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# Corruption as an Anathema to Human Rights Laws and Practice in Nigeria

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Dr. Olusegun Onakoya \*

## Abstract

Corruption, though a universal phenomenon, its menace in Nigeria is alarming as it pervades through every strata of the society with its huge adverse effects on the populace. Over the years, the incidence of corruption has grown to become a 'norm' in Nigeria, with the nation becoming a pariah state in the comity of nations. However, the practice is widely considered to have greater impact on the nation compare to its citizens, it is therefore justifiably domiciled under the Nigerian Criminal Law usually as an offence to be prosecuted by the state on behalf of its citizens.

This paper therefore considers the impact/effect of both private and public corruption on the Human Rights Laws and Practice in Nigeria, with emphasis on analysis of corruption as a violation of the entrenched rights of citizens. Critical issues such as legal framework for human rights and various anti-corruption laws were examined. It is observed that successive governments in Nigeria are usually blamed for economic woes and decay in infrastructure, often attributed to incompetence and negligence while its agencies, such as Police Force, Armed Forces, banks, private persons who are active collaborators are often over-looked. The paper therefore concluded that the impact of corruption could only be holistically measured by the rate of violations of the citizens' rights as provided for by the law and same made punishable. It is further submitted that such infringement on the right of persons occasioned by corrupt practices should not only be tried as abuse of rights but also attract some form of compensation for the victims.

**Keywords:** Corrupt practices, Human Rights, Judicial process, Law reform.

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## **Corruption: an Anathema to Human Rights Laws and Practice in Nigeria?**

Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and rule of law, leads to violations of human rights . . . erodes quality of life. . .<sup>1</sup>

### **Introduction**

The United Nations, among numerous organisations and agencies has identified corruption as a universal phenomenon with huge adverse effects on the economies of the affected nations. Nigeria, like other developing nations has unsuccessfully fought the scourge through diverse means. However, all the efforts of successive governments at eradicating the menace have proved abortive. Government at various times enacted laws aimed at combating corruption, with many agencies set-up to ensure proper and effective implementation of such legislations.

Until recently (Fourth Republic), curbing corruption was primarily considered exclusive business of government at various levels. Corruption, being a crime is perceived as offence against the state hence the passive attitude of private persons towards the act.<sup>2</sup> The reason for this attitude is not far-fetched, as private persons used to perceive the resources stolen or misappropriated as that of the state and not privately owned. Such resources are usually informally categorized as 'national-cake' meant to be shared by those opportune to do so.<sup>3</sup> However, it is cheering to note that today, members of the public, non-governmental organizations and human rights groups are now actively involved in anti-graft war. This is borne out of paradigm shift in the perception of private persons, who now see state resources as being meant to be equitably distributed or deployed for the benefits of its citizens.

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<sup>1</sup> Annan K.A. 2004. Forward to the United nations Convention Against Corruption. Retrieved March 12, 2016 from [https://www.unodc.org/documents/brussels/UN\\_Convention\\_Against\\_Corruption](https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption)

<sup>2</sup> Much unlike offences of stealing, rape, murder and manslaughter etc.

<sup>3</sup> Public officers as defined by the fifth schedule to the Constitution of the Federal Republic of Nigeria (CFRN) 1999 as amended are persons usually involved in the sharing and 'eating' of the said 'national cake'

It therefore appears that gradually Nigerians are beginning to see the connection between corruption and enjoyment of human rights. Pillay<sup>4</sup> explained the relationship between the two concepts (corruption and human rights) thus:

Let us be clear corruption kills . . . Corruption hits the poor first and hardest, breeds impunity of perpetrators; exacerbates inequity, weakens governance and institutions, erodes public trust, undermines the rule of law; and denies victims the right to effective redress, thus creating 'a vicious cycle of crime.'

Human Rights issue had since Nigerian's independence in 1960 become an integral and essential aspect of the nation's constitution. Successive constitution in Nigeria up till date provides for the "fundamental rights" of her citizens and these rights are enforceable where one or more of it is likely to be breached or where breached out rightly. These rights were only discountenanced during the military regimes when the juntas promulgate "the suspension and modification" decrees by which some provisions of the constitution, particularly the aspects bordering on fundamental rights are suspended.<sup>5</sup> To underscore the central nature of human rights to citizens life and property, the Chief Justice of Nigeria, by virtue of the power conferred upon him in section 46(3) CFRN 1999 (as amended) makes rules for the enforcement of fundamental rights.<sup>6</sup>

A major issue yet to be explicitly addressed is whether corruption should be analysed and treated as human rights violation. Human rights law does not explicitly prohibit corruption, while human rights institutions and tribunals rarely apply rigorous human rights analysis to the problem. Similarly, human rights defenders and anti-corruption activists rarely engage or work together on issues of

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<sup>4</sup> See Annual Report of United Nations High Commissioner and Secretary-General, retrieved April 27, 2016 from [www.ohchr.org/Documents/HR\\_Council/Regular\\_Session/Session23/A.HRC.23.26\\_EN.pdf](http://www.ohchr.org/Documents/HR_Council/Regular_Session/Session23/A.HRC.23.26_EN.pdf)

<sup>5</sup> Instances of such promulgations include; the Constitution (Suspension) and Modification) Decree No. 1 of 1966 and the Constitution (Suspension of Modification) Decree no. 1 of 1984 which heralded the military take-over.

