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Beyond Recrimination: The Rule of Law and Nigeria's Anti-graft War

Isaac Olawale Albert*

> The idea of rights is nothing but the concept of virtue applied in the world of politics. By means of the idea of rights, men have defined the nature of license and of tyranny … no man can be great without virtue, no any nation great without respect for rights (Tocqueville 1991 [1835]: 219).

Abstract

The existing literature on corruption in Nigeria and several other parts of the world focuses exclusively on recrimination, namely the securitisation or demonisation of the people accused of corruption and privileging the need to punish them. Atomised in these extant studies is the fact that anti-graft regimes equally have the responsibility to protect the rights of these accused persons in line with the principle of the rule of law. Refusal to protect these rights constitutes a form of corruption in itself. This article considers this issue as crucial to the assessment of the anti-graft war in Nigeria, since 2015 when Muhammadu Buhari became the president of the country. Attention is called to three of the nagging rule of law issues in the country seeking to be actionably addressed: (i) the abusive manner in which some of the accused persons are apprehended; (ii) how they are subjected to 'media trial' though the government eventually loses many of the celebrated cases; and (iii) how the Federal Government disobeys court orders to release some of the accused persons. This questions the credibility of the ongoing anti-graft war in the country and casts an air of authoritarianism around the regime of President Muhammadu Buhari. What Nigeria needs at this moment, in its democratisation effort, is an anti-corruption process that is based on the rule of law. Suggestions are made on how to deal with some of the emerging issues.

* Institute for Peace and Strategic Studies, University of Ibadan, Nigeria.
Email: ioalbert2004@yahoo.com

Résumé

La littérature existante sur la corruption au Nigéria et dans plusieurs autres régions du monde porte exclusivement sur les récriminations, à savoir la titrisation ou la diabolisation des personnes accusées de corruption et privilégiant la punition à leur infliger. Atomisé dans ces études est la responsabilité de protéger les droits de ces accusés qui incombe aux régimes anti-corruption, conformément au principe de primauté du droit. Le refus de protéger ces droits constitue une forme de corruption en soi. Cet article considère que cette question est cruciale pour l'évaluation de la lutte anti-corruption au Nigeria depuis 2015, date à laquelle Muhammadu Buhari a été élu président du pays. L'attention porte sur trois problèmes récurrents de règle de droit qui doivent être traités de manière agressive dans le pays : (i) la manière abusive avec laquelle certaines personnes accusées sont appréhendées, (ii) la manière dont elles sont soumises à des «procès médiatiques» dont beaucoup sont perdus par le gouvernement (iii) l'obstination du gouvernement fédéral à ordonner aux tribunaux de libérer certains des accusés. Cela remet en question la crédibilité de la lutte anti-corruption en cours dans le pays et projette une image d'autoritarisme du régime du Président Muhammadu Buhari. À l'heure actuelle, le Nigéria a besoin d'un processus de lutte contre la corruption fondé sur la primauté du droit. Des suggestions sont faites sur la manière de traiter certaines des questions émergentes.

Introduction

Nigeria is richly blessed with material and human resources. However, bad governance and corruption make it difficult for the country to harness its great potentials and make any steady movement towards sustainable development. Hence, the country remains one of the poorest in the world. To deal with the hydra-headed problem of widespread corruption, several federal institutions have been established by successive regimes in the country. These include the Code of Conduct Bureau, the Recovery of Public Property Act 1984, the Miscellaneous Offences Act 1984, the Bank and Other Financial Institutions Act 1991, the Failed Banks (Recovery of Debts) Act 1994, the Advance Fee Fraud Act 1995, the Nigeria Drug and Law Enforcement Agency Act 1998, the Nigerian Deposit Insurance Corporation Act 1998, the Independent Corrupt Practices and Other Related Offences Commission Act 2000, and the Economic and Financial Crimes Commission Act 2004. There is also the Monitoring of Revenue Allocation to Local Government Act 2006, the Money Laundering Act 2007 and the Public Procurement Act 2007. That corruption persists in Nigeria and indeed is assuming epidemic proportions is to suggest that

these agencies have performed below expectations. Consequently, Nigerians decided during the 2015 election to appoint a president they believed could deal with the corruption cases in the land with deserved vigour. This was the context under which Muhammadu Buhari came to power in 2015.

Unfortunately, many of the tried high-profile corruption cases handled by the Buhari administration failed in court on technical grounds. The core focus of this article is not so much on the failure of the corruption cases but on the civil liberty questions in the handling of the accused persons. This issue is poorly treated in existing studies and an attempt is made here to include it in anti-corruption discourses. The article does not deny the reality of corruption in Nigeria; neither does it aim to say nothing has been achieved by the administration of President Buhari. It simply insists that due process must be followed by the Nigerian state as it fights corruption; and the rights of accused persons must be respected.

Theoretical pathway

Corruption is considered a criminal activity and a form of human rights violation, in the sense that it puts resources that should be in the hands of the generality of the people into the pockets of a select few who might ultimately use such resources to the disadvantage of the society. It is a crime against humanity: a serious offence against hardworking citizens and the state that is saddled with the responsibility for defending them against subversive forces. It destroys a society's social capital and has a negative effect on a people's happiness (You 2006; Helliwell 2006). Different countries of the world have mechanisms for curbing the menace.

