QUICK LEGAL PRESCRIPTIONS TO BOOST THE ANTI-CORRUPTION WAR IN NIGERIA: TOWARDS CERTAINTY, ADEQUACY AND SWIFTNESS OF PUNISHMENT

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Abstract

Corruption as a phenomenon has accounted for the dearth of infrastructure as well as most of the social and economic ills that beset Nigeria today. Nearly all administrations, whether military or civilian have muted the idea of dealing with the monster and have indeed enacted laws, such as the Economic and Financial Crimes Commission Act etc. administrative policies such as the Treasury Single Account, Due Process Departments, Servicom, Whistle Blowing Policy etc. and recently deployed technology as the Integrated Personnel Payroll Scheme –IPPIS. This paper demonstrates that the incidence of corruption has not declined because offenders are not likely to be punished because they are either not properly investigated or charged; where tried, trials go on for years unending and punishment is infinitesimal relative to the crime. This work doctrinally argues that corruption thrives because of the inability of law enforcement agencies and the judicial system to maintain the historical, conceptual and theoretical link between crime and punishment, which is characterized by certainty, adequacy and swiftness of punishment. Quick prescriptions, such as deepening the whistle blowing policy of government and adherence to sentencing guidelines in the Administration of Criminal Justice Act were suggested by the paper.

Keywords: Corruption, Economic and Financial Crimes Commission (EFCC), Punishment, perception index, poverty

Introduction

Johan Finnish has said that delinquent behaviour of a person needs to be taught a lesson not with melody but with iron hand. There is the need of almost every member of society to be taught what the requirement of the

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law—the common path for pursuing the common good—actually is: and {relatively!} vivid drama of the apprehension, trial, and punishment of those who depart from that stipulated common way.[1]

'Unless corruption is killed, corruption will kill Nigeria', is one refrain that often laced the speeches of President Muhammadu Buhari -before and after the 2015 presidential polls. The regime that rode on the back of the war against corruption amongst two other promises – improving security and the economy - to power, also posited that corruption is one of the worst forms of human rights abuses in a speech by the President at the opening ceremony of the 54th NBA Annual Conference in 2015. Nigeria is also ranked 136 out of the 168 countries surveyed, scoring 26 out of 100 on Transparency International's ratings in 2016.[2] This underscores the pervasive nature of corruption in Nigeria and how endemic it has become. It is on account of the foregoing and in view of the high economic cost of corruption; relative to other crimes, that since 1999 several laws in addition to the extant criminal laws were enacted to tackle several aspects of corruption.[3] All of these is aside governmental policies put in place to reduce corruption. In spite of the laws and policies, Nigeria's corruption perception index has not significantly improved.[4]

Most attempts at conceptualizing corruption tend to focus on the giving and taking of 'bribe' or the unjustifiable use of one's position for

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[1] SG Goudappanavar, 'Critical Analysis of the Theories of Punishment' (2013) 1(II) JSS Law College Journal-Online <http://jsslawcollege.in/wp-content/uploads/213/05/CRITICAL-ANALYSIS-OF-THEORIES-OF-PUNISHMENT1.pdf > accessed 14 October 2016

[2]See Corruption Perception Index 2016' *Transparency International* (2016) <http://www.transparency.org/news/feature/corruption_perceptions_index_2016> accessed 20 January 2017

[3]Independent Corrupt Practices and other Related Offences Act 2000, Economic and Financial Crimes Commission (Establishment) Act 2004, Money Laundering (Prohibition) Act 2012. Extant criminal laws i.e. Penal Code law as well as the Criminal Code are replete with provisions that punish corruption. See also International Conventions signed by Nigeria as the United Nations Convention against Corruption (2005) (UNCAC).

[4] See comment by Babajide K. O. (A veteran Journalist in Lagos Nigeria) on TV Continental's primetime show 'Journalist Hangout' of 30 December 2016; that a Banker told him that Nigerians have found a way around BVN (Bank Verification Number). Other more recent cases of corruption in Nigeria include the 'Dasuki-Gate' where billions of dollars meant for the purchase of military hardware were allegedly diverted. Others are those of allegations of diversion of relief materials meant for IDPs in the North East, 'Budget Padding' allegations as well as cases of judicial corruption which led to the arrest by the Department of State Security (DSS) of some Supreme Court Justices amongst others.

'financial gain'. Regardless of the perspective from which one views it, what seems to underlie corruption is the undue use of one's power for personal gain; since the result of corruption transcends financial gain. Our point in this paper is that, in spite of the array of governmental interventions, in terms of policies, there does not seem to be any semblance of decline in the incidence of corruption in Nigeria. Instead, the culprits have continued to improve in their sophistry of the vice and are in fact becoming bolder by the day. It is common knowledge that law enforcement agents in Nigeria brazenly demand bribes on the roads and people are known to have lost their lives for failing to offer such bribes. While there is no shortage of literature in Nigeria on the root causes of corruption and why it has continued unabated; the malaise which has made nonsense of our institutions and is practically bringing our socio economic fabric to its knees, seem to elude any of the solutions proffered by Criminologists, penologists, scholars and policy makers over the years.