<sup>6</sup> See Fundamental Rights (Enforcement Procedure) Rules 2009.

common interests.<sup>7</sup> The ideals of lofty provisions on human rights that adorn the pages of our constitution would not be realisable where the menace of corruption is not effectively checked.

### **Conceptual Clarifications**

Etymologically, the word concept is derived from the Latin *conceptus* or *conceptum* and it means a thing conceived suggesting a mental creation.<sup>8</sup> It is also defined as 'a general notion'. It is essential that we delimit the meanings of the basic concepts that constitute the title of this work. The basic concepts are: "Corruption", "Human Rights", "Rule of Law" and "Anathema", all of which are primary to this paper.

### **Corruption**

According to Black's Law Dictionary<sup>9</sup>, corruption is defined as depravity, perversion, or taint; an impairment of integrity, virtue, or moral principle; especially, the impairment of a public officials duties by bribery. Corruption is the act of doing something with an intent to give some advantage inconsistent with official duty and the rights of others; a fiduciary's or official's use of a station or office to procure some benefit either personally or for someone else, contrary to the rights of others. The United Nations identified corruption as a global menace and deficit to governance defines the endemic problem as:

The abuse of office or private gains, public office is abused for private gain, when an official accepts, solicits or extorts a bribe. It is also abused when private agents actively offer bribe to circumvent public policies and processes for competitive advantage and profit. Public office can also be abused for personal benefit even if no bribery occurs, through patronage and nepotism, the theft of

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<sup>7</sup> Olaniyan, K. 2014. *Corruption and Human Rights Law in Africa* Oxford. Hart Publishing. Pp. 6-7.

<sup>8</sup> Mayfield, M. 2007. *Thinking for Yourself*. 7<sup>th</sup> ed. Boston (MA), Thomas Wadsworth, P. 56.

<sup>9</sup> B.A. Garner (ed.) 2004. *Black's Law Dictionary*. 8<sup>th</sup> ed. St. Paul Minn. West Publishing Co. P. 3711



states assets or the diversion of state revenue.<sup>10</sup>

Nye in his work<sup>11</sup> described corruption as 'behaviour' which deviates from the formal duty of a public role because of private-regarding (family or close associates), pecuniary or status gain, or violates rules against the exercise of certain types of private regarding influence.

In summary, corruption is a complex social, political and economic phenomenon that affects all countries in varying degree. Corruption undermines democratic institutions, slows economic development and contributes to governmental instability. Corruption attacks the foundation of democratic institutions by distorting electoral processes, preventing the rule of law and creating bureaucratic quagmires whose only reason for existing is to solicit for bribes. The consequence of which economic development is stunted because foreign direct investment is discouraged and small businesses within the country often find it impossible to overcome the start-up cost required as a result of corruption.<sup>12</sup>

### Human Rights

The concept of human rights founded on the fundamental principle of human dignity, equality and respect, is thus inherent to the human condition, and as such has reduced the absolute content of the concept of sovereignty<sup>13</sup>. Rights and freedoms as well as that of their guarantees cannot be divorced from the system of values and principles that inspire it. In a democratic society, the rights and freedoms inherent in the human person, the guarantees applicable to them and the rule of law form a triad.<sup>14</sup>

Black's Law Dictionary<sup>15</sup> defines human rights as the freedoms, immunities and benefits that, according to modern values, all human

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<sup>10</sup> World Bank. 1997. *Helping Countries to Combat Corruption: The Role of World Bank*. Retrieved May 3, 2016 from <http://web.worldbank.org>

<sup>11</sup> Nye, J. (1967). Corruption and Political Development: A cost-Benefit analysis. 61 *American Political Science Review*. p. 421

<sup>12</sup> [www.unodc.org/en/corruption/index/htm?ref=menuaside](http://www.unodc.org/en/corruption/index/htm?ref=menuaside). Retrieved May 3, 2016.

<sup>13</sup> Olaniyan, K. 2014. *Corruption and Human Rights Law in Africa*. Oxford Hart Publishing. P. 61.

<sup>14</sup> *Ibid.* p. 59

<sup>15</sup> *Ibid.* p. 758

beings should be able to claim as a matter of right in the society in which they live. Simply, human right is the rights of individuals to liberty and justice<sup>16</sup> or rights of every person as to justice and freedom<sup>17</sup>.