It is unfortunate that scholars are wary of writing about the problem and the means for dealing with it. America is not an exception to this general picture. As Johnston (2005: 809) observed, 'American political science as an institutionalized discipline has remained uninterested in corruption for generations'.

In 2016, the UN Office on Drugs and Crime, Country Office in Nigeria published a *Bibliography of Corruption in Nigeria* (UN 2016) in which it was clearly shown that the study of corruption is not popular globally. While taking a critical look at the Nigerian picture, data from other parts of the world were showcased and the period covered was 1957 to 2013. Within this period, Nigeria recorded the highest number of publications on corruption in the world: 332, against America's 66, the United Kingdom's 61, and Switzerland's one (*ibid.*: 6). Of these Nigerian publications, 287 came from Political Science, 97 from Economics, 39 from Law and 28 from Religious Studies (*ibid.*: 5). Most of the Nigerian works were published from 1999, when Nigeria transited to civil rule, to 2013. The highest number of

publications came out from 2006 to 2007 (*ibid.*: 4). One peculiar thing that came out of these publications is that they are silent on issues relating to the human rights of accused persons. They focused largely on recrimination.

The foregoing notwithstanding, some pictures are emerging globally on anti-graft measures. Fighting the menace could unfold in two major ways. The first (soft approach) is by attacking the root causes of corruption through gradual institutional and societal transformation in a manner that would make corruption less attractive to the people. In this case, people are paid good wages and all efforts are made towards ensuring that people have fewer incentives for engaging in corrupt practices. The second is the coercive (hard) approach, in which the state tries to stamp out corruption by coming down heavily on individuals and corporate bodies considered corrupt. Strong state institutions are needed for ensuring the success of the two approaches (Mauro 1995; Rose-Ackerman 2004).

What are these state institutions and what constitutes their strength when it comes to the fight against corruption? The three core institutions needed here are the executive, legislative and judiciary arms of government. Each of them has key roles to play in ensuring the success of an anti-graft regime. They must build synergic relationships for ensuring the success of the war. The connecting rod is the rule of law. In this respect, the executive would propose the anti-graft laws, the legislature would pass the laws and carry out the oversight function of ensuring that the laws are obeyed, and the judiciary would deal with cases of infraction of the laws, not only by the individuals and bodies for which the laws were created but also by the government pursuing anti-graft policies. The connecting rod of the different levels of intervention is adherence to the rule of law by these institutions.

To what extent is the rule of law observed by those engaged in the anti-corruption war? This is the question this article attempts to answer, with focus on the unfolding situation in Nigeria. The take-off point for this kind of analysis is the World Justice Project's definition of the rule of law in a manner that emphasises the significance of the following four universal principles: (i) the government and its officials and agents as well as individuals and private entities are accountable under the law; (ii) the laws are clear, publicised, stable and just, are applied evenly and protect fundamental rights, including the security of persons, property and certain core human rights; (iii) the process by which the laws are enacted, administrated and enforced is accessible, fair and efficient; and (iv) justice is delivered in a timely way by competent, ethical and independent representatives and neutrals who are of sufficient number, have adequate resources and reflect the make-up of the communities they serve.

The main thrust of the rule of law discourse is that government officials and citizens are bound by the law and will abide by it. This is about equal access to the law and equality before the law. The definition of the rule of law, provided by the United Nations Security Council (UNSC) captures these essential elements as being:

> a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with *international human rights norms and standards.* It requires, as well, measures to ensure adherence to the principles of supremacy of the law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, *participation in decision-making*, legal certainty, avoidance of arbitrariness and procedural and legal transparency (UNSC 2004).

In this respect, there are three distinct features of rule of law discourses. They are (i) government limited by law, (ii) formal legality, and (iii) 'the rule of law, not man'.

A society pursuing anti-graft policies must establish its innocence by showing respect for the civil liberties of all citizens. Those accused of any crime, no matter how weighty, must be presumed to be innocent until the cases against them have been proven beyond reasonable doubt. They have some basic rights that must be respected. The paradox is that those handling them must abide by some non-negotiable fundamentals of a fair trial.

On the contrary, those handling corruption cases are often so sentimental about their enterprise that they assume that the accused persons are guilty as charged. Attempts are made to tamper with the trials in a manner that ensures convictions. It is notable that studies on anti-corruption hardly ever treat this fundamental issue as a democratic practice. The studies are often on recrimination: the establishment of the nature of the corrupt practices and how they are punished or not punished.

This article begins on the note that any anti-graft task must confront four core stakeholders, each with their own rights and duties: the accused person, the prosecuting authority, the judge in the matter, and the public whose basic rights are considered to have been violated by the alleged corrupt practices. Human rights standards presume that the accused person is innocent until the case is proven beyond reasonable doubt. In this way, the burden of proof rests with the prosecuting authority that the person actually committed the offence, and the judge bases judgment on the evidence provided by the jury and the defence of the accused person. To what extent can these principles be applied to the ongoing anti-graft war in Nigeria? What are the present challenges in Nigeria?

