# Anti-corruption campaign in Nigeria (1999-2007)

African Studies Centre (ASC)
Institut Français de Recherche en Afrique (IFRA)

West African Politics and Society Series, Vol. 1

# Anti-corruption campaign in Nigeria (1999-2007)

## The politics of a failed reform

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Published by:
African Studies Centre
P.O. Box 9555
2300 RB Leiden
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www.ascleiden.nl

French Institute for Research in Africa / Institut Français de Recherche en Afrique (IFRA-Nigeria)
University of Ibadan
Ahmadu Bello University, Zaria
www.ifra-nigeria.org

Cover design: Heike Slingerland
Cover photo: Anouk Batard

Printed by Ipskamp Drukkers, Enschede, Netherlands

ISSN: 2213-5480
ISBN: 978-90-5448-115-7

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# Preface: Introduction to the series

The West African Politics and Society (WAPOSO) series is the result of an agreement between the African Studies Centre, Leiden, and the French Institute for Research in Africa / Institut Français de Recherche en Afrique (IFRA-Nigeria), based at the University of Ibadan and at the Ahmadu Bello University, Zaria.

The series aims at publishing original, cutting-edge research work produced by West African, especially Nigerian, scholars in different fields within the Social Sciences and the Humanities, including Political science, History, Anthropology and sociology. Nigeria will occupy a central position in the series, but publications on transnational and regional issues will also be included.

The series emerged as one of the outcomes of the implementation of new editorial policies of IFRA-Nigeria, aiming at ensuring a better visibility to and facilitating global access to scientific publications made in West Africa. This series, in adding the African Studies Center's record of excellence to the strong academic reputation of IFRA-Nigeria, backed by a network of hundreds of upcoming scholars, is a new opportunity to project and valorize scholarship in Africa.

Both the quality of the academic content and the accuracy of the language in which it is delivered will be ensured by a combined process of peer-review and thorough professional editorial screening. All books within the series will be available in print and online.

The publication of the series is made possible by funding from the French Ministry of Foreign Affairs and the Centre National de Recherche Scientifique (CNRS).

Gérard Chouin (IFRA-Nigeria)
Dick Foeken (ASC)

In memory of my late father, Chief S. O. Enweremadu

who provided me with the initial motivation

to embark on this project

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# Acknowledgements

The author wishes to acknowledge the encouragement, support, and contributions received from several individuals and institutions in Nigeria and around the world in the course of writing this book.

First, I would like to thank profusely all those individuals who volunteered useful information and important data during my field research trips to various parts of Nigeria, especially to the federal capital, Abuja, and states such as Lagos, Oyo, Bayelsa, and Zamfara, to mention just a few. In this category I must mention those patriotic Nigerians – who, despite very tight official and personal schedules, took precious time out to grant me interviews and/or offer useful materials – such as Justice Kayedo Eso (Rtd.), former Justice of the Supreme Court of Nigeria and Chairman of the National Commission on Corruption and Economic Crimes (1989) and of the Judicial Panel on the Reform/Reorganization of the Judiciary (1994); Dr. John O. Magbadelo, former Assistant Director, Office of the Secretary to the Government of the Federation in the Presidency and later Deputy Director of the Federal Ministry of Defence; Mohammed A. Bamalli, Head of Human Resources at the Economic and Financial Crimes Commission (EFCC); Ibrahim Balarabe, staff of the Department of Media and Public Affairs of the EFCC; Rabe Nasir, formerly of the Operations Department of the EFCC and later member of the Federal House of Representatives; Uffem I. Eket, Prosecutor with the Department of Legal Services of the EFCC; Mike A. Sowe, Head of the Department of Public Education at the Independent Corrupt Practices and Other Offences Commission (ICPC); Nduese Essien, former Chairman of the Federal House of Representatives Committee on Anti-Corruption, National Ethics and Values, and later Federal Minister for Housing.

Similarly, I wish to thank several representatives of civil society organisations and of some states in Nigeria who assisted with interviews and relevant documentation: Prof. Assisi Asobie, President of Transparency in Nigeria (TIN); Auwal I. Musa, staff member of TIN; Prof. Alex Gboyega, Department of Political Science of the University of Ibadan and Vice-President of the Convention on Business Integrity (CBI); Robert F.O.N., Research Professor at the Nigerian Institute of Social and Economic Research (NISER), Ibadan; Nelson Belief, former Chairman of the Bayelsa State House of Assembly Committee on Ethics and Human Rights and currently member of the Federal House of Representatives; Seilbarugu Werinipre, Chairman of the Bayelsa State House of Assembly Committee on Anti-Corruption and Urban Development; D. Dumaro, Special Adviser

(Political Affairs) to the Governor of Bayelsa State; E. Ogbe, staff member of the Ministry of Information and Culture and former President of the Bayelsa State Senior Civil Servants Association. I must also acknowledge the help of people such as Ibrahim Na'ayi Salihu, Director of Information Services, Ministry of Information of Zamfara State; A.B. Mahmud, Chairman of the Zamfara State Anti-Corruption Commission; Muh'd Sani Takori, Attorney-General and Minister of Justice of Zamfara State; Shikafi S. Chamba, President of the Zamfara Patriotic Alliance; Adamu Mu'azu, Public Relations Officer of Zamfara State Police Command; and Ibrahim Tudu, Secretary-General, Global Network for Islamic Justice, Zamfara State.

While outside Nigeria, I also benefitted from the documents, comments, and expertise offered to me by several erudite scholars. Among them were John Heilbrunn, Assistant-Professor at the Colorado School of Mines; Peter M. Lewis, Associate Professor at Johns Hopkins University; Nicolas Van De Walle, Professor at the Department of Government, Cornell University; John Peel, Professor at the School of Oriental and African Studies, University of London; Patrick Chabal, Professor of Politics at Kings College, University of London; Dr. Jan Kees van Donge, Institute for Social Studies, The Hague; Stephen Ellis, Research Professor, African Studies Centre, Leiden, and Professor at the Free University, Amsterdam; Professor Daniel C. Bach, Director of Research of CNRS and Professor of Political Science of the Institut D'Etudes Politiques, Bordeaux; and of course, Ruth Marshall, former Director of the French Institute for Research in Africa, Ibadan, and now Assistant Professor at the University of Toronto, Canada.

This project could not have come to fruition without the generous financial and institutional support the author received from several institutions and their managers. Notable in this regard were the French Institute for Research in Africa (IFRA), Ibadan, the Leventis Research Corporation and Centre of African Studies/School of Oriental and African Studies, University of London, and the African Studies Centre, Leiden, who provided financial grants to me and welcomed me as Visiting Research Fellow during the course of preparing this book. I remain very grateful to these institutions and their staff for their kind support throughout the period of my fellowship and even beyond.

My deepest gratitude goes to the language editor of this book, Ruadhan Hayes, as well as to the book's three anonymous reviewers for their excellent work. Their comments have helped strengthen my arguments and perfect my writing skills. I am no less indebted to the publishers, the French Institute for Research in Africa (IFRA), Ibadan, and the African Studies Centre (ASC), Leiden, including their able administrators, Dr. Gérard Chouin (IFRA), and Prof. Ton Dietz and Dr. Dick Foeken (ASC), for accepting the responsibility for publishing and distributing this book.

Finally, I want to thank my family, who have endured difficult periods because of my extended travels, both within and outside Nigeria, in search of new ideas in my quest to complete this book. I am particularly grateful to my darling wife, Marvellous Ezinna, for standing by me at all times.

# Acronyms

| | |
|---|---|
| ACC | Anti-Corruption Commission |
| ACF | Arewa Consultative Forum |
| AG | Action Group |
| ANEES | African Network for Environmental and Economic Justice |
| BPE | Bureau for Public Enterprises |
| BPMIU | Budget and Price Monitoring Intelligence Unit |
| CAC | Corporate Affairs Commission |
| CBI | Convention on Business Integrity |
| CBN | Central Bank of Nigeria |
| CCB | Code of Conduct Bureau |
| CJN | Chief Justice of Nigeria |
| CSO | Civil society organisation |
| DFID | Department for International Development |
| EFCC | Economic and Financial Crimes Commission |
| FATF | Financial Action Task Force |
| FEAP | Family Economic Advancement Programme |
| FJSC | Federal Judicial Service Commission |
| FOS | Federal Office of Statistics |
| ICPC | Independent Corrupt Practices and Other Related Offences Commission |
| IFRA | French Institute for Research in Africa |
| N | Naira |
| NAFDAC | National Agency for Food and Drug Administration and Control |
| NBS | National Bureau of Statistics |
| NCAA | Nigerian Civil Aviation Authority |
| NCC | National Communications Commission |
| NCNC | National Congress for Nigerian Citizens |
| NDB | National Data Bank |
| NDIC | Nigerian Deposit Insurance Corporation |
| NDLEA | National Drug Law Enforcement Agency |
| NEPA | Nigerian Electric Power Authority |
| NGO | Non-governmental organisation |
| NHIS | National Healthcare Insurance Scheme |
| NIA | National Intelligence Agency |
| NIALS | Nigerian Institute for Advance Legal Studies |
| NIC | Nigerian Insurance Commission |
| NITEL | Nigeria Telecommunications Limited |
| NJC | National Judicial Council |
| NJSC | National Judicial Service Commission |
| NNPC | Nigerian National Petroleum Corporation |
| NPA | Nigerian Ports Authority |
| NPF | National Pension Fund |

| | |
|---|---|
| NPS | Nigerian Postal Service |
| OMTC | Owena Mass Transport Corporation |
| OSAP | Ondo State Afforestation Project |
| PHCN | Power Holding Company of Nigeria |
| PSRB | Public Service Reform Bureau |
| PTF | Petroleum Trust Fund |
| SAP | Structural Adjustment Programmes |
| SEC | Securities and Exchange Commission |
| SGF | Secretary to the Government of the Federation |
| SSS | State Security Services |
| TI | Transparency International |
| UN | United Nations |
| UNDP | United Nations Development Programme |
| UNIDO | United Nations Industrial Development Organization |
| UNODC | United Nations Office on Drugs and Crime |

# Foreword

The last two decades have been marked by a phenomenal increase in the incidence of corruption in many countries of the developing world and a growing national and international commitment to fight it. This, in turn, has produced a general re-orientation in the global perception of the causes of corruption and the best ways to deal with it, especially in the regions where it has become a pandemic obstructing development, political stability, and global security. Recent scholarly work devoted to the analysis of graft in public institutions often blames widespread corruption on deficient state policies – in the form of public monopoly, opaque administrative rules and procedures, and poor incentive structures – and weak institutions or, in extreme cases, total institutional collapse (multiple governance failures). This logically calls forth neo-liberal economic and administrative reforms incorporating, among other remedies, policies of privatisation and deregulation, aimed at reducing the role of the state in the economy and the removal of state monopolies and official discretion, and improved remuneration for public officials. A second aspect of these reforms has aimed at the reinforcement of institutional capacities – strengthening existing institutions such as civil society organisations (SCOs), judiciary, and the media – or the creation of new institutions, such as independent anti-corruption commissions (ACCs).

Thanks to growing domestic pressure and the active support of a few vocal international non-governmental organisations (NGOs), development aid agencies, and financial institutions, these policies have managed to find their way, in one form or the other, into the policy agenda of virtually every developing country affected by widespread corruption. But what has been the actual result of their implementation? To what extent have they helped in reducing the incidence and/or perception of official corruption? What have been the main challenges? While evidence points to some progress in terms of a progressive fall in the level of corruption in many East European and Central Asian states such as Georgia, Bulgaria, Slovakia, Romania, Moldavia, and Tajikistan, in the great majority of cases, notably those from Africa, the application of these policies has not produced convincing results.

The case of Nigeria is very instructive. While the endemic nature of corruption has never been in doubt (as studies conducted over several decades have shown), it took three recent events in the late 1990s to force the issue onto the global agenda. The first was the revelation of massive plunder of state resources under the Sani Abacha dictatorship; the second was the global fight against money

laundering connected with international terrorism; and the third was the soaring rate of poverty in many developing countries despite billions of dollars in overseas aid. Since 1999, when Nigeria completed a transition from military dictatorship to democratic rule, international pressure has intensified on its leaders to adopt radical reform measures to fight corruption. Indeed, the fight against corruption and criminality in Nigeria has become a major preoccupation, not only for major Western powers threatened by the money-laundering activities of international terrorist networks, but also for the international development institutions working to reduce global poverty.

This book highlights the major steps taken by the Nigerian leadership, under the Olusegun Obasanjo civilian administration (1999-2007), to deal with corruption in Nigeria. Focusing more generally on activities at the federal level of government, but with occasional insights from some of Nigeria's 36 states and 774 local government councils, this book will seek to provide some answers to the following pertinent questions: How effective have market and institutional reforms been in checking corruption in Nigeria since 1999? Why has corruption remained pervasive in Nigeria under the Fourth Republic (1999 to date), despite an avalanche of policies and programmes designed to fight graft and the oftenrestated commitment of Nigerian presidents to bring corrupt officials to book? What else could be done to achieve a significant reduction in the level of corruption in Nigeria? This book is an attempt to address these related questions in a systematic manner.

The primary motivation for writing this book is the shortage of literature on anti-corruption projects in Africa, despite the proliferation of such programmes in the continent. The book itself is a product of several years of study undertaken with the generous financial support of the French Institute for Research in Africa (IFRA), Ibadan, the Leventis Research Corporation, the University of London (Centre of African Studies/School of Oriental and African Studies), and the African Studies Centre, Leiden. The study involved several months of fieldwork in Nigeria, which allowed me to conduct series of interviews with cross-sections of people, study library and archival materials, and retrieve and analyze dozens of official publications on the subject under study. This research was originally submitted in 2006 as a PhD thesis to the Institute d'Etudes Politiques, University of Bordeaux. It was later updated and translated into English from its original French version at the Centre of African Studies/School of Oriental and African Studies, University of London, where I worked as the Nigerian Leventis Fellow from January to March 2009, and reviewed finally at the African Studies Centre, Leiden, where I spent three months (September-November 2009) as a Visiting Research Fellow.