Inefficiencies in the spectrum of law enforcement is exploited by perpetrators to ensure that they are either not punished, or the law enforcement process is slowed or the punishment is inadequate. For instance the number of convictions or even trials is incomparable to the prevalence of corruption in Nigeria. This is an incentive for corrupt tendencies – since punishment, if any, will for instance require only the forfeiture of an infinitesimal percentage of the proceeds of corruption. A case in point is the pension fraud case of John Yakubu, (a former Deputy Director in the Police Pensions office) where an option of fine of N750, 000 was imposed on him and ordered to forfeit N325 million found in his account and several properties after pleading guilty to diverting about N27 billion.[5]

In the light of the foregoing it is therefore proposed in this paper to examine the punishment for corruption vis-à-vis adequacy of punishment in Nigeria's anti-corruption laws, the pace of corruption related trials and the likelihood of punishment for corruption in Nigeria with a view of making prescriptions to bolster the anti-corruption war.

Diagnosis of the Conundrum of Corruption in Nigeria

Black's law dictionary[6] defines corruption as an illegality and a fraudulent evasion of the law or an act of an official or a person position to wrongfully use his station to procure some benefit for themselves or another

[5] Sam Momah, *Nigeria Beyond Divorce: Amalgamation in Perspective* (Ibadan, Safari Books Ltd, 2013) 109

[6] 'The Law Dictionary' (*Black's law Dictionary Free Online Legal Dictionary,* 2nd Edition) <thelawdictionary.org/corruption/> accessed 10 April 2017

as against their duty. Transparency international [7] similarly describes corruption as the abuse of entrusted power for private gain. It further classifies corruption as grand, petty and political. It needs mentioning straightaway that though corruption manifests in different forms, the fundamental elements and its effect on societies remain the same. Countries therefore enact laws to criminalize its manifestations that appear to be prevalent. Hence corruption, though found in every country of the world, is defined by and punished as prescribed by its laws. So for instance until 1977 bribing officials overseas for purposes of 'obtaining and retaining' contracts was not an offence in the United States[8] and other industrialized nations.[9] What therefore amounts to corruption is as defined by the various anti-corruption laws which tend to address various aspect of corruption. These range from the code of conduct for public officers, to the criminal and penal code and then to specialized laws as the EFCC, ICPC laws as well as money laundering prohibition law etc. In Nigeria, corruption which has its roots from colonial times is prevalent in both the public and private sectors. In the public sector all the arms of government have been fingered to be corrupt.[10] Corruption ranges from the taking and offering of bribes by public officials for services rendered, diversion and embezzlement of public funds by public official, inflation of contracts to advanced fee fraud (referred to as 419; the section of the law that criminalized the offence). Others include Money Laundering. Diversion and embezzlement are the most common. The causes of corruption range from poverty, low pay for public officers, poverty, weak institutions and cultural acceptance of corruption.

Since the year 2000, Nigeria has consistently received negative ratings on the Transparency International's corruption perception index; 2016 not being an exception.[11] The fact that corruption is endemic in Nigeria has been subject of several learned as well as other academic treatises and research. Price Waters House Coopers (PWC) compared Nigeria to three other countries not as corrupt as Nigeria – Ghana, Malaysia and Colombia and concluded that Nigeria's economy which was worth $513 billion in 2014

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[7] Transparency International <www.tranparency.org/what-is-corruption/define> accessed 10 April 2017

[8] Foreign Corrupt Practices Act 1977

[9] Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (adopted in 1994, entered into force 15 February 1999) 2009 (OECD Anti-Bribery Convention).

[10] Emmanuel Ani 'All Arms of government are Corrupt – Osinbajo' *Daily Post* (Lagos 21 October 2016) http://dailypost.ng/2016/10/21/arms-government-corrupt-osinbajo/ accessed 10 April 2017

[11] 'Corruption Perception Index 2016' *Transparency International* (2016) <http://www.transparency.org/news/feature/corruption_perceptions_index_2016> accessed 20 January 2017

might have been 22% bigger if the level of corruption were closer to that of Ghana. [12] Corruption has resulted in inefficient institutions and poor economic indices. For instance tax to GDP ratio is about 8% compared to South Africa's 25%. Citizens' do not pay tax because of the belief that it will be squandered. [13] The nature of corruption include public and private institutions. The different faces of corruption in Nigeria include Public officers engaged in bribery, election fraud, internet fraud, corruption in schools especially universities, the police and even in religious places of worship.[14] Though most of it is money related, cases abound of misuse of office for personal gain. Causes of corruption range from greed, poverty and unemployment.

Functionalist perspectives suggest that corruption may be positive and grows because it provides a means of circumventing and manipulating the political and economic system which is unable to strive and cope with demands made on it. [15] Public perception of corruption in Nigeria is subjective, hence whether or not an act amounts to corruption depends entirely on who the culprit is. Groups view taking out of the public purse as having their share of the 'national cake'. Opinion often differs when cases of corruption are unearthed. This is fuelled by Nigeria's fractured political and social structure, characterized by mutual suspicion by its ethnic nationalities. Perception of corruption also differ on religious grounds.