In a broader sense, human rights depicts the following: the right to life, liberty and security of person; the right to freedom of thought, speech and communication of information and ideas; freedom of assembly and religion; the right to government through free elections; the right to free movement within the state as free exit from it, the right to asylum in another state; the right to nationality; freedom from arbitrary arrest and interference with the privacy of home and family; and prohibition of slavery and torture; . . . The right to work, to protection against unemployment, and to join trade unions; the right to a standard of living adequate for health and well-beings; the right to education; and the right to rest and leisure.<sup>18</sup> Also, human rights are succinctly defined as rights inherent to all human beings, irrespective of the nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. These rights are all interrelated, interdependent and indivisible.<sup>19</sup> In the same vein, fundamental rights, especially those believed to belong to an individual and in whose exercise a government may not interfere as the rights to speak, associate, work etc. It is based on principle of respect for the individual. Their fundamental assumption is that each person is moral and rational being who deserves to be treated with dignity.<sup>20</sup>

### **Rule of Law**

Definitive statements by Western philosophers and scholars on this subject generally express the concept of the rule of law as the absolute supremacy or predominance of regular law, enforceable in ordinary courts as opposed to the influence of arbitrary power.

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<sup>16</sup> Collins. 2007 *English Dictionary* Ninth Edition. Glasgow. Harpercollins Publishers, P. 794

<sup>17</sup> M. Robinson and G. Davidson (ed.) 1999. *Chambers 21<sup>st</sup> Century Dictionary*. Revised Edition. Edinburgh. Chambers Harrap Publishers Ltd. P. 655.

<sup>18</sup> See generally, Universal Declaration of Human Rights (1948) and European Convention on Human Rights 1950 (ECHR)

<sup>19</sup> Definition of Human Rights. Retrieved May7, 2016 from [www.ohchr.org](http://www.ohchr.org)

<sup>20</sup> [www.dictionary.com/browse/humanrights](http://www.dictionary.com/browse/humanrights), retrieved May 7, 2016.

Rule of law is the restriction of the arbitrary exercise of power by subordinating it to well-defined and established laws. This concept is further defined as absolute predominance or supremacy of ordinary law of the land over all citizens, no matter how powerful.<sup>21</sup>

Dicey who first expounded the concept based it on three principles that – (1) legal duties and liability to punishment, of all citizens, is determined by the ordinary (regular) law and not by any arbitrary, official fiat, government decree, or wide discretionary-powers, (2) disputes between citizens and government officials are to be determined by the ordinary courts applying ordinary law, and the (3) fundamental rights of the citizens (freedom of the person, freedom of association, freedom of speech) are rooted in the natural law, and are not dependent on any abstract constitutional concept, declaration, or guaranty.<sup>22</sup>

### **Anathema**

The word ‘anathema’ simply refers to something that is detested or abhorred.<sup>23</sup> It could also mean a formal ecclesiastical curse of excommunication or a formal denunciation of a doctrine, a strong curse or imprecation or something accursed.<sup>24</sup> Such a thing or person is usually greatly disliked or detested.<sup>25</sup> Anathema also denotes abhorrent, hateful, odious, repugnant, repellent, offensive, abomination, abhorrence, aversion, monstrosity, outrage, evil, disgrace, bane or pariah.

### **Forms of Corruption**

There are different forms and areas, where corruption manifests and these are diverse. In Nigeria, you find corruption or corrupt practices in almost every stratum of peoples ‘daily activities. A broader classification divides the menace into two major segments, namely:

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<sup>21</sup> Retrieved July 11, 2016 from [www.businessdictionary.com/definition/rule-of-law.html](http://www.businessdictionary.com/definition/rule-of-law.html)

<sup>22</sup> Dicey, A. V. (1982) *Introduction to the Study of Law of the Constitution*, 6<sup>th</sup> edition, London Macmillan and Company Limited, pp. 135-136.

<sup>23</sup> Chambers 21<sup>st</sup> Century Dictionary (2002) Revised edition, Edinburgh; Chambers Harrap Publishers Ltd. p. 43.

<sup>24</sup> Collins English Dictionary (2007) Ninth Edition, Glasgow harpencothins Publishers, p. 58.

<sup>25</sup> The New International Webster’s Comprehensive Dictionary of the English language (2004) Encyclopedic ed. Naples Florida, Typhoon Int. Corp., P. 53.

(1) private and (2) public sector corruption. The classification underscores the fact that corruption is everywhere.

Aside the above classification, corruption is also usually classified in terms of the particular aspect of life it appears, such as political, bureaucratic, judicial corruption and the likes. There is no doubt that corruption permeates nearly every facets of private and public life.