In terms of scope, this book is essentially about the war against corruption launched and executed by the Obasanjo administration during the period May 1999 to May 2007. It is therefore not a study on corruption *per se*. In order to properly engage with and analyze the issues raised in the study, the book has been carefully divided into eight chapters, all arranged in a logical sequence. The first chapter presents an introduction to the study. Chapters 2, 3, and 4 offer an outline of the three broad strategies or policy instruments designed to achieve the goals of the Obasanjo anti-corruption policy. Chapters 5, 6, and 7 look at the actual application of these strategies and the three key challenges that have contributed to defeating the goals of the anti-corruption policy. The book ends with Chapter 8, which offers a brief conclusion to the study.

# Map of Nigeria

# 1

# Introduction: Corruption in Nigeria - A historical challenge

## Introduction

On 29 May 1999, Nigeria concluded a successful transition to civil democratic rule with the inauguration of President Olusegun Obasanjo as the country's second popularly elected president. The election of President Obasanjo, himself a former military dictator, came after sixteen years of uninterrupted military rule, during which corruption and financial crimes[1] were more or less installed as state policies (Federal Republic of Nigeria 1977, 1978, 1980, 1987, 1990, 1994 & 1999). Although corruption is a major challenge for several other developing states (Haarhuis 2005; Nadiz 2004), very few countries have been so ravaged by graft as Nigeria. This fact was duly underlined by the voting of Nigeria as the world's most corrupt nation in 1999, just weeks before Obasanjo was elected.

1 Nigeria's anti-corruption legislation provides straightforward definitions of the twin concepts of corruption and economic crimes. To begin with, the ICPC Act defines corruption to include "bribery, fraud and other related offences". The word bribery is used interchangeably with gratification, which the Act defines, under Section 8, to mean "money, donation, gift, loan, fee, reward, valuable security, property or interest in property being property of any description whether movable or immovable, or any other similar advantage, given or promised to any person with intent to influence such a person in the performance or non-performance of his duties". According to Section 46 of the EFCC Act, "economic crime means the non-violent criminal and illicit activity committed with the objective of earning wealth illegally either individually or in a group or organized manner thereby violating existing legislation governing the economic activities of government and its administration and includes any form of fraud, narcotic drug trafficking, money laundering, embezzlement, bribery, looting and any form of corrupt practices, illegal arms deal, smuggling, human trafficking and child labour, oil bunkering and illegal mining, tax evasion, foreign exchange malpractices including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic wastes and prohibited goods, etc.". (Federal Republic of Nigeria: Independent Corrupt Practices and Other Related Offences Commission Act 2000a, Economic and Financial Crimes (Establishment) Act 2004). For more details on available definitions and theories of corruption, see Heidenheimer (1989) and Andvig & Fjeldstadt (2001).

This conclusion, produced by Transparency International (TI), the global corruption watchdog (1999), could itself be corroborated not only by the findings of dozens of official inquiries set up by successive Nigerian governments before and after 1999 (see Annex I), but also by several academic studies. These research studies have been unanimous in their conclusion that in Nigeria corruption has become the norm (Odekunle 1986; Joseph 1987; Daloz 2002; Lewis 1996; Bayart 1989, 1997; Erubami & Young 2003).

It would be difficult to estimate exactly how much Nigeria has lost to corruption since its independence from Britain in 1960. One source has estimated the loss to be in the region of $400 billion for the period 1966 to 1999 (*The Economist*, October 21, 2006). This would of course consist of income from Nigeria's vast oil resources – but also international aid. The looting of billions of dollars by General Sani Abacha, who ruled Nigeria between 1993 and 1998, is perhaps the best illustration of this corruption. Investigations launched by Abacha's successors have so far led to the recovery of $2 billion from the Abacha family alone, while another $2 billion remains frozen in Western countries such as Switzerland, Luxemburg, and Liechtenstein (Daniel 2004: 102).

Yet corruption has a much longer history in Nigeria. If Abacha's record can be considered appalling, his criminal path had been nurtured to a large extent by the actions of his predecessors, both civilians and military dictators, who were no less culpable. As the eminent historian Stephen Ellis has argued, political corruption in Nigeria was incubated during the colonial era, especially in the crucial 1940s and 1950s, when the then emerging Nigerian political elites were thrust into positions of political power without any independent financial base with which to finance their political careers. The British colonial policy of discouraging indigenous private entrepreneurship ensured that there were very few entrepreneurs. State coffers were the only available source of funds, and so these elites had little choice but to grab them.[2]

Numerous commissions of inquiry established in the late 1950s and early 1960s after Nigeria secured independence from Britain have confirmed the long history of corruption in the country. In 1962, a commission of inquiry, popularly known as the Justice Coker Commission, showed vividly how politicians in Nigeria's Western Region used the then marketing boards to divert millions of pounds into their political party, the Action Group (AG), while deploying the same funds for their personal use (Federal Republic of Nigeria 1962). Earlier, similar official inquiries had established that such corrupt practices had become widespread in the Eastern Region, governed by the National Congress for Nigerian Citizens (NCNC) (Federal Republic of Nigeria 1956; 1957). Widespread

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[2] Personal discussion with Professor Stephen Ellis took place on 9 October 2009 during a meeting at the African Studies Centre, Leiden, The Netherlands.

mismanagement, rampant corruption, tribalism, and nepotism were some of the reasons cited by the leaders of a coup which overthrew this set of civilian leaders on 15 January 1966 (Dudley 1982).

All the regimes that followed saw a much higher level of corruption and mismanagement. According to the reports of some panels of inquiry established following the overthrow of the Yakubu Gowon regime in 1976, senior members of the Gowon regime indulged in a massive diversion of state resources (Federal Republic of Nigeria 1977, 1978; Dent 1978; Apter 2005). Subsequent governments, particularly the civilian regime of President Shehu Shagari (1979-83) (Odekunle 1986; Joseph 1987) and the military governments of Generals Ibrahim Babangida (1985-93) (Lewis 1996; Erubami 2003), Sani Abacha (1993-8), and Abdulsalami Abubakar (1998-99), took corruption to higher levels. Immediately after the Shagari regime collapsed, following a 31 December 1983 military coup, a tribunal was set up to try some of the worst offenders and recover their ill-gotten wealth. At least 51 public office holders were convicted of embezzlement and other abuse of public office on a grand scale (Federal Republic of Nigeria 1986). Elsewhere, an audit inquiry instituted into the finances of the Nigerian Central Bank in 1994[3] indicted Babangida and his administration of filtering away some $12 billion of 'excess' oil revenue which accrued to the nation during the first Gulf War (Agbese 2005). In 2000, an official inquiry, commonly known as the Christopher Kolade Panel, set up in 1999 following return to democratic rule, also indicted the preceding military regime of General Abdulsalami Abubakar (1998-99), for "massively inflating and flagrantly awarding contracts, licences, awards, etc., usually to firms in which top members of the regime had substantial interests, often at very exorbitant prices, thereby causing a sharp drop in the country's external reserves" (Federal Republic of Nigeria 1999b).

This level of corruption explains much of Nigeria's other social and economic problems, weak economic growth, decaying public infrastructures, endemic poverty, and chronic political instability and violence. This is in spite of its abundant natural resources, including petroleum and gas reserves estimated at some 36.6 billion barrels and 1840.6 billion cubic feet respectively (*Africa Confidential*, 25 June 2004), and its large and talented population. The extent of its socio-economic challenges has been documented in several official reports. In a 2004 report on socio-economic conditions, for instance, the United Nations Industrial Development Organization (UNIDO) estimated that the country was the worst affected by capital flight in sub-Saharan Africa, with over $100 billion in private capital held overseas in 1999, representing around 70% of total private capital

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[3] The report of this audit (Pius Okigbo Report) has never been published officially, but many aspects of it have been published by the local media (Alli 2005) and internet sources: http://www.dawodu.com/okigboreport1.htm

(*The Punch*, 24 July 2004). This amount excludes some $63 billion in non-monetary assets held by Nigerians abroad (*ThisDay*, 20 October 2003). Until recently, Nigeria was a large debtor nation and attempted to be considered one of the 'highly indebted poor countries' deserving of debt cancellation. In 2006, after accumulating $36 billion in external debts,[4] she managed to secure a favourable treatment from the Paris Club, which wrote off $18 billion. This pardon, however, came after she paid a colossal $12.4 billion and agreed to continue a broad range of economic and anti-corruption reform policies (*The Guardian*, 23 March 2005).

Endemic corruption in Nigeria has also nurtured widespread poverty and low human development indices. In 1999, when Nigeria transitioned from military to civil rule, an independent estimation of poverty – that is, the percentage of those living on less than a dollar a day – stood at 70% (Xavier & Subramanian 2008). Although the figures are now much lower, standing at 54.4% in 2004, this is still very high compared with past figures. The poverty rate was only 27.2% in 1980, 46.3% in 1985, and 42.7% in 1992 (Federal Republic of Nigeria 2005). Poor governance also translated into a largely illiterate population. According to official sources, the national literacy level for men in Nigeria, as recently as 2004, was only 50.6%. The percentage is even worse for women: 37.7% (*ibid.* 100). Other indices of human development follow similar trends. According to the World Bank, per capita income in Nigeria stood at $390 in 2004, well below the African average ($600) in the same period and even Nigeria's per capita income in 1980 ($1,000). Life expectancy at birth did not fare any better: Only 47 years in 2000 (World Bank 2004).

The impact of endemic corruption on public order is another area that has attracted considerable attention. According to a 2005 World Bank report, Nigeria figures among 25 countries classified as 'Low-Income Country Under Stress' (LICUS). A LICUS is a state characterised by 'weak security, fractured societal relations, corruption, breakdown in the rule of law, and lack of mechanisms for generating legitimate power and authority' (World Bank 2006b). Ethno-religious conflicts were particularly widespread, as politicians frequently exploit mass ignorance and poverty as well as ethnic and religious differences for political gains. These conflicts often left thousands dead or displaced, engendering a general atmosphere of social insecurity and disorder (HRW, April 2006). Official and reliable data on victims of violence are rarely published in Nigeria. However, a 2005 study by the Human Rights Watch suggests that Nigeria may have lost up to 10,000 citizens between 1999 and 2005. The figure for displaced persons hovers

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[4] According to figures published by the Central Bank of Nigeria in 2000, Nigeria's external debt was only $2.2 billion in 1978, before rising to $13.1 billion in 1982 and then $33.1 billion in 1990. (Federal Republic of Nigeria 1999-2007a).

around 500,000, according to an aide to President Olusegun Obasanjo, Moremi Soyinka-Onijala, who was in charge of migrations and humanitarian affairs (*ThisDay*, 27 April 2006).

It would probably be disingenuous to claim that corruption is the sole cause of all Nigeria's development problems. However, this ailment, fostered by a mixture of surviving traditional norms and colonial legacies and subsequently lubricated by the influx of massive petroleum resources and persistent authoritarian rule, has hardly been a blessing in Nigeria (Ndih 2003).

## The Fourth Republic: A new era of reform?

As soon as President Obasanjo was sworn into office as President and Commander-in-Chief of the Armed Forces of Nigeria, a series of reform measures were rolled out in quick succession in a bid to tackle the cancer of corruption which has tarnished the image of Nigeria and undermined socio-economic and political development. During his inauguration on 29 May 1999, Obasanjo, a longstanding critic of corrupt military regimes and founding member of Transparency International (TI), the global anti-corruption watchdog, promised that "corruption, the greatest single bane of our society today, will be tackled head-on … There will be no sacred cows … Nobody, no matter who and where, will be allowed to get away with the breach or perpetration of corruption and evil" (Oko 2002). Indeed, this campaign remained Obasanjo's number-one policy priority throughout the eight years he was in office. The campaign was pursued through different methods and directed at achieving a number of objectives, three of which are most perceptible.

The first was to bring about a sharp drop in the incidence of corruption, through the speedy arrest and prosecution of corrupt public officials. This was to be achieved through the establishment of new anti-corruption agencies, the Independent Corrupt Practices Commission (ICPC) and the Economic and Financial Crimes Commission (EFCC), inaugurated in 2000 and 2003 respectively. Previous experience has shown that such institutions, which have produced relative successes in some countries, were not easily adaptable to Africa – never mind to Nigeria specifically, where the necessary administrative capacity (adequate funds, quality manpower, strong laws, and efficient judicial systems) and strong political support are often lacking, and prevailing political logic tends to favour the abuse of office and misappropriation of public resources.

The second objective was to reduce or remove incentives for corruption among public officials, via a comprehensive reform of the public sector (including the judiciary). Specifically, the reforms aimed at the following: eliminating monopoly, by privatisation and deregulation; reducing discretion, by the streamlining of functions and reinforcement of controls; and removing administrative

opacity, by the increasing of transparency and accountability, particularly in public revenue collection and expenditure. The aggressive implementation of these policies, it was hoped, would reduce the opportunities for corruption among public officials. Some aspects of these reforms – privatisation, reform of the management of public finance, and the adoption of a new policy on employment and compensation (also known as 'professionalisation' and 'rightsizing') in the public service – were pursued with considerable vigour. But their cumulative effect on corruption has proved difficult to see.

The third objective was to redress some of the worst consequences of past corruption on the economy and improve the financial health of the nation. This goal was to be achieved through the identification of some of the offshore bank accounts and assets – landed properties, companies, shares, and so on – owned by corrupt Nigerians and ensure they were duly confiscated and the proceeds repatriated. The corollary to this well-publicised campaign was a well-coordinated diplomatic offensive directed at persuading the (usually Western) governments whose financial institutions are key instruments of this fraud to also initiate reforms to help check the practice. Obasanjo's effort led to the recovery of only a fraction (less that $1 billion) of Nigeria's $300 to $400 billion of stolen assets, although it appeared to have had some effect on the behaviour of office holders in Nigeria as well as leading to the adoption of several international anti-money-laundering initiatives.

Why was the Obasanjo government interested in pursuing such an ambitious anti-corruption war in a country where the privatisation of public resources has been the norm among the political elite and where all previous anti-corruption projects had failed so woefully? Did the strategies announced by the Obasanjo government truly help reduce corruption in Nigeria? Was President Obasanjo's campaign against corruption a genuine anti-corruption crusade or mere political grandstanding? If indeed it was genuine, was the President able to muster the necessary political will and support to implement his war against corruption?