Questionable 'sting operations'

The first major problem with the anti-graft war in Nigeria pertains to how the accused persons are interdicted. In most cases, their homes are broken into, in some cases at night, and several of them have their property damaged in the process without any compensation, even when security operatives responsible for the operations find nothing incriminating against the suspects. The outcomes of these security operations are usually presented to viewers at home on the many television channels in the country. Broken doors, windows, vaults, tables and sometimes the cash recovered from the homes are shown to viewers. On the other hand, viewers of such news are not told that the consent of the property owners was obtained before they were broken into or whether they refused to open the buildings and the structures in them peacefully. Such buildings are usually sealed up at the end of each operation.

A good example to illustrate the nature of this problem is the experience of the former Minister of the Federal Capital Territory (FCT), Bala Mohammed, who has had his home at Asokoro Abuja seized since May 2016 without the Economic and Financial Crimes Commission (EFCC) granting him and members of his family the opportunity to leave with any of their personal effects. This approach to law enforcement can be deemed insensitive to human security, more so because the matter is yet to be resolved more than one year later. Having waited endlessly to be granted access back to the building, Mohammed had to approach a High Court of the FCT, Gudu District, Abuja on 7 June 2017 seeking to be granted the permission to retrieve his personal effects from the building (Richards 2017: 43). He is still waiting for the matter to be decided. There are several cases like this, most especially in Abuja, a city littered with many seized private buildings and hotels.

Nigerians are not scared of the abuses associated with property seizures as much as of how individuals accused of corruption by the government are stalked and arrested. In July 2017, Mrs Patience Jonathan, the wife of the immediate past president of Nigeria, through her lawyer, Granville Abibo, accused the EFCC of bugging her phone lines and sending threatening text messages to her (Akinkuotu and Hanafi 2017: 7). Mr Abibo called attention to another particular experience of the former First Lady in the following terms:

> On May 3, 2017, officials of the FIRS, in a convoy of about 20 trucks and over 70 personnel, raided our client's NGO – Aridolf Jo Resort Wellness and Spa Limited – situated at Kpansia Expressway, Bayelsa State, and orchestrated a massive destruction of personal properties belonging to our client without

> any lawful court order or search warrant and caused mayhem there under the guise of trying to collect unpaid taxes without following any due process provided by the law to do so (Akinkuotu and Hanafi 2017: 7).

Before this particular experience, Mrs Jonathan had petitioned the House of Representatives on how she was being constantly harassed by the EFCC and the National Drug Law Enforcement Agency (NDLEA).

The most controversial of the anti-graft 'sting operations' were the ones conducted against some Nigerian judges arrested in October 2016 by the Department of State Service (DSS) over corruption allegations. The arrests were based on petitions against them and the huge sums of money found in their personal accounts as revealed by Bank Verification Numbers (BVNs). Nigerians were happy with the arrest of the judges, given the age-long criticism of the rate of corruption in the country's judiciary. But the ways the judges were arrested were considered subversive of due processes in the country. For example, the arrest of one of them, Justice Adeniyi Ademola of the Federal High Court, was done at 1.00 am.

Narrating how he was arrested, Justice Ademola observed that he initially mistook the DSS operatives for armed robbers. They numbered up to 45 and were masked. They stormed his official residence at House 30, Ogbemudia Crescent, Apo Legislative Quarters, Abuja. He claimed to have been woken up by the operatives' loud sound of banging, breaking and hitting. When they forcefully gained entrance into the building they showed him a search warrant but declined the suggestion that Ademola should be allowed to call his lawyer. They arrested him and told him that the action was based on 'the petition of Hon. Jenkins Duvie dated April 4, 2016 to the National Judicial Council and granting bail to Col. Sambo Dasuki and the unconditional release of Nnamdi Kanu' (Nnochiri 2016b).

This was widely condemned by some Nigerians, most especially lawyers, who consider it to be a violation of the principle of rule of law. The Nigerian Bar Association reacted sharply to the arrests. First and foremost, it observed that if the Nigerian state has any problem with any judicial officer, the matter ought to have been referred to the National Judicial Council for processing, and if the security agencies in the country were to wade into such matters at all, the judges ought not to have been treated as they were handled. Breaking into the home of a High Court judge discredits the Nigerian judicial system. Commenting on this, Yunus Uztaz, a Senior Advocate of Nigeria (SAN), declared:

> The action the DSS took against these judges was very bad. It is not good at all. You cannot go and arrest a judge in his house at 1am. This is not a military era …. Nobody is saying that if a judge committed an offence that

> he should not be questioned. We operate a democratic system that is based on the principle of the rule of law. Going to waylay judicial officers in their home around 1am cannot be an example of the rule of law in action. It is not done in any civilised society…. What the DSS did is in clear breach of separation of powers and laid down procedure for doing things. It was an invasion of the judges' right to privacy (Nnochiri 2016a).

Similarly, a human rights lawyer, Mr Ebun Olu-Adegboruwa, condemned the sting operation. He argued that any fight against corruption must be done in accordance with acceptable standards and principles of law. He described the scenario as 'breathing down on the judicial arm of government under the guise of fighting corruption' and as a 'mindless invasion of the homes of judges by the DSS' which he considered 'totally condemnable' on the grounds that 'the judiciary is the arm of government that stabilizes democracy and so, should not be exposed to ridicule or opprobrium' (*Vanguard* 2016). A constitutional lawyer, Mr Paul Umuzuruigbo, was also opposed to the idea of the anti-graft policy of the government violating stipulated rules and procedures. He opined that:

> Any fight against corruption must be done under the rule of law, and there is no law that authorizes the invasion of the home of a judge at an unholy hour of the night …. Being public officers, there is no way these judicial officers would have absconded or run away from normal arrest during the day, if need be. It is the height of lawlessness and gross intolerance to go about the arrest of judicial officers in the way and manner played out by the DSS (*Vanguard* 2016).