One major reason corruption continues to grow in Nigeria is that, culprits do not get punished. This view upon which this paper proceeds is supported by several authors [16] who posit that the system has failed in ensuring people are punished for corruption. Studies abound on the inefficiency of the justice system (investigation and prosecution) in crime deterrence. Evidence from the United States tend to support the hypothesis

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[12] 'Corruption in Nigeria: The $20-billion hole in Africa's Largest Economy' *The Economist* (Lagos, 2 February 2016) <www.economist.com/news/middle-east-and-africa/21689905-most-nigerians-live-poverty-millions-would-be-spared-if-officials-stopped> accessed 23 January, 2017.

[13] Ibid.

[14] The Storey Report The Commission of Inquiry into the Administration of Lagos Town Council.

[15] Simon Odey Ering and others, 'Corruption in Nigeria: The Functionalist Perspective' 5 No. 3 (2016) .83.

[16] Oyinlola Oluwagmamiga Ayobami, 'Corruption Eradication in Nigeria: An Appraisal' (2011) Library Philosophy and Practice (e Journal) 542<http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1573&context=libphilprac> accessed 26 January 2017; See also Femi Okurounmu 'Fighting Corruption' in *Leadership Failure and Nigeria's Fading Hopes (being Excerpts from Patriotic Punches a Weekly Column in the Nigerian Tribune from 2004-2009*) (1st edn, Author House, 2010) p.119.

that the expectation of potential criminals with respect to punishment determine crime rates and enhancing efficiency and sanction in order to increase expected punishment reduces criminality.[17] It is now too common to see that public officials alleged to have corruptly enriched themselves from the public purse escape justice or if charged their cases drag on for several years on account of manipulation of a weak justice system.

Efficiency of Punishment in Crime Prevention Examined

The correlation between punishment and crime has origins from the foundations of human existence. Human history is replete with examples of punishment as consequence for offences.[18] John Milton's '*Paradise Lost*'[19] attempts a re-enactment of how Satan together with his angels were thrown down to earth by God as punishment for disobedience. This underscores the place of punishment in Christianity as well as other major religions in the world; from which, without prejudice to Charles Darwin's theory of evolution- the history of human existence is often drawn. From primitive societies to medieval times, as it is today, various forms of punishments for wrongs exist: which range from the very severe to light punishments depending on the perceived seriousness of the offence in any such community. It can then be asserted that historically, the spectrum of justice administration consist in what Goudappanavar[20] terms as the conceptual caravan of punishment; graphically captured thus; Act- Wrong- Offence- Crime- Punishment. This is the cynosure of the correlation between crime and punishment which is hinged on the assumption that mere denunciation of crime is not enough; it must be pushed to its logical end by punishing the offenders. Without punishment, the impression will be created that crime pays.[21]

It will also appear that most definitions and conceptions of punishment tend to reflect the correlation between crime and punishment. This is for example mirrored in the following definitions. Punishment means, '… [t]he redress that the commonwealth takes against an offending

[17] Maurice Kugler, 'Organized Crime, Corruption and Punishment' (2004) Stanford University Center for International Development Working Paper No. 214 citing G Becker 'Crime and Punishment: An Economic Approach' (1968) 76 Journal of Political Economy 167 and S Levitt 'Juvenile Crime and Punishment' (1998) 106 Journal of Political Economy 1156

[18] See allusions to punishment of Satan (Devil) by throwing him out of heaven in the Bible – Book of Revelation 20:10, 2 Peter 2:4. In Islam 'Shaitan' (Satan) roughly translated to mean 'rebel', 'evil' or 'enemy', refused to bow to man on Allah's (SWT) command hence was forced out of heaven. Quran 18:20.

[19] John Milton, *Paradise Lost* (London, Samuel Simmons, 1667)

[20] Goudappanavar, supra note 1.

[21] ibid

member'.[22]Here Punishment is viewed as some sort of social censure of certain acts by wrong doers. Hence punishment is a consequence of a wrong. Hans Kelson[23]described sanction as socially organized and consists in a deprivation of possession of life, freedom, or property to a person who has gone against societal norms.[24] According to Jeremy Bentham punishment is evil in the form of remedy for wrong which operates by fear,[25] while Johan Finnish has said that delinquent behavior of a person needs to be taught a lesson not with melody but with iron hand.[26]

The theories or purpose of punishment also underscore the correlation between crime and punishment. It must be noted that sanction has one important object, which is to eradicate self-help and private sanctions.[27] But while there seem to be agreement as to the necessity of punishment of crimes, whether as an end in itself or a means to an end, history demonstrates from primitive times to date that societies and scholars have differed on the rationale for imposing same. These differences are captured in the various theories of punishment which can be broadly classified as Utilitarian and non - utilitarian. What distinguishes these theories is their focus and goals. While utilitarian theories- Preventive (Restraint), satisfactory (compensatory), reformative (Therapeutic or corrective) and deterrent[28] are forward looking and concerned with the future consequence of punishment (correction) on the one hand, non-utilitarian theories are backward looking and interested in the past acts and the mental state of the offender (retributive). There are a few theories which consist in a mixture of the two theories because they are both forward and backward looking. The utilitarian theories argue that punishment is awarded to reduce crimes and used as means to an end.[29] In support of this view Jeremy Bentham has said, the principal end of punishment is to prevent like offences. What is past is just an act, the future is infinite. It is difficult to redress the evil done, but it is possible to take away the will to repeat it.[30] George Hegel and Immanuel Kant criticized and rejected the utility theory, and presented the contrast retributive theory of punishment, which is non-

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[22] M J Sethna, *Society and the Criminal* (3rd edn, Bombay N.M. Tripathi Pvt. Ltd. 1971) p. 236.