In 2005, President Obasanjo provided some clear insight into the considerations that informed his administration's anti-corruption policy. During one of his numerous speeches dwelling on transparency and accountability in government, the President revealed:

> Our avowed zero-tolerance for the scourge of corruption derives from our conviction that countering corruption and promoting public integrity are critical to economic rebirth and sustained development … The globalized world in which we live today has become hostile to corrupt nations and their citizens. The first consideration in receiving support or assistance from the international community today is the level of corruption in that country. The implication is that we have no choice but to change our ways. (*The Punch*, 6 September 2005)

This statement by President Obasanjo raises two key aspects of the motivation for launching a campaign against corruption. The first is that Obasanjo and those

who worked with him were patriotic and rational leaders who wanted to see their country develop. These leaders correctly diagnosed the cause of their country's underdevelopment and were determined to remove what they perceived as the major obstacle to achieving that goal: Corruption. The second issue raised by Obasanjo is the fact that the decision to embrace anti-corruption reforms was partly, if not entirely, driven by the need to escape international sanction or isolation.

## Anti-corruption campaign and the logic of rational leaders

At face value, Obasanjo's comments would seem to confirm the validity of the 'rational choice theory', according to which public policy makers act on the basis of cost-benefit calculation (Downs 1958; Elster 1986). Two major inferences can be drawn from this perspective. The first holds that decision makers are rational people guided by national or public interest, who can and are willing to select the best solutions to society's problems among several competing alternative courses of action. The second suggests that these decision makers also act to preserve their own narrow, selfish interest – that is, to become 'boundedly rational' (Simon 1982) – in an attempt to escape political sanctions, whether from voters (in advanced liberal democracies, for instance) or from the international community (donors to countries largely dependent on foreign aid). Thus, when decision makers act, it is because sanctions will presumably be put in place if they do not embrace reforms (Haarhuis 2005: 177). How true are these assumptions?

The first argument has not been supported by recent events in many Africa countries, notably Nigeria. Many studies, including our reading of Nigeria's history, show that anti-corruption campaigns have not been motivated by public interest alone (Médard 1986). In fact, very often they have been motivated by the personal political interests of political leaders, who, for instance, instrumentalise the struggle to legitimise their regime, gain access to power, eliminate their political rivals, and reconstruct a crumbling political hegemony. Indeed, despite being credited with exceptional personal political will during the early days of his government – a fact which was largely informed by his long-standing opposition to corrupt military regimes, involvement in some international anti-corruption NGOs, and adoption of a comprehensive anti-corruption strategy on assumption of office – Obasanjo's anti-corruption fight itself, as we will soon discover, became a vital instrument for targeting political rivals.

The second argument appears even less compelling, to say the least. First, the prevailing political context in Africa in general, and in Nigeria particularly, is largely unfavourable to any serious democratic exercise of power as suggested above. Elections and voters are for now ineffective tools for controlling African political leaders. Similarly, donor pressures have little meaning for countries

such as Nigeria that receive little or no foreign aid (World Bank 2005, 2006), just as the huge debt write-off the country won in April 2005 did not lead to the abandonment of the anti-corruption policy, contrary to expectations. Indeed, as K. Haarhuis has argued, there is no evidence that African leaders who receive aid will implement measures against corruption imposed from outside, particularly if their implementation has potential to undermine their strategic interests. African governments have tended to busy themselves with paper reforms, aimed principally at satisfying the demands of voters, but more especially the international community (Haarhuis 2005: 162). During the period under review (1999-2007), for example, political elites in Nigeria successfully resisted several reform measures, pushed by civil society and the international community, which they considered potentially dangerous: Strong anti-corruption agencies, public declaration of assets by public officers, and privatisation of the larger and more lucrative public corporations, such as the Nigerian Electric Power Authority (NEPA), the oil refineries, and the Nigerian National Petroleum Corporation (NNPC). On the other hand, reforms and measures perceived as less risky or aimed at individuals outside the political class received a more enthusiastic reception.

It could be reasoned that the effectiveness of domestic (voter) and international (donor) pressure for a cleaner government will ultimately depend on the specificity of each country and/or region; that is to say, the adoption of reforms will depend both on whether the electorate is perceived to be prepared to move against the political regime if pressures for reforms are ignored and on the extent to which donors are prepared to go to force reforms on recipients of aid (Knack 2000; Tavares 2003; Burnside & Dollar 2000; Alesina & Weder 1999; Rodrik 1996; Dollar & Pritchett 1998). While these conditions are difficult to apply in the case of Nigeria because the country has been largely free from voter and donor pressure, other external and internal factors were as important in shaping Obasanjo's anti-corruption campaign. The adoption of an anti-corruption policy in 1999 and its implementation were influenced by some recent dramatic international changes (which are still affecting the global attitude towards corruption), as well as by the history of the country, which points to the necessity of embracing some forms of campaign against corruption to stave off unpalatable consequences (such as a military coup).

## Historical dynamics of anti-corruption reforms in Nigeria

The analysis and understanding of recent anti-corruption measures in Nigeria require a study of the country's history and internal socio-political dynamics. This will help us understand the extent to which the anti-corruption drive is path-dependent in this country (Pierson 2000; Mahoney 2000). The crusade against corruption proposed by President Obasanjo at the hour of his election in 1999

may be the first under a civilian or democratic government in Nigeria. It can also be described as the most ambitious ever seen in the country. Nevertheless, it is far from being the first in its history. Corruption and anti-corruption fights have been at the heart of national political discourse and actions in Nigeria since independence in October 1960. Almost all the regimes that have come to power in Nigeria strongly denounced corruption, without any form of external pressure, while also proposing measures against it. It is true that most of these measures (inauguration of commissions of inquiry to probe specific allegations and suggest remedies, adoption of new anti-corruption laws (Kolajo 2002) and even the setting up of anti-corruption agencies) did not yield positive results.[5] It is also true that regimes with radical anti-corruption agenda have been overthrown after only a few months in office: Murtala (1975-76) and Buhari (1983-85). Yet, it is also a well-known fact that many regimes, including the two previous civilian regimes – Balewa (1960-66) and Shagari (1979-83) – fell largely because they failed to take action to check corruption in their governments. But in what way did these past experiences really influence the decision to launch an anti-corruption war in 1999? In our view there are at least two ways in which historical antecedents influenced President Obasanjo's decision to launch the current anti-corruption war.

The first way obviously was through 'imitation' or 'cloning'. This occurs when newly arrived regimes attempt to understudy how their predecessors profited from their anti-corruption projects, in order to do better in this regard. It is a well-known fact that despite the many catastrophic consequences of corruption on Nigeria's development, very few regimes in Nigeria have been interested in fighting it.[6] Several popular measures offered by these regimes – such as dismissal of some corrupt officials, confiscation of illicitly acquired assets, establishment of commissions of inquiry, adoption of anti-corruption laws and agencies, and even ad hoc tribunals set up to try offenders – all failed to produce tangible results, largely because they were driven by ulterior motives. These motives usually involved the legitimisation of unpopular military dictatorships and the need to deal with political rivals in a country where struggle for political power is usually intense, if not violent.

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[5] These laws included the Recovery of Public Property (Special Military Tribunal Act Cap. 389), Laws of the Federation of Nigeria 1990 (as amended in 1999), Failed Banks (Recovery of Debts and Financial Malpractices in Banks), Decree 1994 (as amended in 1999), Criminal Code (applicable in southern Nigeria), Penal Code (applicable in the north), and the Code of Conduct Bureau and Tribunal Act, Cap. 56 Laws of the Federation of Nigeria, 1990. Some of the anti-corruption agencies established in the past included the Corrupt Practices Investigation Bureau, proposed by the Murtala Mohammed administration in 1975, and the Code of Conduct Bureau, established in 1979 by the Second Republic Constitution left behind by the Obasanjo military regime.

[6] With respect to application of sanctions against corrupt officials, the Murtala Mohammed (July 1975 – February 1976) and Mohammadu Buhari (December 1983 – August 1985) regimes were rare exceptions, although tendencies toward the instrumentalisation of the anti-corruption war to punish rival political factions were also observed.

Secondly, and more importantly, past governments in Nigeria have, through massive looting of the public treasury, promoted abject poverty among an overwhelming majority of the population, while also widening the gap between the rich and the poor. The Babangida (1985-93) and Abacha (1993-98) regimes, under which corruption became almost a state policy, are arguably the most culpable. The behaviour of these military regimes changed Nigerian political economy in two ways. The first way was somewhat direct, in the sense that appointment to public offices, especially the more lucrative ones, became transformed into a vast system of patronage guaranteeing the maximisation of political support for whatever regime was in power (Gboyega 1996). The second consequence was more indirect, to the extent that the grand corruption of political leaders and top functionaries led to the impoverishment of lower-level officials, who now embraced the same practices without any fear of sanctions. Consequently, the spread of corruption clogged almost all the machinery of public administration, making basic social services almost inaccessible to the poor. In this context, popular pressure and demand for more anti-corruption measures cannot but increase under a popularly elected government.

## Anti-corruption reform and the new global good governance agenda

Despite the huge negative impact of corruption on the socio-economic and political development of many Africa countries, notably Nigeria, anti-corruption projects in the continent had initially received little or no attention from the international community, who considered it the internal affair of relevant sovereign states. Since the second half of the 1990s, however, anti-corruption reforms have been increasingly supported by the international community, which now considers it as a major preoccupation to be promoted under the framework of the global push for ‘good governance’ and poverty reduction (Galtung & Pope 1999; Hadjadji 2002). Everyone in this context, including researchers, international financial institutions (notably the World Bank and the IMF), development agencies, donors, NGOs, and national governments, have now adopted the fight against corruption as a battle cry. What explains such a dramatic change? And what has been its impact in Africa in general and Nigeria in particular?

The first explanation for the dramatic change in the orientation of the international community and the emergence of the ‘global coalition against corruption’ which followed it comes from the collapse of the Soviet Union, which signalled the demise of the Eastern Bloc and accelerated the processes of globalisation. The end of the Cold War, at the beginning of the 1990s, brought an unimaginable amount of diplomatic pressure to bear on countries or governments perceived as corrupt and repressive (Bresson 1998). Secondly, the interest shown by the inter-

national community in corruption has also been raised by ‘global corruption eruption’, that is the growing revelation of serious cases of fraud and bribery involving senior public officials around the world. These corrupt acts have often occurred with the complicity of the largest commercial enterprises, who in the face of rising competition resorted to corruption. Thirdly, this global corruption eruption then led to an increased academic interest in the study and analysis of corruption. The outcome of these studies revealed that despite billions of dollars provided as development aid, the effects of corruption, especially on poor countries, were growing and could no longer be ignored by decision makers (Keefer & Knack 1995; Brunetti *et al.* 1997; Clarke & Xu 2002; Mauro 1995, 1997).

The interaction of these three factors culminated in the proliferation of anti-corruption programmes in Africa and other parts of the developing world, most of them imposed and supervised by the major international financial institutions (notably the IMF and the World Bank), the United Nations (UN) or its agencies (United Nations Development Programme (UNDP) and United Nations Office on Drugs and Crime (UNODC)), and Western donor agencies. These programmes initially centred on neo-liberal economic reform policies such as privatisation and deregulation. Better known in Africa as Structural Adjustment Programmes (SAP), these policies were presented as necessary solutions to the economic crises which rocked many African states in the 1980s and early 1990s, but more importantly as conditions for future international development aid. In the mid-1990s, a second type of anti-corruption policy, rooted in neo-institutional theories, appeared on the stage. These policies called for the reform of the administrative apparatus of the state and the creation and strengthening of democratic institutions, including institutions of civil society (Haarhuis 2005). The presence and proper functioning of these institutions, referred to as ‘indicators of good governance’, would also qualify a country for foreign aid, cooperation, and support from the international community (*ibid*. 21).

The impact of international involvement in the war against corruption has been very noticeable in Africa, where corruption is considered endemic (Kempe 2000; Coolidge & Rose-Ackerman 1997). The first evidence of this is perhaps the continent’s prominent position in virtually all international prescriptions against corruption. The second is the actual spread of reform measures, such as anti-corruption agencies, in many African states. But what has been the effect of these changes on Africa? If these reform agencies have in some instances helped stave off growing local activism and external pressures, there is hardly any evidence that they have changed the behaviour of public officials in Africa in any significant way. With very few exceptions – notably Botswana – the inauguration of anti-corruption agencies and other forms of anti-corruption reform have clearly not been accompanied by an effective war against corruption in Africa.

Some scholars have argued that this failure is occurring owing to the fact that anti-corruption reforms are often designed and imposed by foreign institutions on unwilling recipients (Hadjadji *et al*. 2002: 30; Fjeldstadt 2002); that is to say, the failure of international anti-corruption programmes in Africa is principally due to the absence, at the helm of affairs, of political leaders who favour reforms (Fjeldstadt 2002; Kpundeh 1998). Robin Theobald formulates this thesis more clearly: "reforms require reformers" (Theobald 1986: 258). In other words, successful reforms require the presence of strong and courageous leaders – what Peters & Savoie (1998: 5) called a "political champion", in apparent allusion to Britain under the reformist Margaret Thatcher regime. It is perhaps for this reason that the arrival of President Olusegun Obasanjo, who was widely portrayed as a 'reformist leader', raised unprecedented interest and hope.

## Anti-corruption war: The role of reformers

The return to democratic rule on 29 May 1999, and its 'consolidation' four years later with the national elections in April 2003, offered Nigerians a new opportunity, not only to elect a reform-minded government but also to exercise some pressure on those they elected to institute effective anti-corruption measures. The election of President Obasanjo seemed to reflect this logic, given that corruption was a dominant theme during his election campaigns. Although Obasanjo had promised an all-out war against corruption if elected, as had other candidates, many Nigerians reasoned that his anti-corruption credentials were far more solid than those of his rivals. Aside from his past record as a founding member of Transparency International, Obasanjo was a long-standing critic of corrupt military regimes. President Obasanjo himself even acknowledged the role of corruption in his election. During his first post-election speech, he noted that he considered "this election as a mandate from the people of Nigeria and a command from God Almighty that I should spare no effort in rebuilding this nation. I understand the clear message of the Nigerian people. In giving me their mandate, they have asked me to … restore our dignity … they want me to alleviate their poverty and reduce corruption" (*ThisDay*, 9 May 1999). In other words, his election was largely due to the public perception that he was the candidate most capable of fighting corruption.