Discussion of the matter by the Nigerian public called attention to two issues: (i) the propriety of arresting and trying judges for corruption; and (ii) whether it was proper to have broken into their homes as was happening. The majority of lawyers who spoke on the matter do not see anything wrong with the trial of a judge but in the way they were mishandled. For example, a constitutional lawyer and human rights activist, Mr Kayode Ajulo, argued that: 'If the judges flouted the law, nothing stops them from being investigated. What I am however not comfortable with is their trial in the media …. The DSS have the powers to conduct sting operations. It is done even in the advanced countries. So far that procedure was followed, it is allowed. Sting operations have its own procedure …. If the judges did anything wrong, they should be investigated. I am part of the people that believe that our judiciary should be cleansed. The DSS must have acted on information they received. In our Criminal Act, there are times you can arrest people without a warrant, one of such example is if an offence is committed in your presence …. However, no matter the circumstance, the law must be allowed to follow its due course' (Nnochiri 2016a).

However, there are some Nigerians who believe that fighting corruption requires some of the draconian steps taken by Nigerian law enforcement agencies. One of them is a Lagos-based lawyer, Mr Justice Chimezie, who argued that Nigerians should bother less with whether or not the arrest of the judges was constitutional. What should be uppermost in the minds of the people, in his opinion, is that some offences had been committed and must be punished. According to him, 'Whether the arrest is constitutional or not, the fact still remains that there are allegations of corruption hanging on the necks of these judges. The onus resides with them to establish their innocence of the allegations. I think we must learn to put aside sentiments in dealing with issues that touch on national consciousness' (Nnochiri 2016a).

The Minister of Justice and Attorney-General of the Federation, Mr Abubakar Malami, joined the public debate on 16 October 2016 by releasing a legal review from the presidency in which it was claimed that the DSS complied fully with extant laws by conducting the raid against the judges. It was argued that staff of the DSS are conferred with the powers of Superior Police Officers in the discharge of their responsibilities as they relate to searches and arrests. The DSS was said to have followed Section 148 of the Administration of Criminal Justice Act (ACJA), which provides that: 'A search warrant may be issued and executed at any time on any day, including a Sunday and public holiday.' Section 149 of the ACJA provides for how the search can be conducted in the following terms: '(1) Where any building or other thing or place liable to search is closed , a person residing in or being in charge of the building, thing or place shall, on demand of the police officer or other person executing the search warrant, allow him free and unhindered access to it and afford all reasonable facilities for the police officer or other person executing the search warrant may proceed in the manner prescribed by Sections 9, 10, 12 and 13 of this Act.' It was argued that Sections 9, 10, 12 and 13 allow the DSS to use force in the search of a person arrested. It makes it legal for them to break open any outer or inner door or window of any house or place whether that of the suspect to be arrested or any other person or, otherwise, effect entry into such house or place. The presidential review argued that these provisions are said to be similar to the provisions of Sections 7 and 112 of the Criminal Procedure Law and were followed by the DSS (Daniel and Nnochiri 2016).

Hence, the presidency challenged the two judges of the Federal High Court to go to court to prove their innocence. The spokesperson argued that Nigeria was not the first country in the world where such action was taken against judges. He maintained, inter alia, that 'The Federal Bureau of Investigation, FBI, in the United States of America (a body similar to DSS)

has at various times, prominently in January 2013, May 2014, and November 2015 arrested a number of judges for bribery, corruption and other similar offences; subjected the judges to trial at the end of which the convicted judges were imprisoned …. Nearer home, neighbors like Ghana and Kenya had also cleansed their respective judiciaries through investigation and prosecution of judges suspected of commission of corruption' (Daniel and Nnochiri 2016).

The case of Namadi Sambo, the former vice-president of Nigeria (2010–15), shows that not all the sting operations were based on accurate information. Security operatives searched his houses in Abuja and Kaduna several times and found nothing incriminating on each occasion. At one stage, he started fearing that the agenda was to plant some incriminating 'evidence' in his house. The last of the raids was carried out on 28 June 2017 in Kaduna. It was a joint operation of the DSS and the Independent Corrupt Practices and Other Related Offences Commission (ICPC). Heavily armed security operatives arrived in a white Toyota Hilux, a Toyota Corolla and a Coaster bus, a Toyota Hilux van and a dark-colored Toyota Corolla car. While some of them blocked the major road leading to the residence to ward off motorists and other passers-by plying the road, others went into the residence to search it. At the end of it all, they found nothing incriminating, and left. That was the fifth time of going to carry out same operation (Muhammad 2017). What precisely were they looking for?