[23]*General Theory of Law and State*, (Translated by Anders Wedberg, Cambridge – Massachusetts, Harvard University Press, 1945)

[24], M D A Freeman, *Lloyd's Introduction to Jurisprudence* (17th edn, London: Sweet & Maxwell Ltd. 2001) p.282

[25] Goudappanavar, supra note 1.

[26] ibid

[27] Macklin Fleming,*Of Crimes and Rights*(New York: W.W. Norton & Company. Inc. 1978) p.102

[28] W Friedman, *Law in a Changing Society*, (2nd Ed., Delhi: Universal Law Publishing Co. Pvt. Ltd. 2008) p.225

[29] Goudappanavar, supra note 1.

[30]ibid p.5

utilitarian and hinged on the premise that punishment is not a means to an end but an end in itself. For instance in furtherance of this theory in 1949, Lord Denning appearing before the Royal Commission on 'Capital Punishment' expressed the view that punishment should reflect the revulsion felt by society. He said punishment should not be a deterrent but a denunciation of crime and in doing that some murders should be punished by death.[31] This tug of war between the utilitarian position championed by Jeremy Bentham and the opposition; backward looking view as well as the mixture of the two, continues to agitate the mind of policy makers and elicit divergent opinions on the basis and adequacy of punishment.

Thus whether one adopts the utilitarian principle or not the debate clearly underscores the correlation of crime and punishment. It further highlights the point which is strongly canvassed by this work, that punishment has an effect which is positive on the offender themselves, victim of the wrong as well as the society in the form of retribution, deterrence, correction or compensation etc. This is further supported by the different schools of thought to the extent that while they disagree on the utility or rationale of punishment, they agree without question that punishment must be applied to wrongdoers for the wrong they do. This is because it has a positive effect, albeit in assuaging the victims, compensating them and preventing others from committing the same offence or deterrence. Applying this to corruption cases therefore, regardless of the theory for punishing same, it is essential that offenders are punished. Otherwise if one looks at it from the utilitarian perspective the chance of the offender as well as others committing the offence is higher. And from the retributive perspective the impression will be created that; crime pays and will make other to lose faith in the judicial system and resort to self-help especially the victims.

It is thus clear from the foregoing discussion that the historical, conceptual as well as theoretical perspectives of punishment underscore the place of punishment in crime prevention. Punishment to be effective must be certain, applied in good time and adequately too. The succeeding parts of the paper hope to examine whether this link is effectively maintained in our anti-corruption laws as well as in its application by the judicial process.

Adequacy of Punishment in Nigeria's Anti-Corruption Laws.

Section 35 of the 1999 constitution (as amended) is to the effect that a person cannot be punished for an offence unless the offence is defined and punishment for it is prescribed by a written law. Hence discourse on the adequacy of punishment for corruption must consist in examination of the relevant laws. In view of the endemic nature of corruption in Nigeria several laws exist that define as well as prescribe punishment for several aspects of

[31] ibid.

corruption.[32] Clearly a look at our criminal laws and special legislations on corruption in Nigeria's justice system leans towards a mix of both utilitarian and non-utilitarian principles. This is because the punishments tend to focus on both retribution and deterrence. In Nigeria punishment for corruption range from forfeiture of assets or money, custodial punishment and/or fines. While this can effectively serve the purpose of reducing corruption, the problem in Nigeria is that the laws hardly get to be applied to the offenders. . Therefore, the problem in Nigeria has little to do with inadequacy of the punishments prescribed in the laws, but have a lot to do with the operators.

Noticeable Problems with the Legal Framework for Dealing with Corruption

Much as it is true that the problem in Nigeria has little to do with laws or indeed their adequacy. There are certain noticeable problems with the legal framework for dealing with corruption, which gives room for the operators to undermine the laws which if tackled will give more teeth to the fight against corruption. These problems include;

1. Whereas it is the tradition that most punishment sections of offences leave room for the exercise of some discretion by Judges (by setting the upper limit of punishments), some countries have evolved sentencing guidelines which guide judges in the exercise of that discretion. The guidelines contain aggravating as well as mitigating factors. Sentencing guidelines are necessary in Nigeria to fill in this gap. This is particularly more so in view of Nigeria's trajectory of judicial corruption. Courts in some cases impose light punishments in the face aggravating factors or give alternative of fines. It is commendable that efforts have been made by the issuance of the Federal High Court Sentencing guidelines 2015 and the Administration of Criminal Justice Act 2015. More can be done in the direction of making same applicable to corruption cases in all courts throughout the country.
2. Added to the above point is the fact that, laws that impose fines are unrealistic in view of the effect of inflation. Fines have been imposed which look ridiculous in view of the amount involved as a result of the depleting effect of inflation. It is our view that instead of prescribing