Once elected, Obasanjo moved to justify his reputation as a reformist by rolling out a number of anti-corruption initiatives, including the adoption of an anti-corruption law and institution of a specialised anti-corruption agency, retirement of military officers who had held political appointments, review of several projects initiated by past regimes and believed to be tainted with corruption, and inauguration of dozens of inquiries into the activities of public institutions (see Annex I) (Bello-Imam 2005). Initially, during his first tenure, the President was

largely isolated in this fight, having filled his cabinet with the old political guard (a move that was widely believed to be compensation for their roles in his electoral victory in the February 1999 elections). But following his re-election in 2003, several individuals regarded as 'committed reformists' with solid international reputations were appointed to his government to head key institutions. These individuals included Dora Akuyili (National Agency For Food and Drug Administration and Control (NAFDAC)), Obi Ezekwesili (Budget and Price Monitoring Intelligence Unit (BPMIU)), Nuhu Ribadu (Economic and Financial Crimes Commissions (EFCC)), Nasir El-Rufai (Bureau for Public Enterprises (BPE)), Charles Soludo (Chief Economic Adviser to the President, later Governor of the Central Bank of Nigeria (CBN)), and Ngozi Okonjo-Iwalla (Minister of Finance and Head of Obasanjo's economic reform team until 2006). One common feature shared by these personalities charged with driving the reforms was that they were all technocrats with no previous political affiliation, mainly educated abroad, and/or with substantial ties to major international institutions. Although such foreign connections occasionally raised some eyebrows in Nigeria, these concerns were brushed aside by Obasanjo, who provided these technocrats with political shielding. In the years that followed, Obasanjo's anti-corruption programme benefitted from the presence and initiatives of these personalities.

The Western background of these technocrats or reformers led to a major ideological shift in Obasanjo's anti-corruption war. Unlike the situation that had obtained in the past, when corruption was viewed as a personal moral failure of political leaders and public officials, corruption was now considered as a systemic and structural crisis, resulting from "excessive state intervention in economic and commercial domains" and a "failure of governance". The new thinking now was that corruption required the adoption of a multi-dimensional strategy, including the deregulation of the national economy and privatisation of public enterprises, reform of the civil service (downsizing and review of recruitment, remuneration, and procurement policies), and legal and institutional reform (including the enactment of new laws and creation of new regulatory agencies and the strengthening of existing institutions, such as public services, the judiciary, the parliament, and civil society). At the same time, it was recognised that this multi-dimensional struggle did not exclude public reorientation via public enlightenment and punitive measures such as arrest, confiscation of illegally acquired assets, and criminal proceedings.

This strategy draws from two of the most dominant approaches or perspectives in contemporary literature on anti-corruption: The market and neo-institutionalist approaches. The former, which is rooted in neo-liberal economic theories, views corruption as largely resulting from excessive intervention of the state in eco-

nomic and commercial domains (Toye 1987; Grindle 1991; Evans 1995). According to this view, this state involvement breeds unlimited opportunities for corruption by public officials. The solution to this malaise must, therefore, include structural economic reforms that eliminate state monopolies, discretion, and opacity and that increase transparency in the management of public resources (Klitgaard 1995, 1996; Rose-Ackerman 1997; Kaufmann & Siegelbaum 1997; Ades & Di Tella 2000; Mbaku 2002). The latter, that is the neo-institutional theory, underlines weakness or failure of governance and state institutions as causes of corruption. This is why it is necessary to strengthen the capacity of exiting institutions and to put in place new institutions to complement existing ones.

## Conclusion

The reasons behind the adoption of an anti-corruption campaign will most likely continue to be a question of intense political debate (Holmes 2003). What is clear, however, is that the Obasanjo campaign against corruption in Nigeria was substantially influenced by domestic and external political dynamics, and to some extent by Obasanjo's own personal vision and past anti-corruption commitments. These past commitments are indeed rarely found in Nigeria, so that not surprisingly Obasanjo's anti-corruption policy was greeted with widespread approbation instead of suspicion as was the case in the past. Public support is usually regarded as an essential precondition for the success of public policies. So, how much success did Obasanjo's anti-corruption campaign register in the end? Did the reforms address the key issues? What were the major highlights of this campaign? To what extent did the elevation of anti-corruption struggle into a major policy priority and the groundswell of local and international support translate into success in Nigeria's anti-corruption drive? In other words, what factors have influenced the outcome of the Nigerian campaign against corruption? There are other logical questions that are bound to follow the announcement and implementation of any anti-corruption policy or strategy anywhere in the world. For instance, how prepared was the Nigerian political class, and indeed civil society, for a genuine struggle against corruption? Given the plethora of failed anti-corruption programmes around the world, what factors could have led to the success of the anti-corruption battle in Nigeria? The above are some of the questions addressed in the following chapters that make up this book.

# 2

# The establishment of anti-corruption agencies

## Introduction

While he was in power, President Olusegun Obasanjo conceived and implemented several measures aimed at advancing his anti-corruption policy, one of them being the creation of the Independent Corrupt Practices and Other Related Offences Commission (ICPC) on 29 September 2000 and the Economic and Financial Crimes Commission (EFCC) in April 2004, viewed as the single most important step taken by the President to tackle corruption. These institutions were collectively charged with the responsibility of implementing Nigeria's numerous anti-corruption laws, including their own respective enabling Acts, the Corrupt Practices and Other Related Offences Act 2000 and the Economic and Financial Crimes Commission (Establishment) Act 2004. The institutions were expected to operate from their respective headquarters in Abuja, the nation's capital, through a network of branch offices spread across the whole federation.

The conception of an independent, specialised commission against corruption as an indispensable tool for fighting corruption is an idea that has proved successful in some countries (notably Hong Kong and Singapore) and is now well rooted in global academic discussions on corruption. Nevertheless, its emergence in Nigeria immediately raised at least two important sets of questions. Firstly, is the idea transferable to countries such as Nigeria, with its multiple experiences of weak or failed institutions? If yes, under what specific conditions? Secondly, given the fact that a considerable number of other institutions dealing with corruption in one form or the other were already in existence at the time these institutions were created, what role exactly were these new institutions expected to play? And what would their relationship be with the hitherto existing institutions?

Response to the first set of questions would obviously require a detailed comparative study on the functioning of such bodies across a number of countries, which is outside the scope of this book. However, having said that, it is important to note that in setting up the ICPC and the EFCC, the Obasanjo administration appeared to have succumbed to international pressure or bought into the argument of the leading international organizations that these institutional bodies can indeed be recreated in almost any country with the right amount of political will. Thus, while responding to questions from a journalist on why the government had chosen to put in place a specialised institution to fight corruption, the Attorney General and Minister of Justice Kanu Agabi, Obasanjo's adviser on good governance and transparency, noted:

> The United Nations has for many years now been studying the problem of corruption. In the light of experience it has recommended that nations seeking to eradicate corruption should set up specialised agencies to do so. The nations that have succeeded to eradicate corruption did so by employing specialised bodies. We should be seen to be complying with the United Nations global programme for the eradication of corruption. We cannot afford to be indifferent to the views and feelings of others about our efforts at eradication of corruption while expecting them to do business with us. (*The Guardian*, 1 September 1999).

The second set of questions can be adequately answered by reviewing provisions of the two enabling anti-corruption Acts, the Corrupt Practices and Other Related Offences Act 2000 and the Economic and Financial Crimes Commission (Establishment) Act 2004, which positioned these organs as the pre-eminent institutions for fighting corruption and financial crimes in Nigeria. In this chapter, we shall briefly discuss each of these institutions, with emphasis on their powers, functions, and administrative structures. The discussion will enable us to understand why these agencies were widely regarded as the driving force behind President Obasanjo's anti-corruption crusade and to understand the political stakes that later shaped their progress.

## The Independent Corrupt Practices and Other Related Offences Commission (ICPC)

On 13 July 1999, President Olusegun Obasanjo submitted an executive bill titled Corrupt Practices and Other Related Offences Bill to the National Assembly for passage into law. This was barely six weeks after he was sworn into office. The bill aimed to outlaw all forms of corruption in the public sector and give legal backing for the creation of the ICPC to coordinate the war against corruption in Nigeria. Even though the bill was not the first of its kind in Nigeria[1] and repre-

[1] In 1975 a similar law, known as the Corrupt Practices Decree (No. 38) 1975, was adopted by the Murtala Mohammed military regime. This legislation, which also created an anti-corruption agency, the Corrupt Practices Investigation Bureau (CPIB), was subsequently replaced by the Code of Conduct Act of 1979. The latter Act envisaged the establishment of two bureaucratic institutions, the Code of

sented a sort of conformity with Nigeria's 1999 Constitution, which provides that "the state shall abolish all corrupt practices and abuse of power" (Federal Republic of Nigeria 1999), it nevertheless raised considerable concern in several political quarters.

The first concern came from the federal legislature, which raised at least two major objections to the anti-graft law as proposed by President Obasanjo. The first objection concerned some provisions of the bill, which the lawmakers said constituted grave violations of the fundamental rights of Nigerians as guaranteed by the 1999 Constitution. This was specifically in respect to the powers of the commission to 'invade' the privacy of suspects in the course of its investigation. Secondly, the National Assembly was also not comfortable with a bill which granted the President, the Vice-President, the state governors and their deputies immunity from investigation and prosecution on grounds of corruption, at least while they were in office.

Based on these objections, the two federal legislative chambers, the Senate and the House of Representatives, refused to pass the bill in its original version, choosing instead to subject it to their revision, ejecting the clauses which they had identified as 'anti-democratic' or not in conformity with universally accepted democratic principles. The lawmakers also made sure that they inserted some clauses to ensure that the President, the Vice-President, state governors, and deputy state governors would not be immune to investigation (*The News*, 4 June 2001: 18). After stormy and lengthy debate, spanning a full year (July 1999 to June 2000), the Corrupt Practices and Other Related Offences Act 2000 was finally passed into law by the two federal lawmaking houses as constitutionally required. The law was passed on 13 June 2000. The new anti-corruption law, which effectively paved the way for the inauguration of the ICPC, was subsequently signed into law during a very elaborate ceremony by President Olusegun Obasanjo, also on 13 June 2000 (*The Guardian*, 9 June 2002: 37).

The changes introduced by the National Assembly did not change the character of the ICPC law in any fundamental way. The ICPC Act still retained almost all of the offences proposed by the original executive bill. Similarly, the powers and structures of the commission, as envisaged in the original bill, remained basically unchanged. In consequence, as soon as the anti-corruption Act was signed into law, and especially after the commission was inaugurated, criticism and opposition began to mount concerning certain provisions of the Act that conferred on the body powers that were deemed to be unconstitutional or a gross violation

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Conduct Bureau and the Code of Conduct Tribunal, which were its enforcement arms. In addition, in 1990 a presidential committee on corruption and economic crimes set up by the Babangida administration prepared a draft bill on corruption. The bill, among other items, called for the establishment of a Corrupt Practices Tribunal. This bill, however, was not implemented by the regime.

of the principles of federalism (*The Guardian*, 8 October 2000: 19). Of particular interest here was the notion of 'a public officer', which the Act in its interpretation section defined as:

> … a person employed in any capacity in the public service of the federal, state or local government, public corporations and private company wholly or jointly floated by any government or its agency, including the subsidiary of any such company whether located within or outside Nigeria and including judicial officers and serving magistrates in area/customary courts or tribunals. (Federal Republic of Nigeria 2000a).

The implication of the above provision in the Act was to bring public officers employed in the services of the states and local governments directly under a body (as far as corruption probe is concerned) which is essentially a 'federal agency', being the creation of the central government. The question then arose: Can a state governor, for example, who in any case enjoys constitutional immunity against criminal prosecution while in office, be investigated and prosecuted through an agency of the federal/central government on the strength of Section 52 (27) of the Act? This section provides that when a petition against a governor or his deputy or the President or the Vice-President is received by the commission, they can be investigated, and where they are found to have contravened any section of the Act, the commission can call on the Chief Justice of the Federation to institute an independent council to investigate the indicted official, the report being then forwarded to the state House of Assembly or the National Assembly (in the case of the President and his Vice-President), which have powers to deal with the matter according to the relevant constitutional procedures (which may involve impeachment) if the grounds exist to do so.

Some articulate sections of the Nigerian population, including leading legal luminaries, vehemently opposed this provision, which they considered a gross violation of the spirit of federalism as guaranteed by the Nigerian Constitution. Prominent among these legal experts were two foremost constitutional lawyers, Chief Rotimi Williams and Professor Ben Nwabueze, who spearheaded the opposition to sections of the anti-graft Act. Chief Williams noted that the anti-corruption law "paid no regard whatsoever to the limited scope of the legislative powers conferred on the National Assembly by the Constitution", while arguing that the National Assembly cannot make provisions for dealing with corruption throughout Nigeria (*ThisDay*, 6 July 2000: 4). He recalled that in the past, the attempt of the federal legislature to give itself power to set up a tribunal of inquiry during the Balewa administration (First Republic, 1960-66) was nullified by the courts, expressing the hope that the same fate would befall the anti-graft law.

Professor Nwabueze was more forceful and critical in his arguments:

> … more than being an infraction of the Constitution, it is subversive of one of the foundation pillars of Nigeria's governmental system, federalism, whose two cardinal principles it totally disregards, namely, the principles of the autonomy of the state government vis-à-vis the fed-

> eral government and the exclusiveness of the power of each over certain matters as demarcated in the Constitution. (*The Guardian*, 1 August 2000: 9).

For Nwabueze, the Act "read like a Decree of the Federal Military Government, of which General Obasanjo was head from 1976-1979, a government with powers unencumbered and unlimited by the autonomy of the State governments, by a federal system of division of powers or by a supreme constitution" (*ibid*.). In the opinion of the learned scholar, therefore, "President Obasanjo's anti-corruption crusade deserves our applause and full support, but not at the expense of the cardinal principles of our federal system on which depends, to a considerable extent, the stability and unity of the country" (*ibid*.).