### **Private and Public Sector Corruption**

Corruption in the private sector takes many forms, among them bribery, undue influence, fraud, money, laundering and collusion. Private sector corruption contributes to environmental damage, health and safety problems, economic instability and human rights violations by diverting scarce resources, both financial and human<sup>26</sup>. This form of corruption undermines the productivity of private companies/business enterprises and distorts efficient corporate governance. Companies often pay bribes or rig bids to win public procurement contracts. Many companies hide corrupt acts behind secret subsidiaries and partnerships. Or they seek to influence political decision-making illicitly. Others exploit tax laws, construct cartels or abuse legal loopholes. Private companies have huge influence in many public spheres.<sup>27</sup>

*Public Corruption* encompasses a breach of trust and/or abuse of public office by any person entrusted with responsibilities such position attracts, usually in collaboration with their private sector accomplices<sup>28</sup>. In essence, when public officer within the ambit of statutory definition, (usually at all levels of government) asks, demands, solicits, accepts, or agrees to receive anything of value in return for conferment of unmerited favour or accord privileges in the course of performing their official duties, it is known as public corruption. However, there is a strong link and collaboration between the private and public corruption, while the effects are usually damaging to developing economies such as Nigeria.

Another broad division or major categorization of corruption is *Political* (Grand) and *Bureaucratic* (Pretty).

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<sup>26</sup> Smith, D. J. (2007) *A Culture of Corruption*. New Jersey, Princeton University Press, p. 55.

<sup>27</sup> Corruption by topic- Private Sector. Retrieved September 6, 2016 from [www.transparency.org/topic/detail/private-sector](http://www.transparency.org/topic/detail/private-sector).

<sup>28</sup> Public Corruption. Retrieved Sept. 6, 2015 from <https://www.law.cornell.edu/wex/public-corruption>.

### **Political or Grand Corruption**

This is defined as the abuse of political power by the government leaders to extract and accumulate for private enrichment and to use politically corrupt means to maintain their hold on power.<sup>29</sup> It is usually the use of powers by public officers for unlawful private benefits, particularly when the act relates whether directly or remotely related to their official duties<sup>30</sup>. Political corruption takes diverse forms, which principal among them are: bribery, extortion, cronyism, patronage, nepotism, graft, embezzlement or the official misuse of resources for personal, friends and or relatives benefits. Often, political corruption facilitates criminal enterprises such as money laundering, drug-trafficking and human trafficking among others. This is no doubt ‘grand’, ‘huge’ or ‘enormous’ in quantum and effect. In any society where political corruption is unrestrained, kleptocracy (which literally means “rule by the thieves”) dominates.

Naturally, when “political corruption” is mentioned what readily comes to mind, more often than not is electoral fraud but it is more than that. There are situations where after government is formed, public interests become secondary and government officials divert scarce resources from poor and disadvantaged people. Private, more than public interests dictate policy.<sup>31</sup>

### **Bureaucratic or Petty Corruption**

Bureaucracy has been defined as “government by officials”.<sup>32</sup> It also means “any administration in which action is impeded by unnecessary official procedures and red tape”.<sup>33</sup> Explicitly, the word bureaucracy is defined as a system of government by officials who are responsible to their department heads and not elected.<sup>34</sup> They are found in all the three arms of government, namely the executive, legislative and judiciary Bureaucratic corruption is therefore the

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<sup>29</sup> Political corruption, Law and Legal definition. Retrieved Sept. 7, 2016 from <http://definitions.uslegal.com/p/political-corruption/>

<sup>30</sup> Political Corruption. Retrieved Sept. 7, 2016 from Science Daily – <https://www.sciendaily.com>

<sup>31</sup> Politics and government. Retrieved Sept. 7, 2016 from [http://www.transparency.org/topic/details/politics\\_and\\_government](http://www.transparency.org/topic/details/politics_and_government).

<sup>32</sup> The New Webster’s Dictionary of English Language, international edn. P. 129.

<sup>33</sup> Collins English Dictionary, Ninth edn. P. 226.

<sup>34</sup> Chambers 21<sup>st</sup> Century Dictionary, Revised edn. P. 189

misuse of power by public officials for personal gain in violation of laws that govern public servants and moral principles.<sup>35</sup>

In its basic form, it occurs when a public servant demands and accepts bribes or kickback, in order to perform his official duties. This specie of corruption is prevalent in Nigeria and it occurs at all segments and levels of public administration, such as police stations, schools, tax offices, custom services offices, ministerial offices and government parastatals, immigration offices, judiciary and others. In Nigeria, people encounter daily bureaucratic corruption which is usually the offshoot of faulty implementation of government policies. This form of corruption has become severely endemic to public life.

### **Judicial Corruption**

Judicial Corruption or corruption in the judiciary could be summed-up as general misconduct of judges and other judicial officers through taking and giving of bribes and other forms of gratification with a view to influencing the right course of justice. This sometimes manifests in undue interference or bias during the proceedings in court or giving a ridiculously light sentence upon conviction as a result of gratification.