[32] These laws include The Constitution of the Federal Republic of Nigeria (CFRN) 1999, Criminal Code Law, Penal Code Law, Economic and Financial Crimes Commission Act 2004, Independent and Corrupt Practices Commission Act 2000, Money Laundering (Prohibition) (Amendment) Act 2012. Others are the Freedom of Information Act 2011, Fiscal Responsibility Act 2010, Code of Conduct Bureau and Tribunal Act, The Bank and Other Financial Institutions (Amendment) Act 1991, Failed Bank Act No 16 of 1996, Nigeria Extractive Industries Transparency Initiative (NEITI) Act, Foreign Exchange Miscellaneous Provisions Act No. 17 of 1995, Advance Fee Fraud and other Related Offences Act. 2006.

particular amounts the laws should rather use standard units or parameters or body be saddled with responsibility of determining the amount so as to keep pace with the present value of the Naira. Or there should be frequent review of the laws.

3. The constitutional provision restricting persons from vying for elective political offices after conviction,[33] which is some form of punishment for corruption is inadequate. In view of the endemic nature of corruption it should be a total ban instead of the 10 years. Some may argue that it will amount to double jeopardy i.e. punishing the convict twice. It is not, because if it were the ten years restriction could as well be taken as punishment. The total ban is some form of show of revulsion by the society of the offence and it is utilitarian because it will deter persons nursing the ambition to hold elective positions from committing such an offence. At any rate such persons cannot be admitted into certain professions, how much more then public service.

Trial of Corruption Related Offences within a Reasonable Time

It can hardly be disputed that charging an accused person to Court without undue delay has positive implications for the fight against corruption. The 'freshness of evidence' is an asset for prosecution that cannot be underestimated. Itse Sagay has severally defended the trial of Col. Sambo Dasuki (Former National Security Adviser) and others on the alleged diversion of monies meant for the purchase of military hardware to fight insurgency in the Northeast of Nigeria, by saying those cases are 'low hanging fruits'[34] that should be plucked and not a case of witch hunting. It is reckoned that this is because they were allegedly committed at the twilight of the immediate past administration, as such the evidence needed in terms of documents and witnesses to prosecute the case can be easily obtained. The chances of effectively and successfully prosecuting such cases immediately is higher than if it is left to some future time.

Also trial within a reasonable time is a constitutional right of an accused person in Nigeria.[35] This right of an accused person is guaranteed in the constitutions of many countries[36] and is also enshrined in International Instruments. For instance Article 14(3) (c) of the International Covenant on

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[33]Constitution of the Federal Republic of Nigeria 1999 (As Amended) (CFRN) s 66(1) (d)

[34] 'Special Courts coming for Corruption, Kidnapping, Others - Sagay' *Premium Times* (Lagos, 24 June 2016) http://www.premiumtimesng.com/news/headlines/205873-special-courts-coming-corruption-corruption-kidnapping-others-sagay.html accessed 10 April 2017

[35]CFRN (as amended) 1999, (n 29) s 35 (4)

[36] United States Constitution (6th Amendment), Constitution of Kenya art. 50(2) (e), Constitution of Uganda art. 23(6)

Civil and Political Rights guarantees persons in the determination of a criminal charge against them to trial 'without undue delay.' The scope of trial within a reasonable time depends on the laws of a country, which could range from flexible trials; left to the test of reasonableness or fixed timelines.[37] In Nigeria, the constitution as well as the criminal procedural rules have no fixed timelines for trials in criminal cases, but require that accused persons be tried within a reasonable time.[38] This guarantee covers both right to be charged to court within a reasonable time, as well as to have their trial, after they have been charged, to be disposed within a reasonable time. The test of reasonableness is subjective;[39] depending on the circumstances of a case. A court will usually take into account the time spent, the reason for the delay and the effect of the delay in prejudicing a trial to determine whether a case has been determined within a reasonable time. Regrettably in Nigeria Open Society Foundations a non-governmental organization in its report in 2015 has said as at October 2012, 71% of the prison population in Nigeria 'were detainees awaiting uncertain trial' and that the average pretrial detention period was 4 years.[40]

What is germane to this work is that apart from the benefits that this right affords for the accused person, trial within a reasonable time or speedy trial has implications for the system. Once allegations of corruption are quickly taken up and prosecuted it deters others. However, where the impression is created that trials can be prolonged, in most cases by the interference of the accused persons in bringing frivolous applications or in some cases influencing the prosecutors or judges to slow the process and ultimately delay being punished corruption is encouraged.

In the end failure to swiftly deal with corruption cases undermines the fight against corruption as it has these legal consequences;

a. Evidence is likely to be lost with time. It is common in Nigeria to hear that officials who conducted investigations are either transferred or they have in fact retired. Our poor administrative structures leads to poor record keeping and corrupt officials manipulate or destroy evidence. Speedy trials within a reasonable time reduces the chances of loss of evidence as evidence will be fresh at the time of trial.