It was against the background of these harsh criticisms, especially from renowned legal experts, that fears were raised about the possibility that such legal loopholes or shortcomings might deadlock the application of the Act and, by extension, the operations of the anti-graft commission. Fears were further raised when, in a further challenge to the powers of the commission, Ondo State, a state in southwest Nigeria, led eight other states in mounting a challenge in early 2000 in Nigeria's highest court, the Supreme Court, challenging the constitutional powers of the federal government to extend its anti-corruption dragnet to Ondo State, or to any other state for that matter. At the Supreme Court, Ondo State and the other allied states, through their lawyer, Chief Rotimi Williams, raised two fundamental questions for determination before the court. One was whether or not the National Assembly can competently enact laws in furtherance of, or in effectuation of, Section 13(5) by virtue of Item 60 (a) of Part One of the exclusive legislative list, in the second schedule to the 1999 Constitution. The second was whether or not the provisions of the Act (the anti-graft law of 2000) had impeded, encroached upon, or removed the legal rights of the plaintiffs, and if so, whether the provisions of the Act were thereby rendered unconstitutional (*The Guardian*, 9 June 2000: 37).

This legal challenge created considerable problems for the ICPC, as many state governments refused to recognise the institution's existence. Ondo State was, of course, one of them. The state had earlier commenced legal proceedings against one of its top functionaries, accused of defrauding the state. The accused, a commissioner (equivalent to a cabinet minister), tried at the Ondo State Chief Magistrate Court, was alleged to have cheated the state by inflating a contract from N12 million to N35 million. And barely three days after the case was reported in the media, another senior official of the state government was indicted for corrupt practices and accused of paving the way for the grounding of the fleet of buses of the state-owned Owena Mass Transport Corporation (OMTC). The managing director of the transport corporation was subsequently ordered to return N8.7 million to the government's coffers, another full-time director of the

company was ordered to refund N230,000, and yet another official was ordered to refund N100,000 (*The Punch*, 2 September 2001: 18). Surprisingly, when the ICPC expressed interest in the case, in line with its legal responsibilities as spelt out in its enabling law, the Ondo State government refused to transfer the accused commissioner's case file for further investigations. In fact, while the legal tussle at the Supreme Court lasted, Ondo State government refused to cooperate with the commission and even went ahead to bar the anti-graft agency from operating in Ondo State.

This kind of open hostility towards the ICPC also came from other states. Immediately after he was sworn into office as chairman of the ICPC, Justice Mustapha Akanbi sent letters to each of the 36 state governors to inform them about the operations of the commission and solicit their co-operation in this regard. Some of the state governments in their reply "said the commission was an unconstitutional body", while others promised to respond to the commission's letter in due course but never did (*Vanguard*, 24 May 2002: 16). Thus, even if the critics and opponents of the anti-graft law were not rejecting the law in its entirety or opposing the war against corruption in the country under the Fourth Republic, their actions and utterances were enough to throw a spanner in the works of the commission, which became moribund, so to speak, while the legal tussle lasted.

On 7 June 2002 the Supreme Court, in a highly celebrated and landmark ruling, delivered its verdict in favour of the ICPC, thereby ensuring that the commission made a triumphant exit from the legal shackles which were threatening to paralyse the war against corruption. After reviewing the arguments of the proponents and antagonists, as it were, the Supreme Court ruled that the anti-corruption Act was validly enacted by the National Assembly. Applying the Blue Pencil Rule, it also ruled that only offending sections, viz. Section 26(3) and Section 35 of the Act, were invalidated. Section 26(3) prescribes a time frame within which all prosecution of criminal offences under the Act must be concluded. The section was struck down because it "infringes on the principle of separation of powers and therefore is unconstitutional" (*The Guardian*, 18 June 2002: 76). Section 35 was struck down because it empowers the anti-graft commission to arrest and detain any person who failed to obey a summons directed to him "until the person complies with the Summons" (*ibid*.). This Section implies that a person may be detained indefinitely, contrary to the provisions of the 1999 Constitution. The authority of the Attorney General of the Federation or any person authorised by the anti-corruption commission to lawfully initiate or authorise the initiation of criminal proceedings in any court in Ondo State (*a fortiori* any part of the Federation), in respect of offences created by the Act, was also upheld. By this ruling, the court sifted the good from the bad.

Armed with this final and conclusive judgment in its favour, the anti-corruption commission was now expected to forge full-speed ahead in its war to rid the country of corrupt practices.

The powers and resources provided to the ICPC to achieve its mission deserve to be highlighted in some detail.

*The administrative structures of the ICPC*

The ICPC was inaugurated on 29 September 2001, with Hon. Justice Mustapha Akanbi, a well-known jurist and former Appeal Court President, as chairman. Specifically, Section 3(4) of its enabling Act provides that "the Chairman shall be a person who has held or is qualified to hold office as a judge of a superior court of record in Nigeria" (Federal Republic of Nigeria 2000a). Similarly, Section 4(6) provides for the position of a Secretary appointed by the President, whose duty is to keep the records of the commission, and take care of the general administration and control of staff. The commission also has as members another 12 men and women of no less integrity, all nominated by the President, 2 from each of the 6 geo-political zones in the country. The commission has its administrative headquarters in Abuja, the federal capital, and was expected to establish branch offices in all the 36 states of the federation in due course. Under Section 3(12) of the Act, the commission was conferred with the powers to appoint, dismiss, and exercise disciplinary control over its staff.

Being a new organization which was greeted with public pressure from its immediate take-off, the commission was faced with some very tough structural limitations upon its birth. These included the vital questions of how and from where to pool its foundation staff and the issue of office and residential accommodation of its key staff. The commission therefore had to commence operations initially with a skeletal staff deployed from, among others, the Offices of the Secretary to the Government of the Federation (SGF), the Head of Service, the Police, and the State Security Service. Lawyers or prosecutors were also seconded from relevant institutions to join the commission to enable it commence operations. The almost unavoidable dependence on the services of staff of some of these institutions, which had been grossly tainted with corruption in the past – especially the Nigerian Police – became a source of concern for many people. However, in the years that followed, the commission moved to effect the recruitment of its own workforce, based on its needs and the level of resources available to it. In one such exercise, the commission engaged consultants from KPMG, one of the world's most renowned management firms, to recruit its own personnel in 2001.

Office and residential accommodation were other challenges which the ICPC confronted upon its birth in 2000. The commission first began its operation from

a temporary site, the boardroom of the defunct Family Economic Advancement Programme (FEAP), before gradually moving to take over the offices of the defunct Petroleum Trust Fund (PTF) (Akambi 2001). In a similar vein, members of the commission had to reside in hotels for some time before the commission later moved to secure rented residential accommodation for the chairman and members of the ICPC's board, as no government quarters were available when it began its work. The absence of a well-equipped office and residential accommodation for the top echelon of such a very important commission, at inception, is an indication of the level of official preparedness. As for logistics, the commission began with some few refurbished vehicles, inherited from the defunct PTF. However, the ICPC later acquired its own vehicles for the use of members and staff of the commission.

*Powers and responsibilities of the ICPC*

The powers and responsibilities of the commission, as defined by the enabling law – in this case, The Corrupt Practices and Other Related Offences Act 2000 – are far-reaching. Before the enactment of the 2000 Act, there were other laws which dealt with corrupt practices in the country. These laws included the Criminal Code (which is applicable in the southern states) and the Penal Code (which is applicable in the northern states), the Recovery of Public Property (Special Military Tribunal Act Cap. 389, Laws of the Federation of Nigeria 1990, as amended in 1999), the Failed Banks (Recovery of Debts and Financial Malpractices in Banks) Decree 1994 (as amended in 1999), and the Code of Conduct Bureau and Tribunal Act, Cap. 56, Laws of the Federation of Nigeria 1990. However, as varied as these laws were, they were believed to be outdated, to the extent that there are now modern methods of corruption used by the perpetrators of corruption which were not contemplated by the lawmakers at the time the older statutes were enacted. Detecting these modern methods of corruption, it was thought, required state-of-the-art legislation. Furthermore, among other issues, these statutes were said to be scattered rather than grouped together conveniently and were not comprehensive (Onuogu 2002). The anti-corruption Act of 2000, therefore, was able to bring about some orderliness in the laws, putting them in a more comprehensive document, and to also fill the lacuna created by the inadequacy of the existing laws.

But what exactly does the Act say about the scope of the ICPC's powers? And how sufficient are these powers? It will not be necessary to examine every aspect of the Act here; we will attempt to highlight some of the most important provisions only, with emphasis on those provisions that touch on the powers and responsibilities of the commission. To begin with, the ICPC Act's definition of corruption, as we have noted, "includes bribery, fraud and other related of-

fences". It also defines gratification, under Section 8, to mean "money, donation, gift, loan, fee, reward, valuable security, property or interest in property being property of any description whether movable or immovable, or any other similar advantage, given or promised to any person with intent to influence such a person in the performance or non-performance of his duties".[2] The aim of these definitions is obviously to catch within the Act's ambit all forms of dishonesty related to corruption and allied offences. The interpretation section is also important because it guides the court in its interpretation of certain words and phrases used in the Act, while assisting the commission in determining what conduct constitutes corrupt practice.

The powers and responsibilities of the commission are found in Sections 6(a) to (f) of the Act, and they include the following: To receive and investigate complaints from members of the public on allegations of corrupt malpractices and, in appropriate cases, prosecute the offenders; to examine the practices, systems, and procedures of public bodies, and where such systems aid corruption, to direct and supervise their review; and to instruct, advise, and assist any officer, agency, or parastatals on the ways fraud or corruption may be eliminated or minimised by them. The ICPC was also empowered to advise heads of public bodies of any changes in practices, systems, or procedures – compatible with the effective discharge of the duties of public bodies – that would reduce the likelihood or incidence of bribery, corruption, and related offences, educate the public on and against bribery, corruption, and related offences, and enlist and foster public support in combating corruption (Federal Republic of Nigeria 2000a).

The ICPC, as we have said, was also to hire its own staff and organize them in the manner it deemed fit. To achieve this goal, the commission created various departments and committees, which were charged with the responsibilities of carrying out different aspects of its duties. For instance, pursuant to Section 6 of the Act, the board of the commission was organized into three general committees. The first dealt with investigation and prosecution; the second dealt with the study of the systems, practices, and procedures at parastatals, public institutions, and the like; and the third took charge of public enlightenment and education. Each committee has a member of the commission as its chairman. The chairman of the

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[2] This provision was often interpreted by the ICPC to mean that it was not empowered to initiate any investigation on mere suspicion of corruption. In other words, even if it has sufficient evidence indicating that an offence of corruption has been committed, investigation and prosecution will have to wait until a complaint is received from a member of the public. The consequence of this interpretation was that individuals or officials who were known to be living above their legitimate incomes continued to enjoy their loot, to the irritation of members of the public. The commission often justified its refusal to investigate such cases on the basis that it had not received any petition against these individuals.

ICPC was the chairman of the investigation and prosecution committee during the period under review (*Tell Magazine*, 3 June 2002: 33).

Furthermore, the Act in Sections 8-26 created a wide range of punishments for offences which include acceptance of gratification by an official, corrupt offers to public officers (by private individuals, for example), corrupt demand by persons, and offences related to corrupt and fraudulent acquisition of property. Others are penalties for offences committed through postal systems, deliberate frustration of investigation by the commission, making false statement or returns, gratification by and through agents, bribery of public officers, the offence of using office or position for gratification, bribery in relation to auction, bribery for providing assistance in regard to contracts, failure to report bribery transactions, dealing with, using, holding, receiving, or concealing gratification, making of statements which are intended to mislead the commission, and conspiracy. The penalties for these offences ranged between one and ten years' imprisonment, with the option of a fine.

In order to eliminate all forms of corruption, especially the modern methods of perpetration, and render the commission and its fight against corruption more effective, the Act also contained provisions or unique clauses: One provision limits the time within which offences of corruption can be tried to 90 working days, with a proviso to extend the time when good grounds exist (Section 26(3));[3] another provides that special judges of the High Court be designated to try only corruption cases (Section 26(2) and Section 61(3)), in order to accelerate the speed of trials, bearing in mind the snail speed of the Nigerian judicial system; another provision requires the protection of witnesses and their evidence (Section 64). Others are the clauses allowing for presumption in certain cases, notably in connection with giving or receiving of gratification, which can be presumed to have occurred for a corrupt motive once it is proved that it had been given or received in the first place (Sections 53 and 54); a clause stating that evidence shall not be admissible to show that gratification is customary in any profession, trade, vocation, or calling, or on a social occasion (Section 60). There were also provisions which provided for punishment for the following: Inflation of the price of goods or services above the prevailing market price or professional standard (Section 22(3)); the award of contracts without budgetary provisions, approvals, and cash backing (Section 22(4)); the transfer or the spending of money for a particular project or service on another project (Section 22(5)); and, of course, the failure to report bribery transactions (Section 23(3)).

Sections 27 to 42 of the Act grant the commission wide powers to perform and enforce these provisions, including the powers to investigate, search, seize (any

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[3] This provision was later declared null and void by the Supreme Court of Nigeria, which reasoned that it encroached on the powers of the judiciary.

property which is the subject of investigation), and arrest (any suspect), if it deems this to be necessary in its investigations. These powers may be exercised upon the receipt of report(s) made orally or in writing by any member of the public to an officer of the commission. In practice, the investigation department is assigned the responsibility to investigate any such report, and after investigation, cases are referred to the prosecution department if there are sufficient facts to prosecute. Officers of the commission investigating cases enjoy some immunity and are conferred with special powers under Section 5(1) of the Act, which provides that "(s)ubject to the provisions of this Act, an officer of the commission when investigating or prosecuting a case of corruption shall have all the powers and immunities of a police officer under the Police Act and other laws conferring power on the police, or empowering and protecting law enforcement agent".

In theory, prosecution of an offence under the ICPC Act is supposed to be initiated by the Attorney General of the Federation or any person or authority to whom he delegates this authority (Section 26 (2)). However, Section 61(1) of the Act also states that every prosecution for an offence under the Act or any other law prohibiting bribery and corruption will be deemed to be performed with the consent of the Attorney General.