The testimony of an eyewitness to the Kaduna raid suggests what could have happened during the search. He said, 'When they came out, they look so rough, evidence that maybe they break into some areas (ceiling) in the house. We saw police, SARS, DSS …. They threatened to shoot us. They blocked all the road leading to this place' (Agande 2017a). In a statement released by Sani Umar, the Special Adviser to the former vice-president, the Kaduna invasion was not the first of such assault on the property of the former vice-president in both Abuja and Kaduna. He observed that:

> On each occasion valuable fittings were deliberately destroyed …. The recent desperation exhibited by some security agencies in carrying out a raid on an unoccupied residence, blocking all entry and exit points, in a commando-style and coming along with a bullion van speaks volume about the clandestine intention of the security operatives … the consistency with which the searches occurred, and the intervals between them portray a desire of a fault-finding mission. We are apprehensive that a repeat of such episode will not be surprising if an incriminating object is planted in his residence in order to willfully and deliberately incriminate him …. We hope it is not a way to try to give a dog a bad name in order to hang it (Agande 2017b).

What was now amounting to unwarranted harassment of a leading member of the opposition drew the anger of former ministers in the administration of President Goodluck Jonathan. In a Resolution reported on 4 July 2017, they unanimously 'condemned in very clear terms the persecution and decimation of the opposition and the unwarranted invasion of the residence of the immediate past Vice President of the Federal Republic of Nigeria, Namadi Sambo, and the continued harassment and detention of key members of the opposition' (Williams-Smith 2017).

The Nigerian public got to know later that the sting operations were based on false information provided by a 'whistle blower', Abubukar Sani. The security services did too little to double-check the information given to them before striking. Upon this realisation, the ICPC had to arraign the man before Justice Aliyu Tukur of the Kaduna State High Court on a two-count charge of providing false information and misleading public officers while on lawful duty. The Counsel to the Commission said that Sani reported to the ICPC on 21 June 2017 that he had helped to carry some money in local and foreign currencies, believed to be ill-gotten and believed to still be in the house, from Kaduna airport to the Kaduna home of the former vice-president in 2013 (*The Nation* 2017: 7). This particular case shows how cheaply the anti-graft agencies could allow themselves to be misled. Sambo's house was not searched once but several times. Were all the searches motivated by false alarmists? Should the raids have been so abusive of the rights of the former vice-president? What compensation was there for such embarrassment?

Media trial of accused persons

The second human rights question connected with the ongoing anti-graft war in Nigeria is what Nigerians call 'media trial' of the accused persons. By this is meant how the Nigerian state exposes unverified or unverifiable information about the persons accused of corruption in the public sphere. The arrest of some of the accused persons takes place in front of television cameras and the clips, along with the evidence (palatial buildings, Nigerian and foreign currencies found on the person), are then shown to angry viewers in the evening. Following such public display of the 'evidence', radio and television stations across the country would continuously sponsor discussions of the 'offence' and call for suggestions on what should happen to the 'criminals'. Even before the matter is taken to court, most of the cases would have been decided in the media by very bitter discussants.

The unhealthy sentiment against such accused persons is compounded by how they are brought to court. They are often in armed security vehicles, sometimes in handcuffs and guarded by fierce-looking security men. Their exit from the vehicles, entry into the court room, pensive look in the courtroom, and journey back to the prison are shown to viewers at home in desperate efforts to show that the government is fighting corruption in the land. The defendants often look defenceless. The only consolation they get is usually from their lawyer as family members are not granted quality access to them.

The Nigerian media often report the courtroom scenarios in a manner that promotes more negative public sentiments against the accused persons. In some cases, the schools not built and clinics not served with drugs are shown as 'evidence' against the accused persons. Those of them who dare shake hands with their well-wishers in the courts are accused of not taking the cases against them seriously. Cameras zoom in on the faces of some them in pensive moods to show the amount of shame they have brought upon themselves by their 'criminal acts'. The following day, newspapers will carry news and pictures of the accused persons in different sentimental postures, with a view to increasing their sales. Discussants on television and social media pick up the issues from there. In some cases, officials of the Nigerian state appear on television to present arguments against the accused persons as if they are in a court of law. They cite sections of Nigerian laws in support of the prosecution and predict what will eventually happen to the accused persons. By the time the cases are decided by the courts, the personal image of the accused persons will have been thoroughly wrecked. Many of them eventually win the cases against them, but they react by withdrawing into their shells not appearing frequently at public functions.

Tale of failed court trials

The paradox is that the Nigerian state often loses many of the celebrated anti-corruption cases. The government often blames this on the lawyers who defended the accused persons as well as the judges that handled the cases. Several of these cases were lost in April 2017. That month, Justice Abdulazeez Anka of the Federal High Court in Lagos passed a judgment vacating a frozen account of a Senior Advocate of Nigeria, Mike Ozekhome, who was ordered to forfeit 75 million naira found in the lawyer's Guaranty Trust Bank account. The lawyer had 'offended' the Federal Government by representing the Governor of Ekiti, Ayo Fayose, in court. The latter, a member of the opposition party and the most vocal antagonist of President Buhari, was accused of corruption and his personal account was frozen by

the EFCC without any court order. The EFCC was later ordered to unfreeze the account. The money found in the account of his lawyer, Ezekome, was said by the EFCC to have been paid to him from the supposedly stolen money. Hence, the money was tagged 'proceeds of crime'. Ozekhome argued on the other hand that what he was paid was a professional fee and it was not his business to know where his client got the money.