In Nigeria, sections 98, 98A and 98B of the Criminal Code Act<sup>36</sup> provide for 'official corruption' targeted against misconduct involving bribery, extortion and other similar acts by public officials. The provisions of law cited above, applies to the judicial officers by virtue of Part II, fifth schedule to the Constitution of the Federal Republic of Nigeria 1999 (as amended).<sup>37</sup>

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<sup>35</sup> Ifediore, J. p., The effects of bureaucratic corruption in economic development: the case of Sub-Saharan African in okafor, C., Olorunfemi, J. F. and Osuagwu, A., *Analyzing the effectiveness of relevant laws and crime control theories in the fight against corruption in Nigeria*, being paper presented at 46<sup>th</sup> NALT Conference of University of Ilorin, April 22-25, 2013 P. 11

<sup>36</sup> Cap. C38 Laws of the Federation of Nigeria (LFN) 2004

<sup>37</sup> The schedule provides for the class of offices whose holders are referred to as 'public officers'. It provides *inter alia* that the Chief Justice of Nigeria, Justices of the Supreme Court, President and Justice of the Court of Appeal, all other judicial officers and all staff of court of law fall within this class.

Similarly, Section 1(1) of the Criminal Code Act states that, 'judicial officer' includes the Chief Judge and a Judge of High Court, a Magistrate, the President and Justice of the Court of Appeal, the Chief Judge and Judges of the Federal High, the Chief Justice of Nigeria and a Justice of the Supreme Court, and when engaged in any judicial act or proceeding or inquiry, an administrative officer.

In addition to the aforesaid provisions, section 98C (3) provides for additional class of officers, so classified as judicial officers thus:

(3) In this section. "Judicial officer" means, in addition to the officers mentioned in the definition of that expression contained in section 1(i) of this code —

- (a) a member of a customary court;
- (b) a member of a juvenile court;
- (c) an arbitrator, umpire or referee;
- (d) a person called upon to serve as an assessor in any civil or criminal proceedings;
- (e) a member of a jury;
- (f) a member of a tribunal of inquiry constituted under the Tribunals of inquiry Act; and
- (g) any person before whom, under any law in force in Nigeria or any part thereof, there may be held proceedings in which evidence may be taken on oath.

An interesting angle to the provision of law; specifically enacted to cover the process of prosecuting corrupt judicial officers is contained in section 98C which provides *inter alia* that-

- (1) A judicial officer cannot be arrested without warrant for an offence under section 98, 98A or 98B of this code.
- (2) No proceedings for an offence under section 98, 98A or 98B of this Code shall be instituted against a judicial officer except on a complaint or information signed by or on behalf of the Attorney-General of the Federation or by or on behalf of the Attorney-General of the State in which the offence is alleged to have been committed...

It is evident that the above provision of law seeks to protect judicial officers from frivolous arrests given the sensitive position they occupy. Judicial corruption in its wildest form involves a deviation from certain accepted standards of behaviour not only for material or non-material gains, such as the furtherance of personal or professional ambitions, but also involve moral turpitude and violation of judicial ethics all of which in the long run affect the independence and impartiality of the judiciary.

According to Sagay, corruption by a judge is a crime that should be classified as a crime against humanity because it erodes the trust and confidence of the people in judicial process.<sup>38</sup>

### **Legal Framework for Human Rights in Nigeria**

In Nigeria, the successive constitutions enacted into law since independence had always provide for the protection of human and (peoples) inalienable rights. The constitution of the Federal Republic of Nigeria, 1979 and 1999 respectively provides for "Fundamental Human Rights" which clearly spelt out the enforceable rights.

The following are the outline of the fundamental rights recognized by the CFRN 1999 (as amended).

- i. Right to Life<sup>39</sup>
- ii. Right to enjoy respect for the dignity of person<sup>40</sup>
- iii. Right to personal liberty<sup>41</sup>
- iv. Right to fair hearing<sup>42</sup> in judicial process (or *quasi* or administrative panels).

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<sup>38</sup> "Corruption in judiciary, Crime against humanity." *The Punch* October 18, 2016. Retrieved March 1, 2017 from <http://punchng.com/corruption-judiciary-crime-humanity-says-sagay/>

<sup>39</sup> Section 33(i) further states that no one shall be intentionally deprived of his life.

<sup>40</sup> Section 34(a0)-(c) provides further no person shall be subject to torture or to inhuman or degrading treatment, no person shall be held in slavery or servitude, and that no person shall be required to perform forced or compulsory labour.

<sup>41</sup> See generally section 35(1) of CFRN 1999 (as amended), this right includes 'false' or unjust incarceration. However, it becomes imperative to note that the provision in subsections (1) (a)-(f), (2)-(7) have considerably whittle down the potency of the said provision of law.