The comprehensive nature of the Act – that is, the wide scope of offences created under it – appeared to be intended to bring within its ambit all forms of dishonesty related to corruption and allied offences, taking into consideration Nigeria's past experiences. Similarly, the wide powers granted to the commission by the Act seemed not to be a mere accident, but a deliberate intention to make the commission not just a dog that barks, but also one that bites. Indeed, in the context of a legal framework for combating corruption, there appeared to be adequately worded provisions in the Act for tackling most aspects of corruption pervading public and business life in Nigeria. Nevertheless, as wide as its powers may appear to be on the surface, the ICPC Act – and as a consequence, the ICPC itself – faced at least two potential challenges which became increasingly obvious as time went on.

The first problem was that the ICPC was precluded from investigating cases that occurred before 13 June 2000. In other words, because the anti-corruption Act was signed into law on 13 June 2000, any offence of corruption that was committed before that date cannot be prosecuted by the commission. According to Section 61(2) of the Act, such corrupt acts could only be prosecuted by the already existing anti-crime bodies.[4] Indeed, pursuant to this legal provision, several

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[4] Section 61 (2) of the ICPC Act 2000 states that "(w)ithout prejudice to any other laws prohibiting bribery, corruption, fraud or any other related offences by public officers or other persons, a public officer or any other person may be prosecuted by the appropriate authority for an offence of bribery, corruption, fraud or any other related offences committed by such public officer or other person con-

cases of corruption reported to the ICPC were referred to the Federal Director of Public Prosecutions and his counterparts in the individual Nigerian states or to the police, as the case may be. This legal provision not only contrasted with best practices around the world,[5] it made little sense in Nigeria. The commission's inability to investigate and prosecute former officials became a major source of legitimacy crisis for it. A second loophole was that the ICPC law had deliberately excluded several criminal acts taking place outside the public sector (bank frauds, money laundering, tax fraud, etc.), which most Nigerians considered to be corruption.

Given these challenges, it was not surprising that the Obasanjo government soon came under intense public criticism and diplomatic pressure, notably from the Financial Action Task Force (FATF),[6] which threatened to impose sanctions if perceived short-comings in Nigeria's anti-corruption legislation were not corrected (Abdullahi 2004). This was the basis for the establishment of the EFCC, which subsequently became the dominant anti-graft body in Nigeria.

## The Economic and Financial Crimes Commission (EFCC)

The EFCC was first proposed by a 2002 law, the Economic and Financial Crimes Act 2002,[7] but came into existence only on 11 April 2003.[8] Unlike the ICPC, the birth of the EFCC witnessed little or no controversy. Although its enabling Act contained far more 'draconian' powers than those of the ICPC, its passage in the National Assembly still proceeded almost without any political challenge. There are two explanations for this paradoxical situation. Firstly, being legislation that was more or less imposed by powerful international interests, it could not have faced the same kind of political opposition or legislative scrutiny which the ICPC Act attracted. Secondly, and perhaps more importantly, the EFCC bill was not considered a threat by Nigeria's political class, who erroneously interpreted it as a weapon against fraudsters in the banking industry or individuals specialising in advance-fee fraud (commonly known as "419" in Nigeria).[9] It was in an open

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trary to any laws in force before or after the coming into effect of this Act and nothing in this Act shall be construed to derogate from or undermine the right or authority of any person or authority to prosecute offenders under any other laws". ICPC Act 2000 *op cit.*

5 In Hong Kong and Singapore, for instance, anti-corruption agencies can, under specific circumstances, investigate and prosecute cases committed even before the establishment of an anti-corruption body.

6 The Financial Action Task Force (FATF) is an inter-governmental body established to promote and enforce national and international policies and legislation designed to combat money laundering. Its headquarters in located in Paris.

7 This Act was subsequently replaced by the Economic and Financial Crimes (Establishment) Act 2004.

8 Before this date, the government's war against economic and financial crimes was mainly conducted by an ad-hoc body known as the National Committee on Economic and Financial Crimes.

9 419 is a financial crime which derives its name from Section 419 of Nigeria's criminal code, which criminalises any act designed to obtain money under false pretext. Also known as advance-fee fraud

admission of this fact that a former Speaker of Nigeria's lower legislative house, the House of Representatives, Ghali Umar Na'abba, said that the "EFCC was meant to fight 419 and money laundering. It was never intended to be an institution to fight corruption in public places. That duty is for ICPC" (*ThisDay*, 6 February 2006). Thus, right from the beginning, the EFCC enjoyed far higher financial and political support from the executive arm of government and indeed the international community. This level of support translated into a more robust administrative structure and a confident leadership willing to step on toes on some occasions.

*Powers and responsibilities of the EFCC*

Just like the ICPC, the powers and responsibilities of the EFCC are contained in different sections of its enabling Act. According to the Act, the commission is specifically charged with the responsibility of conducting investigations into crimes of a financial and economic nature,[10] such as 419, money laundering, counterfeiting, capital and market fraud, cyber crimes, credit-card frauds, contract frauds, and terrorism and terrorism financing, as outlined in Section 6. The commission can equally enforce other previously existing legislation touching on economic and financial crimes.[11] The EFCC is also enjoined in Section 6 of the Act to take all necessary measures to prevent and eradicate economic and financial crimes in Nigeria. This will include identifying, monitoring, freezing, or confiscating proceeds (funds and properties) from criminal activities such as terrorism and financial and economic crimes, and collaborating with similar institutions abroad, especially in the area of research, investigations, exchanges of personnel, international mutual legal assistance (for extradition), and prosecutions. Similarly, the EFCC is expected to promote the coordination of, and maintain close ties with, all Nigerian institutions charged with investigating economic and financial crimes, such as the Police, Ministry of Justice, Customs, Immigration, Prisons, Central Bank of Nigeria, and National Drug Law Enforcement Agency (NDLEA), to mention just a few. Another important task assigned to the commission is to educate and enlighten the general public and solicit their support for the war against economic and financial crimes.

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or confidence trick, 419 is a scam in which the target is usually persuaded, through emails or any other tool of communication, to advance sums of money in the hope of realizing a significantly larger gain.

10 See Section 46 of the EFCC Act, 2004 op cit.

11 Specifically, the Act in Section 7 (2) states that "in addition to the powers conferred on the Commission by this Act, the Commission shall be the coordinating agency for the enforcement of the provisions of the Money Laundering Act of 2004; 2003 No. 7. 1995 No. 13; the Advance Fee Fraud and Other Related Offences Act 1995; the Failed Bank (Recovery of Debts) and Financial Malpractices in Banks Act, as amended; the Banks and Other Financial Institutions Act 1991, as amended; Miscellaneous Offences Act; and any other law or regulation relating to economic and financial crimes, including the Criminal Code and Penal Code". EFCC Act 2004 op cit.

Apart from its powers to coordinate all the other regulatory and security agencies involved in the eradication of economic and financial crimes, which permits it to assume a sort of 'position of superiority' relative to the concerned institutions, the EFCC differs from the ICPC in at least two important respects relative to the scope of its powers. In the first place, it did not misinterpret its liberty to commence investigations and even prosecutions – if and when it had reason to suspect that an individual or institution had committed or had infringed upon any of the economic and financial crimes' laws – by waiting to receive a formal petition, as was the case with the ICPC. This meant that the EFCC was able to act in a more proactive manner to bring corrupt individuals to book before they had sufficient time to cover their tracks. The second point is that the powers of the EFCC are retroactive, in the sense that offences committed in the past (before the establishment of the commission) can be investigated, and any person suspected of illegal enrichment or illicit financial transaction and – better still – any person possessing unexplained wealth relative to his legitimate income can be brought to court. Thirdly, the powers of the EFCC cover both the private and the public sectors. These wide powers were complemented by fairly broad administrative structures.

*The administrative structures of the EFCC*

In comparison with other institutions charged with eradicating corruption and crime, (ICPC, Code of Conduct Bureau, NDLEA, NAFDAC, etc.) the EFCC distinguishes itself not only by the extensive scope of its powers but also by its inclusive administrative structures. As is the case with the ICPC, members of the board of the EFCC, including its chairman (an executive chairman), must be very experienced personalities with impeccable character, nominated by the President and then confirmed by the Senate. However, apart from the EFCC chairman, who must possess at least 15 years of professional experience acquired in a security organization, the other members of the commission must include the heads, or their representatives, of the Central Bank of Nigeria (CBN) and the Ministries of Foreign Affairs, Finance, and Justice. Others included are from the NDLEA, National Intelligence Agency (NIA), State Security Services (SSS), Corporate Affairs Commission (CAC), Securities and Exchange Commission of Nigeria (SEC), Nigerian Deposit Insurance Corporation (NDIC), Nigerian Insurance Commission (NIC), Nigerian Postal Service (NPS), National Communications Commission (NCC), Nigerian Customs Service, Immigration, and the Nigerian Police Force.

The chairman is assisted by a secretary general, who is the head of administration, and a team of six directors in charge of each of its departments: Organizational Support, Financial Crimes Intelligence, Advance-Fee Fraud and Other

Economic Crimes, Intelligence, Enforcement and General Operations, and Prosecutions and Legal Council and Training School. The EFCC chairman is also placed in charge of a large bureaucratic structure, which in 2006 included some 800 personnel. The figure was about 500 during its first year of existence. The EFCC's staff profile was thus better than that at the ICPC. These permanent employees were housed in its imposing administrative headquarters in the federal capital, Abuja, and regional offices (in Lagos and Port Harcourt) which became functional in 2005.

The size and effectiveness of any organization depends largely on the level of funding. While comprehensive and comparative data on the finances of both the EFCC and the ICPC are unavailable, anecdotal evidence points to a superior level of finance for the EFCC. According to our data, the EFCC received over N700 million ($5 million) in public subvention during its first year and N1.1 billion ($8 million) in its second (*ThisDay*, 4 June 2005). By contrast, the ICPC received only about N500 million ($3 million) on average between 2000 and 2004. What accounted for this huge gap in funding between the EFCC and the ICPC?

The different approaches to sourcing for funds by the two organizations were partly responsible for this wide gap in funding. While the EFCC enthusiastically welcomed funding from a variety of local (usually public) and international institutions, the ICPC on the other hand accepted assistance only from international organizations, which must be in non-monetary form (for example, training of ICPC personnel, supply of equipment, and payment for ICPC programmes). According to ICPC officials, this is to protect the integrity of the organization and avoid putting it in an awkward position when the anti-graft body is called upon to investigate an official of such donor organizations.[12] Similarly, outside the provision that required the National Assembly to appropriate funds for its operations, the ICPC Act is virtually silent on the question of other sources of funding for the commission. On the other hand, Section 35(2) of the EFCC Act provides that in addition to statutory allocation to be approved by the National Assembly, "the Commission may accept gifts of land, money or other property whether within or outside Nigeria upon such terms and conditions, if any, as may be specified by the person or organization making the gift provided that the terms and conditions are not contrary to the objectives and functions of the Commission".

## Conclusion

From all indications, President Obasanjo considered the setting up of new anti-corruption commissions as key to actualising his goal of fighting corruption in

[12] This information was provided during my interview with Mr Mike Sowe, ICPC's Head of Public Enlightenment, in Abuja in November 2004.

Nigeria. This was demonstrated by his establishing first the ICPC and then the EFCC, notwithstanding widespread political opposition. These two commissions, however, were not endowed with the same levels of legal powers and administrative structures, as a result of the different circumstances of their birth and funding. As should be expected, these differences in level of funding, administrative structures, and scope of powers had substantial impacts on the achievements of these two institutions. But before looking at the performances of these bodies, let us first examine the other reform measures put in place by the Obasanjo government to fight corrupt practices.

# 3

# Judicial and public service reform

## Introduction

> Over the years, the Public Service Commission at Federal and State Levels lost the values on which they were established. Merit was sacrificed for expediency and opportunism. Retraining of hired staff hardly took place. It allowed so-called "ghost workers" to infiltrate the service and ended up with a payroll that was totally at variance with output or productivity. Parastatals were mismanaged, looted, and so badly run that they became an embarrassment to norms of efficiency, productivity, management, and probity … The proliferation of parastatals as well as the creation of several agencies had resulted in unnecessary duplications of functions and in some cases mandates. – President Olusegun Obasanjo. (*The Guardian*, 3 August 2004)
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> A good, fair and fearless judiciary instils discipline in the people. A bad or corrupt judiciary is unworthy of a democratic society and is capable of destabilising the society and thus breeding anarchy. – Chief Justice Mohammed Uwais. (*Daily Independent*, 27 July 2004)

Despite their vaunted potency, it is now widely assumed that specialised commissions against corruption are not sufficient alone for fighting corruption, especially where corruption is systemic or endemic (Gould & Amaro-Reyes 1983; Rose-Ackernan 1996; Mény 1997; Stapenhurst & Langseth 1997; World Bank 2000). Anti-corruption commissions – *ex post* curative measures – must be complemented by a general reform of the public bureaucracy, including the judiciary – *ex ante* preventive measures – if they are to be effective. The measures taken by the Obasanjo government to reform Nigeria's public services and judiciary have been rooted in this logic. What exactly were the measures taken? And where did they originate from? In this chapter, two types of reforms will be considered. The first type involves all the major reforms directed at public agencies under the direct control of the executive arm of government. We will call these 'public service reforms'. The second type concerns reforms taking place within agencies of the judicial arm of government, and we will refer to these as 'judicial reforms'.

## Public service reforms

During the years that preceded President Obasanjo's rise to power, Nigeria's public services became plagued by various forms of inefficiency and corruption. These were not new phenomena. Three decades earlier, similar issues had provoked calls for reforms or restructuring, culminating in the 'great purge' of 1975-76 by the military government of General Murtala Mohammed, in which over 11,000 public servants lost their jobs (Ereho & Oladoyin 2000). Unfortunately, this purge and subsequent reforms failed to curtail the corruption and inefficiency of the public sector (Aina 1982). Many of the reforms proposed were not comprehensive enough – for instance, they often focussed merely on higher pay for civil servants (Mohammed 2003). Others were frequently abandoned midway through for political reasons. A typical example was the Shehu Shagari regime, which had, following a severe economic crisis in the early 1980s, constituted a panel on the reform/reorganization of public parastatals and companies in 1982. The commission recommended the privatisation of most state companies, to be quickly followed by an increase in the role of the private sector as a way of getting out of the crisis (Osaghae 1995: 24). These recommendations, like most others, were never implemented before the regime was toppled in a military coup on 31 December 1983. The subsequent implementation in the mid-1980s of the recommendations of Shagari's panel, under the title of 'Structural Adjustment Programme', did little to alter the decay in Nigerian public services, a decay which had reached an unprecedented height in 1999 by the time President Obasanjo was elected.