The second major case lost by the Federal Government was that of Justice Adeniyi Ademola and his wife, Olabowale. The High Court of the FCT, to which they were taken, discharged them of all the 18-count charges of fraud brought against them. These charges included fraudulent diversion of huge sums in local and foreign currencies, as well as possession of firearms and involvement in the collection of gratification. This is the judge whose house was broken into at 1:00 am by the security agencies.

The EFCC case, filed before a Federal High Court in Lagos in November 2016, seeking an order that the Skye Bank account of the former First Lady of Nigeria, Mrs Jonathan, be frozen, also failed. The commission had contended that the account, harboring US$ 5.8 million, must have been proceeds of crime. The court ordered the EFCC to unfreeze the account. The same week the case was lost by the government, a Federal Court discharged and acquitted a former Niger Delta minister, Elder Godsday Orubebe, of all corruption allegations (Ezeamalu 2017). He was accused by the ICPC of diverting 1.97 billion naira meant for the compensation of owners of property on the Eket Urban section of the East-West Road in Eket, Akwa Ibom State. The case was thrown out when the Attorney General of the federation strangely came up with the argument that the case filed against the former minister did not exist.

The most celebrated of the failed anti-graft cases was that of the Senate President, Dr Olusola Saraki. The case lasted for 21 months: from 15 September 2015 to 17 June 2017. Saraki was accused by the Code of Conduct Bureau, shortly after his controversial emergence as Senate President, of false asset declaration, and arraigned before the Code of Conduct Tribunal. The management of the case, like many others, was so sloppy that the charges against him were adjusted three times. In his defence, Saraki argued that the allegations against him were based on petitions from complainants who never appeared as witnesses to testify, and that the petitions upon which the allegations were based did not form part of the documents presented in court. He won the 13-court charge in June 2017 on the grounds that evidence provided against Saraki was 'incurably defective' (Okakwu 2017). One other ground for Saraki's acquittal is that the Code of Conduct failed to invite him before filing the charges against him (Adesomoju 2017: 40).

The latest of the cases lost by the EFCC at the time of writing was that of Bala Ngilari, a former Governor of Adamawa State. He was discharged and acquitted on 20 July 2017 by an Appeal Court sitting in Yola, the Adamawa State capital, presided over by Justice Folashade Omoleye. Ngilari was jailed for five years by a Yola High Court presided over by Justice Nathan Musa on a five-count charge of spending over 160 million naira on the award of a contract for the purchase of 25 Toyota Hilux trucks without due process. He was charged along the Secretary to the State Government, Ibrahim Andrew Welye, and the former Commissioner for Finance, Sanda Lamurde, who had earlier been discharged and acquitted by the lower court, due to lack of evidence. However, Ngilari was jailed. The appellate court set aside the ruling of the lower court based on the grounds that the former Governor was not a procurement entity; he could not be charged as if he was an ordinary procurement officer (Yusuf 2017).

Failing to look at the matter strictly from the context of the rule of law, both the Federal Government and the Nigerian public blamed the failed cases on Nigerian lawyers, and the judiciary which is said to be opposed to the anti-graft drive of the Buhari administration. At the All Nigerian Conference of Judges in 2015, Buhari blamed the problems faced by the anti-graft regime on 'judicial corruption', 'dilatory tactics by lawyers sometimes with the apparent collusion of judges … to stall trials indefinitely [and] denying the state and the accused persons of a judicial verdict', and a 'negative perception arising from long delays in the trial process … that have damaged the international reputation of the Nigerian judiciary, even among its international peers' (*The Guardian* 2015).

The president may not be totally wrong but the blame lies more with the handling of the cases by agents of the government, namely the EFCC and prosecutors, most especially. Most of the cases failed on technical grounds, suggesting that the government was more interested in the anti-graft war at the emotional level than having the capacity to actualise it. It was usually a case of weak prosecution and weak evidence. On the other hand, the accused persons have strong survival instincts and massive financial resources to hire the right kinds of lawyers to win the cases. Commenting on the complex nature of the situation, Adeniyi Akintola, a Senior Advocate of Nigeria, observed that:

> The judiciary is not to blame. The Federal Government may have a good intention, but the approach is bad …. Some of the cases in court have to be reviewed and withdrawn where necessary …. Some of the charges in court are lousy and cannot be sustained because they are laughable …. In some cases, the proof of evidence says, "investigation is ongoing and yet to be concluded", yet you rush same to court. In some, the prosecution witnesses

> testified under cross examination that "no money was stolen or missing", and in some, the prosecution witnesses say, "the law under which the accused is brought has not been domesticated in the state and no law known as PPA is in existence in this state". Still, the prosecution forges on with the case …. In some, the prosecutors have no business being prosecutors. In fact, they are disasters. I wouldn't know whether the Presidential Advisory Committee has access to the court proceedings when trials are going on. Only the lazy, ignorant commentators will blame the judiciary on this issue …. Those who know how the system works and appreciate the position of the law and our inquisitorial and adversary judicial system, know that morality has no place in judicial decisions, neither would your emotion matter. It is not how you and I feel, but what the law says …. The fight is too media-driven; it gives room for culprits to cover their tracks. Cases are not won on the pages of newspapers or in the newsroom (*The Punch* 2017: 2).