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[37] United States Speedy Trials Act (As Amended) 1979 sets time limits for trial of Federal Criminal Prosecutions.

[38] *Augustine Eda v Commissioner of Police* (1982) NCLR 219

[39] *E A Lufadeju v. Evangelist Bayo Johnson* (2007) 8 NWLR (pt. 1037) 535. 2 Per Aloma M. Muktar (JSC)

[40] See ECOWAS court decision in *Alade v. Federal Republic of Nigeria* ECW/CCJ/APP/05/11 <https://www.open societies foundations.org/litigation/ns.orgalade-v-federal-republic-Nigeria> accessed 15 December 2016.

b. Speedy trial also serves an important function in deterrence of crime as studies have shown that the shorter the time between the violation and the punishment, the more effective the deterrent effect.[41]

What is the probability or certainty of eventual punishment of corruption related offenders in Nigeria?

In Nigeria, the logic in these two apothegms have been turned on their head; that 'Crime does not pay' and 'ninety nine days for a thief and a day for the victim'. In Nigeria, crime pays and every day seems to be for the thief. This is because the probability of punishment for crimes is very low. This is apparent from the statistics of persons accused of corruption vis-à-vis actual conviction and punishment or concluded trials. For instance the EFCC reported through its spokesperson in 2015, Wilson Uwujaren that it had secured only 243 convictions between 2013 and 2014.[42] This number is measly in the light of the prevalence of corruption in Nigeria and against the background of the existence of about 1500 pending cases filed by the commission as at 2012 according Farida Waziri the EFCC chairperson.[43] The chairperson also said that the EFCC had recorded 600 convictions out of 2, 265 cases investigated and recovered about $11 billion from inception in 2003 to 2011. Though this may look like a lot, the volume of investigations, trials or resolution of corruption cases is not commensurate to the degree of the prevalence of corruption.

Statistics abound that several cases of corruption have reared their ugly heads from independence in 1960, which have received little or no attention in terms dealing with the culprits or resolving the allegations legally (by either convicting or absolving the protagonists).[44] The Halliburton bribery scandal as well as the cases of former State Governors especially Ibori's case (Delta State) readily comes to mind. These are cases where though the culprits were either tried or convicted or certain persons or companies were found to be culpable in other countries for offering bribes,

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[41]Jeffrey Rosen, 'Prisoners on Parole'*NY Times*, 10 January 2010. <http://defensewiki.ibj.org/index.php/right -to-a -speedy-trialcite-note-2.>accessed 15 December 2016

[42] 'EFCC's Scorecard amid Knock Downs and Drag Outs' *The Nicheeng,*22 March 2015 <http://www.thenicheeng.com/efccs-scorecard-amid-knock-downs-and-drag-outs/> accessed 13 November 2016

[43] Farida Waziri, 'Economic and Financial Crimes Commission's (EFCC) Critical role in growing the Economy' being a paper presented to the Nigerian-British Chambers of commerce on the 7th may 2011<https://ww.proshareeng.com/news/nigeria%20economy/theefcc/Economic-and-Financial-Crimes-Commission's-Critical role in growing the Economy/14392>accessed 12 January, 2017

[44] 'EFCC's Scorecard amid Knock Downs and Drag Outs'*, supra* note 42.

Nigeria has failed to try successfully and in some cases not even attempted to try the persons involved in receiving the bribes for political reasons or failure of the judicial system. Corruption typically has been the basis for change of governments since independence, whether military or civilian and yet most of the allegations have remained unresolved. Some examples of the corruption allegations through Nigeria's history through to independence include the claims of acquisition of a bank by Azikiwe Nnamdi through a family firm in 1944, which paid up capital investigations showed was from the Eastern Region Finance Corporation, Adegoke Adelabu had to resign as district council head on grounds of corruption and there were several cases of corruption at the native authority in Bornu which led to the enactment of the Customary Presents Order.[45]Since independence allegations of corruption have trailed nearly all administrations which is peaked during Ibrahim Babangida's regime in 1985.

Not much has changed in view of the barrage of allegations and very little is being done to resolve the allegations of corruption all over the place. Some examples of the allegations flying in the public domain in 2016 with a few number of them being tried with little progress being made include;

1. $2.2 billion illegally withdrawn from Excess Crude Oil Accounts, of which $1 billion supposedly approved by President Jonathan to fund his re-election campaign without the knowledge of the National Economic Council made up of State Governors and the President and Vice President.[46]
2. Massive scam in weapons and defense procurements, and misuse of 3 trillion Naira defense budget since 2011 under the guise of fighting Boko Haram.
3. Diversion of $2.2 million vaccination medicine fund, by Ministry of Health.[47]
4. NIMASA fraud under investigation by EFCC, inclusive of accusation of funding PDP and buying a small piece of land for 13 billion Naira.