To correct these issues, the Obasanjo administration announced a new series of reform measures, to be coordinated by a permanent institution, the Public Service Reform Bureau (PSRB) (*The Guardian*, 12 February 2004). The goal of these reforms was first and foremost to reduce the incentives for corruption, through the elimination of monopolies by privatising and deregulating, the elimination of discretion by streamlining functions and reinforcing controls, and the removal of administrative opacity by increasing transparency and accountability, especially in public revenue collection and expenditure. The aggressive implementation of such policies was expected to reduce the opportunities for corruption among public officials. Our analysis in this section will not cover all aspects of the reforms implemented, but only the most important ones: Accelerated privatisation of public enterprises, reform of the management of public finance, and the adoption of a new policy on employment and compensation in the public service, also known as 'professionalisation' and 'rightsizing'.

*Privatisation of public enterprises*

One of the most important reform policies of the Obasanjo administration was privatisation of public enterprises, defined as the "divestment by the (Federal) Government of part or all of its ordinary shareholding in designated enterprises" (Federal Republic of Nigeria 2000b: 2). Privatisation of public enterprises was conceived not only as a strategy for promoting economic growth and rapid development but also as an effective means of fighting corruption. The argument of the government, according to Vice-President Atiku Abubakar, was that "a more efficient economy driven by the private sector would not give room for corrupt practices witnessed in the public sector" (*The Guardian*, 8 June 2004). Privatisation, according to the government,

> permits governments to concentrate resources on their core functions and responsibilities, while enforcing the 'rules of the game' so that the markets can work efficiently, with provision of adequate security and basic infrastructure, as well as ensuring access to key services like education, health and environmental protection. The objective is to assist in restructuring the public sector in a manner that will affect a new synergy between a leaner and more efficient government and a revitalized, efficient and service-oriented private sector. (Obasanjo 1999: 4)

Although the sale of government businesses is now commonly associated with the Obasanjo administration, privatisation is not a recent phenomenon in Nigeria. On the contrary, its origin goes back to the Ibrahim Babangida military regime (1985-93), which adopted the policy as part of a Structural Adjustment Programme imposed on developing countries by the Bretton Woods institutions (IMF and World Bank) as a conditionality for negotiating the debts which became unsustainable during the economic crises in the 1980s (Biersteker & Lewis 1997; Umoren 2001; Dibie 2004). Nigeria is believed to have invested over $100 billion in its diverse public enterprises, which numbered around 600 at federal level and employed some 420,000 persons by 1993 (Jerome 2003). Return on investments in these enterprises was said to be 10% at most. Indeed, these businesses were largely responsible for Nigeria's external debt, which reached $36 billion in 2005. According to the Bureau of Public Enterprises (BPE), the institution charged with supervising the sale of these enterprises, $19.8 billion, representing 55% of Nigeria's external debts, were in fact incurred to finance these enterprises. Of that sum, some $1.5 billion was borrowed to finance the construction of Hilton Hotels ($300 million), Sheraton Hotels ($250 million), and some Paper Mills ($1 billion) alone. According to the BPE, the rate of return on these investments was only 0.5%, while their contribution to budgetary deficit represented 5% of GDP in 1998. As a matter of fact, with the exception of the Nigerian Insurance Corporation (NICON) and the Central Bank of Nigeria (CBN), none of the state companies or corporations had been profitable. This is notwithstanding the fact that they collectively received statutory transfers to the tune $3

billion in 1998, $800 million in 1999, $1.4 billion in 2000, and $4 billion in 2001 (*ThisDay*, 28 April 2005).

Despite this disappointing record, along with the collapse of course of some of the most costly state firms – such as Nigeria Airways, Nigerian National Shipping Line, and Nigerian Railways Corporation – and the critical state of others – for example, the refineries, Nigeria Telecommunications Limited (NITEL), and the National Electric Power Authority (NEPA) – the privatisation of inefficient state enterprises was never faithfully implemented by Obasanjo's predecessors. The policy was abandoned midway by the Babangida regime, which had initially embraced it, and then by its successor the Abacha government, which showed even less interest in the policy. These regimes were pressurised to drop the policy both by the Nigerian political class, used to seeing appointments to public office (including onto the boards of public enterprises) as a principal source of political patronage, and by an increasingly impoverished civil society, who saw the invisible hands of some foreign actors bent on violating the sovereignty of their nation and fostering inequality and mass poverty in Nigeria (Biersteker & Lewis 1997). During his brief period in power, General Abdusalami Abubakar, who rose to power in June 1998 following the sudden demise of General Sani Abacha, promised to resuscitate the policy before the re-establishment of civil democratic rule planned for May 1999. This promise, however, which was applauded by Nigeria's creditors in the West and international financial institutions (Obadina 1998), went unfulfilled. Even if the regime had overcome domestic political pressure against the policy, time and the presence of other pressing priorities (such as the transition to a civilian-rule programme) would not have allowed for the implementation of any meaningful privatisation programme.

The arrival of President Obasanjo in May 1999 marked the revival of the privatisation programme. Obasanjo's vision was influenced by three factors: the works of influential scholars, successful privatisations elsewhere, and of course the pressures of international financial institutions. Despite some pessimism as to the efficacy of privatisation as an anti-corruption tool (Watt *et al.* 2000; Whitehead 2000), many scholars and anti-corruption experts had continued to emphasise its benefits. Rose-Ackerman (1996: 3), for instance, argued that "if a parastatal that is the locus of corrupt payoffs is moved into the private sector, those payoffs will end … Policies that lower the controls on foreign trade, remove entry barriers for private industry, and privatise state firms in a way that assures competition, all contribute to the fight against corruption". Some of the proponents of privatisation, however, have suggested that privatisation policy is likely to succeed only if accompanied by other specific changes, such as adoption of a new management order and new regulations and principles of production. These in turn will be facilitated by the putting in place of external controls – that is, the

transfer of ownership rights to foreign investors (Bafoil 1999). Empirical data have also been supplied by some Africanists to show the long-term benefits of privatisation. According to one such study, despite some deficits at the level of job creation, privatisation has largely ameliorated the condition of privatised firms in several countries in Africa, including Nigeria, Benin, Mozambique, and Uganda. In the particular case of Nigeria, "changes in management and labour practices led to improved enterprise performance and increase in shares prices" (Makalou 1999: 15).

Successful privatisations in other emerging economies also had salutary effects on President Obasanjo. Since the 1980s, a considerable number of countries, notably in Central and Eastern Europe, the former Soviet Union, and recently Africa, have embraced the policy of privatisation of state enterprises on the conviction not only that it will raise the overall efficiency of the privatised firms, but also that it will lead to a reduction in the level of corruption (Schleifer & Vishny 1993; Olson 1996; Ades & Di Tella 1997; Kaufmann & Siegelbaum 1997; Rose-Ackerman 1999). The fact that the successes of these nations did not escape President Obasanjo's attention was evident in the following comments:

> State enterprises suffer from fundamental problems of defective capital structure, excessive bureaucratic control or intervention, inappropriate technology, gross incompetence and mismanagement, blatant corruption and crippling complacency which monopoly engenders. Inevitably, these shortcomings take a heavy toll on the national economy. The problems associated with state-owned enterprises and monopolies are not peculiar to Nigeria. It is true, however, that many developing countries have overcome the problems through a well-designed and single-minded pursuit of privatization programme. (Obasanjo 1999: 4)

While President Obasanjo, like other leaders before him, continued to deny that privatisation was embarked upon to satisfy powerful foreign interests, it remains true that attempts to sell off wasteful and inefficient state companies is not just about a rational economic decision born out of enlightened self-interest. Nigeria, like other highly indebted poor countries, was more or less compelled to embrace privatisation, one of the preconditions fixed by her creditors for the much-sought-after debt relief (Obadina 1998). Pressures from these actors did not cease until Obasanjo began to implement the policy (cf. Osaghae 1995). But how far did Obasanjo go in his quest to sell Nigeria's moribund public enterprises, and what challenges confronted him? How did the administration overcome pressures from the political class and civil society – particularly from labour, who are historically against privatisation?

During the inauguration of the National Council on Privatisation on 20 July 1999, President Obasanjo identified three steps or phases to be followed by his privatisation programme. The first phase, running from June to December 1999, was the privatisation of banks and cement factories already quoted on the stock exchange. The second phase was the sale of hotels, vehicle assembly plants, etc.

Then the third and final phase was to see the privatisation of the largest state companies and corporations, such as the National Electric Power Authority (NEPA), Nigerian Telecommunications Limited (NITEL), Nigeria Airways, fertiliser plants, and the petroleum refineries (Obasanjo 1999: 6). The administration approached the exercise with such speed that by the end of 2006, very few companies were unsold as against a total of 95 marked for either full or partial privatisation in 2000-01. The sales helped save the government some $4 billion in 2004 alone, representing the amount that was given to these institutions in the form of state support the previous year (*ThisDay*, 28 April 2005). This progress, however, did not outweigh the negative aspects of the policy. Progress was not as rapid as one may be tempted to assume, nor was it uniform across the three tiers of government. Some of the biggest enterprises were never privatised by the time Obasanjo left office in May 2007. More importantly, the whole process was not as transparent as the proponents of privatisation often presented it.

First, Nigeria, a federation with 36 state governments and 774 local governments, is such a huge and complex country that a single policy is hardly applicable across the whole country. While the federal government was quick in privatizing its own companies, the situation in the states and local councils remained unclear. While some state governments pursued their own privatisation plans, others were busy creating new business. To cite one example: In the north-central state of Nasarawa, an eight-man panel was inaugurated by Governor Abdullahi Adamu on 10 November 2003 to privatise the state's enterprises. Seven of these enterprises were slated to be sold by the end of 2005 (*ThisDay*, 1 March 2005). But in the south-south state of Delta, which retained approximately N17.7 billion in investments in various private business concerns at 13 December 2004, including N9.5 billion in one of Nigeria's mobile phone operators (V Mobile Nigeria Limited), politicians were taking a completely different direction. In its 2005 budget, this state announced it was setting aside a further N5 billion (out of a budget of N106 billion) for the creation of commercial enterprises with the aim of creating employment for the youth in the state. Conscious of the folly of its decision, the state government was quick to emphasise that "within a given period, once the businesses stabilize, then we remove our participation before political interferences begin to impact on the business" (*ThisDay*, 12 March 2005).

At a second level, in spite of its often-restated commitment, the Obasanjo government did not succeed in privatizing the largest enterprises, which were coincidently the most inefficient firms. The electricity company (NEPA, now known as Power Holding Company of Nigeria (PHCN)) and the refineries[1] are the most relevant here. Part of the reason, as we have said, was the politics of patronage.

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[1] Nigeria operates a total of four oil refineries (Kaduna, Warri, Port Harcourt I, and Port Harcourt II).

The Nigerian political class (especially from the southeast and north of the country) opposed or tried to halt the privatisation train, owing to the fear that privatisation would most certainly exacerbate the concentration of economic wealth in the hands of elites from rival ethnic groups (such as the Yoruba of the southwest) considered to be more economically advanced (Osaghae 1995). They also collectively feared losing a vital source of political patronage provided by these institutions, which offered some 5,000 political appointments in their commissions and boards of directors (Anya 2003). One example occurred in April 2001, when a planned privatisation of the debt-ridden Nigeria Airways was halted following the strong opposition of some members of the House of Representatives, the second chamber of the National Assembly (*BBC News*, April 2001). This decision prompted a World Bank team, advising the government on the privatisation policy, to depart in protest, citing "slow progress, refusal of the government to heed its advice and resistance to the sale of Nigerian Airways". The government was able to liquidate the airline only in 2004, when all its aircraft became grounded.

A third factor concerns the limited interest shown in the enterprises slated for privatisation by the foreign investors often preferred by the government. Outside the upstream sector of the petroleum industry, foreign investors showed limited interest in Nigeria, despite its immense potential. As a rule, foreign investments in Africa and Nigeria in particular largely favour the extractive sector, notably the oil and mining sectors (*The Economist*, 24 June 2006; UNCTAD 2006). Indeed, frequent appearance in opinion polls of the world's most corrupt countries, poor regulatory environment, decayed public infrastructures, and frequent violent ethno-religious conflicts appear to have conspired to rob the country of investors' interest. The administration's failed attempt to privatise the four refineries, symbols of Nigeria's endemic corruption, is emblematic of this situation. One newspaper editorial dutifully summarised the problem of the refineries:

> The government's efforts have met little success. The government is finding it difficult to sell the four refineries, which are being portrayed as worthless in their current state … Investigations revealed that the government made an unsuccessful bid to get the oil majors (Shell, Chevron-Texaco and Mobil) to take up the offer of acquiring 51 percent stake and partner the government in managing the refineries … The oil majors are demanding wide-ranging liberalisation (removal of fuel subsidy) and full control of the refineries' management before considering buying them. Government's attempt to implement these demands has sparked off unrest. (*AfroNews*, 5 August 2004)

The privatisation of state assets was also dented by allegations of massive corruption and favouritism. The process was heavily criticised for the lack of transparency which characterised the selection of buyers and consultants, the undervaluing of assets on sale, and even conflicts of interest where officials bought up assets using fronts (Anyi-Ude 2005). These allegations were repeated by different sources during the sale of companies such as the Aluminium Smelter Com-

pany (ALSCON) located in Ikot Abasi, Akwa Ibom State (*ThisDay*, 29 April 2005), and especially NITEL (*ThisDay*, 26 April 2005).

By and large, these obstacles and challenges did not detract from other gains recorded in the privatisation project, especially at the federal level. In the final analysis, the success of the privatisation programme will depend on its contribution to the reduction in the level of waste and corruption in the public sector, which was the original intention of its initiators. This in itself will depend to some extent on the successful implementation of other aspects of the reforms proposed for the public sector, such as a reform of the management of public finance and the adoption of a new policy on employment and compensation.