<sup>42</sup> Section 36(1) refers. Even though, with its avalanche of provision it remains one of the most enforced rights in Nigeria particularly by the



- v. The right to privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communication and protection.<sup>43</sup>
- vi. Fundamental right to freedom of thought, conscience and religion, including freedom to change ones religion or belief, and also right to propagate such religion or belief in worship, teaching, practice and observance.<sup>44</sup>
- vii. Freedoms of expression, right of persons to hold opinions, receive and impart ideas and information without interference.<sup>45</sup>
- viii. Right to associate and assemble freely without any inhibition.<sup>46</sup>
- ix. Right to move freely and reside in any part of Nigeria.<sup>47</sup>
- x. Right not to be discriminated against by virtue of tribe, place of origin, sex, religion or political opinion/affiliations.<sup>48</sup>
- xi. Rights to acquire and own immovable property in any part of Nigeria and protection of such real property or chattels from being compulsorily acquired.<sup>49</sup>

Similarly, the African Charter on Human and People's Rights (ratification and enforcement Act<sup>50</sup>) of which Nigeria is a signatory and domesticated provides extensively for 'human and peoples rights'.

Section 1 of the Act provides that –

As from the commencement of this Act, the provisions of the African Charter on Human and

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judicial arm of government. This right has its roof in the two age-long common law principles, namely: *audi alteram partem* and *nemo iudex in causa sua*.

<sup>43</sup> See section 37 of CFRN 1999 (as amended)

<sup>44</sup> Section 38 refers.

<sup>45</sup> Section 39 CFRN 1999 (as amended).

<sup>46</sup> See generally the provision of section 40.

<sup>47</sup> See section 41, note also the proviso/limitation in sub-section 2 of the provision.

<sup>48</sup> Section 42 (1) – (3) refers.

<sup>49</sup> See Sections 43 and 44 of the Constitution respectively. However, the proviso to the latter section are too many as to reduce the potency of, or the effect of the principle provision. The provisos are contained in sub-section 2 (a)-(m) and sub-section 3 thereto.

<sup>50</sup> Cap. A9 Laws of Federation of Nigeria 2004.

Peoples' Rights which are set out in the schedule to this Act shall, subject as hereunder provided, have force of law in Nigeria and shall be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive and judicial powers in Nigeria.<sup>51</sup>

The Act could be described as an amplified version of the CFRN 1999 (as amended). The principal highlights of the rights as contained in the Act and obvious extension of the chapter 4 of CFRN 1999 (as amended) are; (i) rights to liberty and security of life<sup>52</sup>, (ii) right to enjoy the best attainable state of physical and mental health; right of persons to be protected by the state by provision of physical and mental health facilities<sup>53</sup> and also; right of persons to education<sup>54</sup>. Article 18(4) of the Act provides particularly for the aged and the disabled to the extent that they shall have right to special measures of protection in keeping with their physical or moral needs.

The principal legislations examined above and other laws enacted specifically to protect different categories of persons, such as infants/children, disabled and illiterates among others are evidence that there are no dearth of laws as far as human rights protection in Nigeria are concerned. However, a fundamental problem is the very germane issue of enforcement, particularly of certain acts which bother on rights violation but usually classified under corrupt practices in most cases by public officers.

### **Effects of Corruption on Human Rights**

The principal effect of corruption in developing countries particularly Nigeria is extreme poverty. The word 'poverty' could be diversely defined or explained. Chambers 21<sup>st</sup> Century Dictionary<sup>55</sup> defines poverty as the condition of being poor, want, poor quality, inadequacy or deficiency. It was also described as the condition of being without adequate food, money etc.; scarcity or

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<sup>51</sup> The provision under reference is a direct compliance with Article 1 of the Act *inter-alia* compelled members who subscribed to the 'charter' to adopt legislative or other measures to give effect to them.

<sup>52</sup> See Article 6 of the Act.

<sup>53</sup> Article 16 (1) & (2) the Act.

<sup>54</sup> Article 17(1) of the Act.

<sup>55</sup> Revised edition, page 1087

dearth, a poverty of idea or absence of elements conducive to growth and productivity.<sup>56</sup>

The United Nations Commission on Human Rights and Sub-Commission on the promotion and protection of Human Rights in one of its reports gave a comprehensive definition of 'poverty' in the following words –

[A] string of misfortunes; poor living conditions, unhealthy housing, homelessness, failure-often-to appear on the welfare rolls, unemployment, ill-health, inadequate education, marginalization, and an inability to enter into the life of society and assume responsibility. The distinguishing feature is that these deprivations-hunger, overcrowding, disease and illiteracy-are cumulative, each of them exacerbating the others to forms horizontal vicious circle of abject poverty.<sup>57</sup>

In the recent years, a number of international organisation at the global and regional levels have identified and admitted the devastating effects of corruption on the protection of human rights and development. The effects of corruption on governance particularly in the developing nations are diverse and have grave effects on human rights, which may be civil, political, economic, social and cultural, as well as right to harness ones potentials given an enabling environment.<sup>58</sup>

Mis-use or mis-application of public funds or outright embezzlement of public resources often hamper the government's desire to provide public services/infrastructures for the benefit of the people. Such services ranges from provision of good health facilities, transportation, electricity supply, educational facilities (well-equipped libraries, laboratories, qualified and well trained human resources) as well as other welfare services.

In countries where corruption is pervasive, it affects every strata of governance at all levels. All arms of government and their agencies

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<sup>56</sup> Collins English Dictionary, ninth Edition, page 1274.