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[45] Robert L Tignor, 'Political Corruption in Nigeria before Independence' (1993) Vol. 31 No. 2 *Journal of Modern African studies.*

[46] 'Oshiomhole: Okonjo-Iweala stole $1billion for Jonathan's campaign'*The News,* Lagos, 13 July 2015, http://thenewsnigeria.com.ng/2015/07/oshiomhole-okonjo-iweala-stole-1billion-for-jonathans-campaign/ accessed 10 April 2017

[47] Victoria Ojeme 'N1.9bn Ebola fund scam: Ministry staff stop arrest of officials' *Vanguard* (Lagos, 12 June 2015)< http://www.vanguardngr.com/2015/06/n1-9bn-ebola-fund-scam-ministry-staff-stop-arrest-of-officials/> accessed 10 April, 2017 accessed 10 April 2017

5. NDDC scams and multifarious scams including 2.7 billion naira worth of contracts that does not confirm to the Public Procurement Act.[48]
6. Police Service Commission Scam investigated by ICPC that revealed misappropriation of over 150 million Naira related to election related trainings. ICPC made refund recommendations, but many analyst indicated prosecution was more appropriate.

From the above statistics, it is clear that the probability of punishment for corruption in Nigeria is slim for a number of reasons; which range from political patronage (for instance it was reported that former President Olusegun Obasanjo had records that Legislators were corrupt but the reports were used to blackmail, rather than try them.),[49]lack of political will and inefficiencies of the law enforcement mechanisms. This seeming certainty that one is unlikely to be punished is an incentive for corruption.

Corruption, Punishment and the Justice System in Nigeria

Discussions on punishment for corruption mostly (if not entirely) should skirt around the role of the two key components of the justice sector. The investigative and prosecutorial arm as well as the adjudicatory component. In our adversarial legal system the responsibility of the first arm (investigative and prosecutorial) is to get evidence of infractions of corruption laws as well as to present it before the appropriate tribunal. This arm comprises of the Police and officers of special bodies as the EFCC or ICPC saddled with powers to carry out investigations on the one hand and the office of the Attorney General[50]or his agents as well as those special bodies as the EFCC, the Police etc. who can in addition to their powers to investigate prosecute offenders.[51] The second arm is the judiciary comprising of the courts. The courts have the responsibility to adjudicate on cases of corruption submitted to it. It has the duty to within a reasonable time hear and decide on the cases and make a verdict as to the culpability of the persons charged. This arm plays a very important role in this regard, in that it has the

[48] Ibanga Isine 'Multibillion Naira contract scam rocks NDDC' *Premium Times* (Abuja 8 August 2015) www.premiumtimesng.com/news/headlines/188019-multibillion-naira--contract-scam-rocks-nddc.html accessed 10 April 2017

[49] Otive Igbuzor, 'The Buhari Administration and the War against Corruption.'<http://www.otieigbuzor.com/-the-Buhari-administration-and-the-war-against-corruption-in-nigeria/> accessed 12 January 2017.

[50]CFRN 1999 , s 174(1) (a)

[51]Administration of Criminal Justice Act 2015, s. 106. The Prosecutor must be a Legal Practitioner. The section is an affirmation of the Supreme Court's decision in *FRN v Osahon* (2006) 5 NWLR (Pt. 973) 361. Though the Court did not limit the Police powers to Legal Practitioners as provided by s 106.

responsibility of imposing the appropriate punishment as the case may be. Punishments imposed by courts, where the appeal process has been exhausted is final subject to the power of the president to commute punishments or pardon offenders.[52]

The performance of the justice sector i.e. the two key components of the justice sector is clearly not too impressive. The failings of those exercising investigating and prosecutorial as well as judicial powers which have contributed to the failure of the fight against corruption by undermining the conceptual link between crime and punishment which has been shown must exist to lower corruption include;

1. Absence of synergy between investigating and prosecuting bodies. This lack of synergy results in delays in trial. In practice many cases have not been charged to court in the name of waiting for advice from the Director of Public Prosecutions (DPP). This often happens where cases end up with the Police on account of the lack of resources to obtain the advice. The resource could be as little as money to duplicate the case file to be sent to the DPP for advice.[53]
2. Secondly and in a related manner is a situation where accused persons are not brought to court hence cases must be adjourned. Lack of synergy between the prisons and the Prosecutors accounts for these situations, hence resulting in the delay of trials.
3. Corrupt officials do not investigate, charge offenders improperly or for lesser offences deliberately, or fail to diligently prosecute cases. Our view is that too much discretion is left to law enforcement agents as to the manner allegations of corruption are handled. So that if they too are influenced by politics or nepotism the process of bringing culprits to book is subverted and the suspected offenders escape punishment. In other climes, as the United States for instance, the constitution as well as the Speedy Trials Act and other administrative regulations sets timelines for charging suspects to court
4. Also we find the NBA President's[54] view that investigative and prosecutorial powers be separated as far as the EFCC is concerned as germane. However we will like to add that it is essential that the legal framework separating the two should ensure effective synergy between the two bodies to exercise those powers so that the experience of the Police and the offices of the Attorney will not happen where they are often blaming each other for delays.

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[52]CFRN 1999 (n. 29) s 175. State Governors have similar powers.

