System of Comprehensive Accountability to Control
- Eme O.I (2012), Politically Exposed Persons and April 2011 General Elections in Nigeria: Challenges before Anti-Corruption Agencies, paper read at the International Political Science Association Conference held at Madrid between 7 and 11 June, 2012.

- Eme, O.I et al. (2009) "Corruption in Nigeria: The National Assembly Experience, 199-2006", in Tony Edoh and Terhamba William (eds), *Democracy, Leadership and Accountability in Post-Colonial Africa: Challenges and Possibilities*, Makurdi: Aboki Publishers.
- Eme, O.I. and Okoh, C.I. (2011), "The Role of EFCC in Combating Political Corruption," *Oman Chapter of Arabian Journal of Business and Management*, Vol.1. No 3 (October), Pp 45-68.
- Eme, O.I.(2010) "Corruption in Nigerian Government Institutions: A case of Police Equipment Fund, *Journal of Liberal Studies*, University of Nigeria, Nsukka, Pp. 440-458.
- Ezeani, E.O. (2008), "The State and Crisis in the Power Sector in Nigeria". University of Nigeria *Journal of Political Economy*, Vol 2 Nos 1 & 2 Pp. 1-21.
- Federal Republic of Nigeria (1999) *Constitution of the Federal Republic of Nigeria*. Lagos: Federal Government Press.
- Global Programme Against Corruption (2001)Empowering the Victims of Corruption
- Godday, M. (2012), "Maku, Okupe Blame Nigeria's Corruption Index on negative media", *The Sun on Saturday*, December 6, P. 7.
- Greenberg, T.S., Gray, L., Schantz, D., Latham, M. and Gardner, C. (2009) "Stolen Asset IRIS, (1996), 'Governance and the Economy in Africa: Tools for Analysis and Reform of Corruption', Centre for Institutional Reform and the Informal Sector (IRIS), University of Maryland.
- Jakubowski, F. (1973), *Ideology and Superstructure*, London: Allison and Busby.
- Joseph, A.R. (1991) *Democracy and Prebendal Politics in Nigeria: The Rise and Fall of the Second Republic*: Ibadan: Spectrum Books Ltd.
- Lenin, V.I. (1984), *The State and Revolution*, Moscow: Progress Publishers.
- Marx, K and Engles, F. (1971), *Manifesto of the Communist Party*, New York: International Publisher.
- Miliband R. (1977), *Marxism and Politics*, England: Oxford University Press.
- Miliband, R. (1969). *The State in Capitalist Society*, London: Weidenfeld and Nicoison.
- Mordi, R. (2010), "Early Cases of Corruption" *TELL* June 7, p.18.
- Okpaga A., Ugwu S. C., Onyishi, A.O. & Eme, O.I. (2012), EFCC and Politically Exposed Politicians in Post 2011 Elections: An Analysis of Governors who lost Elections, *Oman chapter of Arabian Journal of Business and Management Review (AJBMR) Vol.1, No. 7, February Edition, Pp.74 -98*.
- Olaleye, O. Akosile, A. et al (2012), "Transparency International Ranks Nigeria 35th most Corrupt Nation", December 6, *Saturday This Day*, Pp. 8-9.

- Saul, J. (1974), "The State in Post Colonial Societies: Tanzania," *Socialist Register*, 351.
- Sunday Sun Editorial (2012), "Nigeria's Dismal Corruption Ranking", *Sunday Sun*, December 7, P. 15.
- Tullock, G., 1996. 'Corruption Theory and Practice', *Contemporary Economic Policy*, 14(3):6-13, Washington DC: World Bank
- UNDOC and the World Bank (2007), *Stolen Asset Recovery (SAR), Initiative: Challenges*,
- Wikipedia (2012), *Overview of Corruption Perception Index (2012)*.
- Wikipedia Free Encyclopedia (2009), "Politically Exposed Persons"
- Wolfsberg Group (2005), *Wolfsbergs Anti-Money Laundering, Principles on Private Banking*,
- Wolfsberg Group (2008) "Frequently Asked Question on Politically Exposed Persons"
- World Bank, (1997b), *Report of the Corruption Action Plan Working Group (CAPWG) – Country and International Strategies*, OPC Review Draft, May.
- World Bank, (1997c), *Helping Countries Combat Corruption: The Role of the World Bank*, Washington, DC: World Bank.
- World Bank (2007), *Politically Exposed Persons – A Policy Paper on Strengthening Preventive Measures*, Washington DC: World Bank.