<sup>57</sup> United Nations Rights Study Series, No. 1.

<sup>58</sup> Human Rights and anti-corruption, retrieved may 10, 2017 from [www.ohchr.org/EH/Issues/D/velopment/GoodGovernance/Pages/Anticorruption.aspx](http://www.ohchr.org/EH/Issues/D/velopment/GoodGovernance/Pages/Anticorruption.aspx)

will under-perform since their performances are impaired by graft. It is presently widely acknowledged that corrupt practices among public officers in Nigeria have reached a stage where every right violation are traceable to the vice.

The impact of corruption in Nigeria cannot be over-emphasised, it has led to gross underdevelopment with several millions of Nigerians at the receiving end. There is no doubt that the preponderance of corruption has eroded what would have been the gains of fundamental rights of Nigerians as clearly spelt out by constitution of the Federal Republic of Nigeria (CFBN) 1999 (as amended). Arguably, of what use is right to life when the law enforcement agencies saddle with the responsibility of protecting life and properties are inadequately equipped to discharge their duties. Corruption and corrupt practices contributed largely to ineffective policing in Nigeria, which invariably has led to increase in waves of crime, such as murder, armed robbery, kidnapping and terrorism with lots of lives being lost daily.

A recent arms deal scandal in Nigeria, otherwise referred to as “Dasuki’s arms deal” or “Dasukigate” by Nigerian tabloids is on all fours with the our discourse. A former National Security Adviser to the erstwhile President of Federal Republic of Nigeria,<sup>59</sup> retired Colonel Sambo Dasuki was alleged to have corruptly enriched himself with a huge sum of \$2.2 billion being money earmarked for procurement of arms for the military in its fight against insurgency in Nigeria (fight against *Boko Haram* terrorist group operating in the North Eastern part of Nigeria). The money was allegedly shared among some stakeholders in President Jonathan’s government and the People Democratic Party of Nigeria.<sup>60</sup> The suit against Dansuki is still pending in court since when he was first arraigned. The case has witnessed several adjournments. However, what remains uncontroverted is the fact that either no arms were procured for the military or at best the supplies were obsolete and inadequate for effective fight against insurgency. It is submitted that this is a negation of the provision of section 33(1) of the CFRN, 1999. Though, it seems the letter of the provision under reference focused

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<sup>59</sup> President Goodluck Ebele Jonathan (2011-2015)

<sup>60</sup> Dasuki’s arms deal scandal and blood of the innocent, retrieved July 1, 2019 from *vanguardngr.com*. Ever since his arraignment in Suit Number: FHC/IKJ/CS/248/2011 among other cases, he was neither released on bail as directed by court nor his prosecution being done expeditiously.

on government extra-judicial deprivation of lives yet it is undoubtedly the right of government to protect the lives of her citizens.

In the same vein, the provision of 44(1) CFRN 1999 has on many occasions been violated by corrupt public officers who sometimes use the influence of State Governors to revoke the right of occupancy purportedly in line with the provisions of the Land Use Act, 1978 which specifically states that Right of Occupancy may be revoked for overriding public interest<sup>61</sup> of no little significance is also the subtle move to acquire vast expanse of land in almost every part of Nigeria for the herdsmen, whose pre-occupation is cattle-rearing.

In the recent times there have been intractable conflicts between the herdsmen and farmers in some parts of the country. These conflicts have led to loss of lives and properties of innocent Nigerians. For instance, in February 2016, as result of a clash between herdsmen and farmers in Benue State, 40 persons were killed and about 2,000 persons displaced. Most recently, more than 92 Nigerians were massacred by suspected herdsmen in Benue and Niger State.<sup>62</sup>

The Federal Government under the leadership of President Mohammed Buhari appears to favour the land allocation for herdsmen in different parts of the country through any process practicable. The initial attempt was the unsuccessful grazing bill moved on the floor of the eight assembly (National Assembly).

The bill which was sponsored by Senator Zainab Kure was to provide for the establishment, preservation and control of National Grazing Reserve Commission and for purposes connected therewith.<sup>63</sup>

Unsuccessful attempt at passing the said national grazing bill to law paved way for another controversial project,<sup>64</sup> which is also aimed

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<sup>61</sup> See section 28 of the Land Use Act, 1978. This provision was breached in *CSS Bookshops Ltd. Registered Trustees of Muslim in Rivers State and 3 Ors.* [2005] 11 NWLR 530 at 564 and 577 SC among other cases.

<sup>62</sup> A critical analysis of Conflicts between herdsmen and farmers in Nigeria, retrieved July 1, 2019 from <https://www.ajol.info/hts>

<sup>63</sup> National Grazing Bill, retrieved June 30, 2019 from [nass.gov.ng](http://nass.gov.ng)

<sup>64</sup> The Rural Grazing Area (RUGA) is an arrangement which seeks to settle migrant pastoral families. This also involves land allocation for the

at acquiring land from the owners for the use of the herdsmen, which business is more of private gains for individuals rather than for the public interest as envisaged by the Land Use Act. The chain effect of corruption is more obvious in Nigeria and other developing countries, when compared to the developed countries. Corruption causes underdevelopment, which in turn causes extreme poverty, extreme poverty allows easily for breach or violation of human rights.