Calling attention to why many of the cases failed, Mike Kebonkwu, a human rights activist, stated:

> In a situation where the anti-graft agencies rush to court with suspects before gathering evidence or without gathering tangible evidence, hoping that the judiciary should do its job for it, is an affront on the Nigerian Constitution. In all the high profile cases being prosecuted by the anti-graft agencies, I am not aware of any conviction being recorded. All we see are the small fries and foot-soldiers being convicted while the barons are left to escape like the last drama that played out in the Code of Conduct Tribunal, where the principal member of the National Assembly was discharged and acquitted (Kebonkwu: 2017: 20).

The opinion of Chief Rafiu Balogun, the National Legal Adviser to the Nigerian Bar Association, is not different from that of Chief Akintola. He said, 'One thing I have noticed in this country is that we usually rush to court. Do the lawyers working for the Economic and Financial Crimes Commission have sufficient evidence before rushing to court? ... What about investigation and the EFCC lawyers? It is only in Nigeria that people rush to court and later, they begin to search for evidence' (*The Punch* 2017: 2).

Another lawyer, Mr Godwin Udofia, came to the same conclusion that the problem is more with the handling of the cases:

> In most of the failed corruption cases in our courts in recent times, we see the government first hurriedly arresting a suspect, subjecting him to media trial, then rushing to arraign the accused with bogus charges …. Because the charges are bogus, they can lay up to 50 or 150 charges and the accused will assemble a formidable and credible defence team, while the prosecution will be laboring to make the charges stick …. In that case, you cannot blame the judiciary when the case collapses …. In criminal trials, the courts act

> principally on materials or evidence placed before them. Of course the court is not a magician, neither is it a spirit or armed with the power of clairvoyance to descend to the arena of combat to fish for evidence in which to nail the accused …. This is not absolving the judiciary of blame, but in the tardiness of investigation, the prosecution is responsible for the failure of the corruption cases in recent times' (*The Punch* 2017: 2).

A Port Harcourt-based human rights activist, Dr Jackson Menazu blames it all on the government. He, too, feels that suspects should not be arrested until there is substantial evidence against them. He cited the case of the former Governor of Delta State, James Ibori, who was tried in Nigeria several times and no conviction could be secured until he was tried once in the United Kingdom and jailed.

The former Nigerian President, Chief Olusegun Obasanjo, interpreted the problem from the angle of conspiracy theory. To him, those prosecuting the cases deliberately wanted them to be lost. He said, 'If I am a lawyer and I want the opponent to win the case, what I will file will be "wishy washy"…. And if I file a "wishy washy" case, the opponent will see the loophole and he will get out of it …. Secondly, thorough investigation is very important. Now, investigation must be thorough, it must be proper and it must be really taken seriously …. Third, our judges must be committed in fighting corruption' (Ezeamalu 2017).

The Federal Government's disobedience of court orders

One critical issue raised by Justice Ademola and others, but which is atomised in the discussion of their detention experiences, is that they were targeted for ordering the release of Col. Sambo Dasuki, Nigeria's former National Security Adviser who was detained on charges of mismanaging money set aside for fighting Boko Haram, and Nnamdi Kanu, the leader of the Indigenous People of Biafra (IPOB). Dasuki was accused of being involved in the Boko Haram arms scandal and has been in detention since 2015. Justice Ademola alleged that he was being persecuted by the government for granting Dasuki bail. The government is still keeping the former National Security Adviser. While approaching the court for another order to be discharged from further trial, Dasuki claimed that he was released from prison on 29 December 2015 after fulfilling the conditions for his bail. He was re-arrested immediately by the DSS and has been in detention since then without being taken to court for any new charges.

The two other prominent Nigerians with same problem are Mr Nnamdi Kanu of the IPOB (as noted above), and the Islamic Movement of Nigeria (IMN) leader, Sheikh Ibrahim El-Zakzaky and his wife. Dasuki has blamed

his continued detention and the detention of Kanu and El-Zakzaky on President Buhari who said live on television on 30 December 2015 that they do not deserve to be granted bail. He prayed for the court to grant him bail. He, like the others, are still in detention.

The case of the former National Security Adviser, Colonel Sambo Dasuki (rtd.) who is facing trial for allegedly diverting and sharing over US$ 2.2 billion, meant for arms procurement for the anti-Boko Haram war to politicians and cronies is the most celebrated of the cases. It deserves deeper attention in this article. Dasuki has been in detention since December 2015. He has been granted bail by three different courts but the orders were not obeyed. Dasuki is not the only person affected by this recourse of the Nigerian state to self-help. This violates Section 287 of the constitution, which the president swore to uphold. This section of the Nigerian law imposes a binding duty on all authorities and persons to obey the judgments of all courts. In this context, the flagrant disobedience of court orders constitutes a serious threat to the rule of law in the country.