[53]M A Agbonika, 'Delay in the Administration of Criminal Justice in Nigeria: Issues from a Nigerian Viewpoint'. (2014) Vol. 26. *Journal of Law, Policy and Globalization* p.134

[54]See Text of Speech of A. B. Mahmoud (President of the Nigerian Bar Association) to mark the International Anti-Corruption day on the 9th December 2016.

5. The judiciary needs to do more in terms of the average time cases take to be resolved. Admittedly, certain delays are unavoidable but more needs to be done to fast track trials especially in the direction of judges taking more control of their courts. Thankfully the administration of criminal justice act has addressed some of the notoriously huge gaps often exploited to delay trials, namely interlocutory appeals and the requirement that trials must proceed day by day to reduce adjournments. What is required is firmness of the judges, where they need to be, so as to fast track trials. Secondly, corruption of judges has been an issue in Nigeria which has served to weaken the correlation between crime and punishment in that culprits of corruption on account of this escape punishment. The ethics of the profession needs to be reined in by the parent body of the Bench – the National judicial Council to sanitize the arm of government. Appointment process to the Bench needs to be transparent and clear so that those appointed will be above board. Part of the problem may be occasioned by professional incapacity. Training and funding could go a long way in ensuring that culprits of corruption are punished.

Conclusion

This work has shown that there is a strong correlation between crime and punishment which could be positively deployed to reduce the incidence of corruption in Nigeria. It has been argued that corruption thrives easily because offenders know that they could manipulate the system and slow the trial process (and punishment ultimately), get light punishment or avoid punishment altogether. Where punishment is certain, swift and adequate; it is believed corruption will significantly reduce in Nigeria. The experience of countries that have certain and strict repercussions for corrupt tendencies as China, where over one million people were punished for corruption in three years show clearly the effectiveness of punishment in reducing corruption. This is a necessary component of the utilitarian theory of punishment premised on the supposition that once institutions and structures are put in place to ensure punishment (whether custodial, fines, community service etc.) is meted out or there are certain consequences for one's actions, only then will corruption be reduced to its barest minimum. This paper argues that Nigeria has sufficient laws to curb corruption, but the institutions of state have failed to implement them by ensuring consequences for ones actions and concludes by making quick prescriptions on how to ensure the certainty of punishment in the following recommendations.

The following recommendations are hereby suggested as a means to boost the anti-corruption war in Nigeria:

1. Even though laws prescribe maximum punishment for crimes in Nigeria, it is recommended that sentencing guidelines should put in place to

apply to all courts that have power to try cases of corruption so as to make for some level of uniformity in sentencing and minimize cases of abuse.

2. Fines should be determined by the use of a standard unit so as to take into account the effect of inflation. This will avoid situations where with time fines become ridiculously low because of inflationary trend.
3. We join the call for Special courts to be established to handle corruption cases. This is because corruption is more endemic and affects our national fabric as elections that have special tribunals. As a matter of factthe greatest issue threatening our electoral system is corruption. Special courts to handle corruption case will ensure faster treatment of such matters.
4. Procedural rules need amendment so that there should be time limit for determining corruption cases as in electoral matters to reduce the possibility of delaying trials. This should however be with an option for extension by an independent tribunal or superior court which must be satisfied that there is need for the extension and neither the court nor the parties was responsible for the delay. The Speedy Trials Act 1979[55] in the United States, sets time limits for trial of cases. If same can be done for electoral matters, how much more corruption cases. Albeit corruption cases are crimes as opposed to election matters that are civil in nature; time limits can be fixed with necessary modifications as to allowances to be made so as not to defeat the ultimate ends of justice. The time frame should generally state the time within which charges must be filed failing which a case can be dismissed on the objection of the accused person and time within which hearing and judgment must be delivered.
5. Return of cases by judges should not just be based on number of cases per month but also account must be taken of the time taken to determine the case.
6. Infrastructure in courts must be improved. It is commendable that the budget of the judiciary has been increased in 2017 budget to 100 billion from 70 billion. While there is room to do more, it is hoped that the budget is funded or cash backed.
7. Criminal laws and the constitution tend to focus more on the accused person and has provided safeguards for them without commensurate safeguards for the victim in terms ensuring that within a reasonable time justice prevails.
8. The place of capacity building and remuneration for law enforcement agents, anti-corruption agencies and courts cannot be overemphasized. Also the manual for prosecution of corruption cases developed by the

[55] See The Speedy Trials Act, supra note 37.

presidential advisory committee on the fight against corruption must be given more teeth and strengthened.

9. Nigeria must strongly consider retributive theory in its formulation of anti-corruption laws and policies as Indonesia has done with the endemic problem of drugs trafficking and use. Though not advocating death penalty, punishment need to be stiffer.
10. Persons convicted of corruption must be completely shut out from the political space for life as opposed to the current constitutional 10 years.
11. The culture of whistle blowing must be deeply entrenched with protection for those who raise alarm. It is commendable that the finance ministry has taken the lead in this direction.
12. The prerogative of mercy should not apply to persons punished for the crime of corruption. The exercise of the power to pardon or prerogative of mercy has the capacity of undermining the fight against corruption where persons who have been punished for corruption are pardoned purely on political grounds. Additionally persons convicted of corruption should have National Honours conferred on them revoked.