The Constitution of the Federal Republic of Nigeria 1999 as amended provides for a lofty provision on right to fair hearing. Of particular interest is section 36(6) (b) which provides that "every person who is charged with a criminal offence shall be entitled to... be given adequate time and facilities for the preparation of his defense...

The *Nigerian Tribune* in its publication of March 19, 2017 x-rayed the impact of the high cost of litigations on Nigerians and concluded that it has adverse and unfavourable effect.<sup>65</sup> The bottomline is that poverty which is an offshoot of corruption may deprive a prospective litigant from venting his grievances through legal process when he cannot afford the legal expenses, which include, but not limited to; filing fees and solicitors' fees. Therefore, such a person even where the law provides that he has the right to defend himself in person or by legal practitioners of his own choice is limited due to paucity of funds.

It is noteworthy that the rights accorded Nigerians by virtue of chapter IV of CFRN 1999 (as amended) have all been eroded through entrenched corruption and corrupt practices both in private and public sectors.

It is imperative to note that the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act<sup>66</sup> which is enforceable in Nigeria is broader in space, compared to the provisions of the CFRN1999 (as amended) on the subject. Many of the provisions of the Act are meant to strengthen the rights of Nigerian, however like its corrosive effect on the Chapter IV of

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purpose to accommodate the herdsmen and their herds, retrieved June 30, 2019 from <https://www.pulse.ng>>tznhkvc.

<sup>65</sup> Costly litigation: Any hope for the common man? retrieved June 30, 2019 from [tribuneonline.com](http://tribuneonline.com).

<sup>66</sup> Cap. A9 LFN 2004

CFRN 1999 (as amended), endemic corrupt practices have rendered the Act largely ineffective.

Unfortunately, measures by successive government in Nigeria to ensure that corruption is eradicated have yielded little or no result. However, one thing is clear, the states inability to meet the peoples' needs as a result of corruption is a violation of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act and other laws that guarantee rights of persons. There is no doubt that a consistent fight against corruption and corrupt practices is very important to the realization of human rights. It is obvious that it ultimately allows for efficient and proper use of public resources and ultimately improves citizens' well-being, access to public infrastructural facilities and enhances Nigerians' standard of living.<sup>67</sup> A cursory look at the right to the dignity of human persons and the parlous state of Nigerian prisons which subject the inmates to inhuman and degrading treatment speaks of the obvious infraction on the rights of some of these men and women.<sup>68</sup> In one of its editorials, the *Punch Newspapers* condemned the unwholesome state of Nigerian prisons as follows:

Judged by the parlous state of its prisons, Nigeria is a nasty and underdeveloped country feigning to be developing. It is a falling state where the prisons are overcrowded, filthy and underfunded.<sup>69</sup>

In spite of the enforcement clauses/provisions in the Act and CFRN 1999 (as amended), corruption in Nigeria has rendered what would have been gains and benefits of the laws illusory. The enforcement of provisions of African Charter on Human and Peoples' Rights provides as follows:

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<sup>67</sup> Olaniyan, K. (2014) *Corruption and Human Rights Law in Africa*, Oxford, Hart publishing, P. 8

<sup>68</sup> Section 34(1) CFRN 1999 (as amended) provided for the right to dignity of human person. Article 5 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) provides *inter alia* that "every individual shall have the right to the respect of the dignity inherent in a human being... all forms of... cruel, inhuman or degrading punishment and treatment shall be prohibited."

<sup>69</sup> Prison congestion: Acting on Buhari's alarm. Retrieved June 30, 2019 from <https://punchng.com/prison-congestion>

As from the commencement of this Act, the provisions of the African Charter on Human and Peoples' Rights which are set out in the schedule to this Act shall, subject as thereunder provides, have force of law in Nigeria and shall be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive or judicial powers in Nigeria.

### **Conclusion**

It is therefore a holistic approach to fight against corruption, if the offence could be viewed as infringement on the rights of persons. While the aforesaid may be considered as a step towards eradicating corruption in Nigeria, the issue of enforcement should be clearly thought and spelt-out. It is suggested that the procedure for enforcement of fundamental rights may serve as template for treatment of corruption as a breach or infraction of person's rights. It will however be necessary to develop a legal framework that will harmonise the two concepts, namely: corruption and human right, with a view to establish a connection between them. This, it is believed will have far-reaching positive effects on efforts to eradicate corruption in Nigeria. For instance, the difficulties being faced by private persons who seek to seek redress for public sector corruption will be removed, without necessary recourse to the freedom of Information Act 2011 which is not applicable yet in many states of the federation.