Frustrated by the failure of his efforts to get justice in Nigeria, Dasuki took the Federal Government before the ECOWAS Regional Court, demanding his release and also a payment of 500 million naira as compensatory damages for his unlawful detention and seizure of property since December 2015. During the hearing of the matter in May 2016, William Obiora, a DSS officer provided two contradictory reasons why Dasuki was still in detention despite some court orders to the contrary. The first is that he was still detained for personal security. The DSS claimed that some ongoing investigations revealed that Dasuki could be harmed by some of the politicians implicated in the arms deal for which he was standing trial. The second is that he could escape from Nigeria if allowed to go home. On the other hand, Roberts Emukperuo, who represented Dasuki, argued that his client never requested protection from the Nigerian state. He also tendered an affidavit confirming that as of 24 August 2015, the DSS had completed its investigation on the matter. He found it difficult to accept further detention of his client on any of the two grounds. The matter was decided on 4 October 2016, during which the presiding judge of the ECOWAS court, Justice Friday Nwoke, ruled that the arrest and detention of Dasuki was unlawful, arbitrary and amounted to a mockery of democracy and the rule of law. The court ruled in favour of Dasuki and directed that the Federal Government should pay him a sum of 15 million naira as damages. Dasuki is still in detention; the government failed to release him.

Discussion

President Muhammadu Buhari warmed himself in the heart of Nigerians as an anti-corruption crusader when he led Nigeria from 1983 to 1985. He performed so well during that time that Wikipedia has characterized his political philosophy as 'Buharism'. The political philosophy is defined thus:

> Buharism is a term rooted in the politics of Nigeria, referring to the economic principles and the political ideology of the military government of Nigeria headed by General Muhammadu Buhari from 31 December 1983 to 27 August 1985. This ideology shares common features with fascism; the government was a right-wing nationalist government that pursued corporatist economic programs and curtailed personal freedoms. Economic reforms were characterised as moving the political economy away from the control of a "parasitic" elite, and into the control of an emerging "productive" class. Buharism represented a two-way struggle: with external global capitalism and with its internal agents and advocates (https://en.m.wikipedia.org/wiki/Buharism).

Arising from the foregoing is the fact that Buhari's anti-graft policies succeeded in the 1980s through authoritarian methods: curtailing of personal freedoms. But he now has to do the same job in a democratic setting that places great emphasis on the rule of law. It is in this respect that the regime faces some challenges in the ongoing anti-graft policy. The way and manner that persons suspected of corruption have been arrested under the new administration and the way the regime disobeys court orders to release detained persons suggest that the administration has little or no respect for the rule of law.

The second observation is that the new regime does not have a good strategy for handling the anti-graft cases. In most cases, the accused persons were arrested and taken to court before the Nigerian state started to search for evidence against them. This enabled many of the accused persons to win their cases on technical grounds. Dealing with this problem would require that all the anti-graft agencies in the country must be better trained on how to handle the kind of delicate cases that come to them for investigation and prosecution.

The failed cases are blamed on the lawyers that defended the accused persons and the judges that handled the cases. Under the rule of law, such persons should not be blamed. First and foremost, any accused person is presumed innocent until the cases against them have been proven beyond reasonable doubt. Hence, there is nothing wrong in lawyers offering to defend them. Even when the accused person would eventually go to court to take the plea of being guilty, he still needs legal representation. That a lawyer wins his case is also not to suggest that he is corrupt but competent.

A similar case can be made in favour of judges who passed judgments against the Nigerian state. The work of these judges is to ensure that the rights of all persons are protected. The evidence before judges and how well this is argued also determines the kind of judgments they pass. Legal processes are not based on sentiment but evidence. To deal with this problem, the anti-corruption agencies must tighten their loose ends in their investigations and methods of prosecution.

The lapses in some of the judicial trials seem to have provided some corrupt Nigerians with new ways of having their cake and eating it. The ongoing problem of the government losing almost all anti-corruption cases and turning round to blame the judiciary pushes Nigeria in the direction of what is known as the 'sticky' thesis of corruption (Rothstein and Uslaner 2005). Once this becomes widespread, as is now witnessed in Nigeria, it becomes very difficult to curb. In this kind of situation, a pliable citizen would simply say: 'Well, if everybody seems corrupt, why shouldn't I be corrupt?' (Myrdal 1968: 409). The impression created here is that if the corrupt persons in society are setting new precedents in law by being corrupt and getting away with it, it makes no sense for other people to be honest in the rotten society in which they find themselves, as corruption cannot be changed from below but through committed state interventions.

Conclusion

The point made in this article is that the ongoing anti-graft war in Nigeria reflects a number of civil liberty problems that ought to be addressed immediately, as a way of making the system more credible. The rights of suspects must be respected, not only through the processes of their arrest but also in their treatment thereafter. The cases charged against them must be proven beyond reasonable doubt. Until then, they should be presumed to be innocent of the charges against them and protected under the law. Much needs to be done by the government along these lines.

The foregoing notwithstanding, the administration of President Buhari has definitely set new precedents in the management of corruption in Nigeria. The administration broke the myth of the sacrosanct authority of high judges and the Senate President by having them arrested and charged for corruption. This is new to Nigerians. By arresting so many judges for corruption and trying the Senate President, Dr Saraki, for false asset declaration, the Buhari administration has shown once and for all that no Nigerian is above the law. This is a great contribution to rule of law traditions in Nigeria that must be commended. This boldness in confronting corruption in the Nigeria must continue but done with due respect to the rule of law.

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