### *Reform of the management of public finance: The Budgetary and Fiscal Transparency Initiative (BFTI)*

Before the advent of civilian rule in 1999, the concept of budgetary or fiscal transparency in the management of public finances was almost non-existent (Alli 2005; Federal Republic of Nigeria 1999b). This permitted assorted fraud and abuses, including massive diversion of state resources, illegal award of contracts, and tax fraud, to flourish unchecked. Contract awards, particularly, gave public officials unlimited opportunities to enrich themselves through the construction of white-elephant projects[2] and price inflation and kick-backs.[3] The relative absence of taxpayers and a culture of secrecy, induced by decades of military rule, undermined the capacity of the population to demand financial accountability from leaders. Determined to eliminate such waste and abuses, the Obasanjo administration embraced a number of policy measures, including the adoption and application of financial regulations relating to public procurement, the publication of all revenues and transfers accruing to the three levels of government (federal, state and local), and the monetisation of the benefits of public officials.

### *Transparent and strict application of financial regulations relating to public procurement: The due process regime*

In January 2000, a document titled *Preface to Financial Regulations* was released by the federal government. The document painted a sorry picture of the state of public finances in Nigeria, while highlighting the need for urgent reform.

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[2] On 21 June 1999, a Panel on Non-Performing or Failed Contracts was instituted to study all federal projects launched between 1 January 1976 and 31 December 1998. The report of the study, which was submitted in November 2002, found that 1,651 projects had been abandoned by firms which had been paid varying sums to execute these projects. Most of these firms were linked to 'big men', who disappeared after receiving the payments (see Annex I).

[3] In June 2006, the Budget Monitoring and Price Intelligence Unit, a national institution set up to check contract inflation, reported that it had saved about N40 billion ($330,000) after closely scrutinizing bids submitted for public purchases and contracts.

To correct some of the observed deficiencies, a study by the World Bank and a group of local experts was commissioned by the administration. Accordingly,

> the comprehensive review of the country's public procurement system covered the existing legal framework; organisational responsibilities and capabilities within government; present procedures and practices; the reliability of government accounting systems and the effectiveness of budgeting systems in directing resources for intended purposes. Comparisons were made in each of these areas on how practices in Nigeria differ from established international best practices. A participatory approach was used for the review, which involved all key stakeholders, including Federal, State and Local Governments together with representatives of the private sector. (Ekpenkhio 2003: 1)

After a painstaking review, the study concluded:

> Nigeria lacks a modern law … to provide guidance and monitor purchasing entities; the Finance (Control and Management) Act (1958), and … regulations which set basic rules for managing public expenditures have gaps, deficiencies and faulty implementations … which create opportunities for bribery and corruption; due to inflation and lack of regular adjustments on the thresholds of the approving limits of the Tender Boards, their authorizations were constantly being eroded resulting in abuses; there was proliferation of tender boards which were perceived by the private sector as sources of delays and non-transparency … Customs systems and procedures were cumbersome and major causes of delay in clearing goods, and hence a source of corruption; and procurement is often carried out by staff who substantially lack relevant training. (World Bank 2003: 2)

The report also proposed some remedies, including

> the need for a procurement law based on the United Nations Commission for International Trade Law (UNCITRAL) model; the need to establish a Public Procurement Commission (PPC) to serve as the regulatory and oversight body on Public Sector Procurements; the revision of key areas of the Financial Regulations to make them more transparent; the streamlining of Tender Boards and strengthening their functional authority, including powers to award contracts; a critical need to rebuild procurement and financial management capacity in the public sector; and a comprehensive review of the businesses related to export, import and transit regulations, procedures and practices. (*ibid.*)

In furtherance of these recommendations, the federal government published a document, dated 27 June 2000, *Circular on New Policy Guidelines for Procurement and Award of Contracts in Government Ministries/Parastatals*, outlining what later became known as the due process policy. Under the policy, all projects or purchases below N1 million must now be approved by the Director General/Permanent Secretary, through "selective tendering". Projects and purchases of between N1 and N50 million are to be approved by a minister heading a Ministerial Tenders Board, while those above N50 million must now be approved by the Federal Executive Council, presided over by the President (Federal Government of Nigeria 2000c).

After this policy was adopted, other measures followed in quick succession. For instance, a bill for the establishment of a Federal Public Procurement Regulatory Agency was submitted to the National Assembly. And in a move towards institutionalising reform, an institution named the Budget Monitoring and Price

Intelligence Unit (BMPIU) was established. All projects financed from the public treasury at the federal level and above N50 million are now to be vetted by the BMPIU, which was given powers to issue "due process certificates" or cancel all contracts that failed to meet international standards for transparency and competition or 'value-for-money'.

Despite mounting criticisms that the BMPIU was slowing down government work,[4] the evasive attitude of some government institutions, and the unwillingness of the federal legislature to pass into law some bills that were supposed to institutionalise this policy – including the Fiscal Responsibility Bill and the Federal Procurement Bill – the BMPIU made rapid progress. It managed to increase conformity with financial regulations,[5] at the same time saving billions of dollars in inflated contracts that would have ended up in private bank accounts. The institution became particularly well-known during the period 2004-5, when it was led by one of the most reform-minded members of the Obasanjo administration, Mrs Obiageli Ezekwesili.[6]

- Publication of revenue allocations to all tiers of government

At the beginning of its second term of office, in April 2003, Obasanjo's administration introduced a new financial policy: The monthly publication of revenues accruing to all levels of governments (federal, state, and local). This was expected to promote greater financial accountability and reduce corruption. The brainchild of the former Minister of Finance, Ngozi Okonjo-Iweala, the monthly publications of official revenue on the Federal Ministry of Finance's official website and in the local dailies soon emerged as one of the most important steps taken by the administration to advance its war against corruption.

However, much as it encouraged interest and popular demand for political leaders to provide more information on their financial activities, which was traditionally considered an official secret, monthly publication of government revenue inflow was deeply controversial. It was also difficult to see how exactly this measure could contribute to reducing official corruption and how to measure its effectiveness. Nevertheless, the virulent opposition the policy generated, especially among state governors and their local government chairmen, who immediately dismissed it as "harmful" to good governance, appears to confirm its po-

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[4] Senator Abubakar Sodangi, Chairman of the Senate Committee on Internal Affairs, announced this during a meeting on the ministry's budget with the Minister of Internal Affairs.

[5] A report by the Ibadan-based Nigerian Institute of Social and Economic Research (NISER), Nigeria's foremost think-tank, also confirmed the effectiveness of the BMPIU, although the report also suggested the BMPIU should be relocated to the Budget Office in order to further enhance its effectiveness.

[6] Mrs Ezekwesili, a founding member of Transparency International, subsequently became Minister for Solid Minerals, and then Education, in Obasanjo's cabinet.

tency as a tool in fighting corruption. The real challenge, therefore, was how to ensure its consistent application, especially after Obasanjo's expected departure in May 2007. Fears about the principled application of the policy were initially raised by the refusal of the President to fulfil his June 2004 promise to ensure that, in line with this policy, payments to all federal ministries and parastatals are published regularly (*ThisDay*, 15 June 2004). This immediately opened the door to accusations of hypocrisy by the state governors, who now see the policy as targeted at them. One other factor, apart from political opposition, that threatened its survival was funding. The publication of such information on a regular basis entailed huge financial costs. In fact, within a few months of launching it, the policy was almost abandoned owing to shortage of funds. The policy was rescued only by the generosity of The Soros Foundation, which intervened to ensure that publications continued (*The Independent*, 16 May 2006).

- Monetisation of the benefits of public officials

The third aspect of reforms in public-sector finance was the introduction of a new policy, which calls for the monetisation of fringe benefits enjoyed by federal officials.[7] This policy came into existence in 2002. Monetisation, as it was popularly called, aimed to eliminate waste and abuse committed by public officials in general, and the top brass in particular, who were provided with assorted official benefits outside their monthly take-home pay. These included accommodation, domestic servants, furniture, and chauffeur-driven vehicles (Ekaette 2003; The Anti-Corruption Crusader 2003). As Head of Service Alhaji Yayale Ahmed himself pointed out, the management of these provisions in the past had generally "tended to create leakages weighing heavily on the cost of government" (*The Guardian*, 18 June 2004). Typically, the officials concerned converted public property in their possession, especially official vehicles, and their houses, including the facilities inside them (telephones, electricity, gas, water), to illegal private or commercial use. Alternatively, they allowed them to decay into the most terrible conditions, or simply left with them when they disengaged from the service. In place of such official privileges, public servants (with very few exceptions such as soldiers, police officers, and judges) would now be paid cash, proportionate to their position. This was to be included in their monthly salaries, in lieu of such benefits. In other words, these public officials would henceforth now rent or purchase their own homes, buy their own vehicles, and pay their telephone, water, and electricity/gas bills[8] (*Daily Independent*, 16 May 2006).

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[7] A piece of legislation known as "Certain Political and Public and Judicial Office Holders (Salaries and Allowances etc.) Act 2002" was adopted to manage this policy.

[8] By May 2006, over 25,000 government houses had been sold under the monetisation policy.

There are obviously some important benefits associated with such a policy. Unlike what obtained in the past, this policy is not only prudent because it will save the government substantial resources in the long run; it is also more just and egalitarian. As the government itself was quick to point out: "There was inequality (in the previous system) as majority of the officers did not enjoy those benefits. Monetization on the other hand, is anchored on equity as every officer gets his or her due" (*ibid.*).

Like all the other reform policies highlighted, monetisation has also had its own costs and setbacks. Beyond the noble intentions, monetisation involved considerable financial resources and some macro-economic trade-offs in terms of inflationary pressure and distortion of national budget. These considerations subsequently forced the government to slow down its implementation. Instead of applying the policy to all categories of federal officials in one sweep, a revised plan issued in June 2004 stated that the policy would first apply to the ministries (core civil service) and then progressively apply to the other services in a step-by-step fashion or as funds permitted.

Soon after its implementation commenced, other problems began to appear, which tended to undermine the very objective of the policy. Some institutions of the same government were not committed to this policy and took steps that went contrary to the requirements of monetisation. The federal legislature will serve as an example. In April 2006, the Senate ordered and took delivery of 117 Peugeot 407 cars, one each for its members. Apart from a statement condemning this action, which was issued by the Revenue Mobilization, Allocation and Fiscal Commission (RMAFC) – the federal institution charged with supervising revenue allocation to the three tiers of government and fixing salaries and benefits of public servants – nothing else was heard from the administration, fuelling speculation that the purchase might have been made with the approval of the Presidency as a way of buying off the lawmakers, who were planning to vote on a controversial constitutional amendment bill which sought to extend the tenure of President Olusegun Obasanjo beyond 2007 (*ThisDay*, 25 April 2006).

### *Reinforcing administrative capacity: New policy on employment, remuneration and retrenchment*

> To be able to push sufficient changes in the direction of public service capacity building requires that we review and strengthen our management development institutions. Accordingly, I have mandated the Head of Service to immediately embark on a policy of catch them young to bring into the service young graduates from tertiary institutions with first-class performance in their colleges. With their ambition, motivation, creativity and capacity to learn, they will be the high flyers that will move the civil service into the contemporary age of precision-driven efficiency and effectiveness. – President Olusegun Obasanjo. (*The Guardian*, 25 June 2005)

With the above statement, President Olusegun Obasanjo signalled the arrival of yet another aspect of his multiple public-sector reforms: A new policy on recruitment, reinforcement of capacity, and retrenchment[9] of public servants. This policy, like the other policies discussed above, was pursued with relative vigour and consistency until Obasanjo left office in May 2007. What was the actual goal and content of this policy? The policy on recruitment, reinforcement of capacity, and retrenchment focussed on three broad areas: Meritocracy in recruitments – that is, professional competences with respect to actual institutional needs; appropriate compensation or remuneration for public officers, including regular salary increases, reform of the pension system, and the gradual adoption of a National Health Insurance Scheme; and retrenchment or prompt removal of officials for inefficiency or corruption. These reforms received wide support from Nigerians and the international community, especially among the international financial institutions,[10] creating the impression that they were irreversible.

- Appropriate compensation and remuneration

The new policy of reinforcing the capacity of public officers was tied principally to the idea of adequate compensation and remuneration of workers. It rests on the hypothesis according to which only a well-remunerated service can resist corrupt temptations or inducements (van Rijckeghem & Weder 1997). Pursuant to this, the monthly minimum wage of federal workers rose from N3,500 to N7,500 in 1999, representing a more than 100% increase. In 2003, an increase of between 12% and 4% was implemented in ascending order.[11] Salary increases were also introduced in all the 36 states of the federation, as dictated by available resources. In the same measure, the government also pushed through a new Contributory Pension Scheme. The debt-ridden National Pension Fund (NPF) was replaced by several licensed, private financial institutions specializing in the management of pension funds. Similarly, a new National Healthcare Insurance Scheme (NHIS) was launched by the federal government to ensure decent living conditions for workers.[12] On a more negative note, the proposed National Housing Fund failed to materialise despite all the publicity, in part owing to the complex negotiations involving the federal government and workers' union on the one hand, and federal government and state governments on the other.

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[9] Retrenchment in Nigerian parlance refers to the termination of employment, owing to redundancy, the poor financial health of an organization, or any other reason.

[10] In 2006, the World Bank voted a sum of $140 million to support these reforms.

[11] In January 2007, a new minimum wage brought the salary of the lowest-paid federal worker to N12,000.

[12] The Pension Reform Act 2004, which aimed to reform the pension system, came into effect on 1 July 2004, when the National Pension Commission was established. On the other hand, the National Health Insurance Scheme (NHIS) was set up on 6 June 2005, 43 years after it was first proposed. It was made possible by the passage of the National Health Insurance Scheme Act 1999.

- Professionalisation of the public service: Return to merit-based recruitment

The professional competence of a public service is a factor that cannot be ignored or underestimated in the search for a credible and honest public service (Evans & Rauch 1995). To this end, a new policy emphasizing a more meritocratic recruitment – that is, the attraction of quality personnel into the public service – was encouraged. In theory this should involve a reformulation of Nigeria's constitutionally rooted quota system or 'federal character system', which prescribes that public sector employment at all levels of government must be shared between the geo-political zones, states, or local governments as the case may be. This system, which is as old as Nigeria itself, was adopted to avoid the domination of the public services by a few states or ethnic groups or regions, but has now become emblematic of its neo-patrimonial politics, often becoming a source of conflict and disintegration rather than stability and integration, the latter being the reasons for which it was adopted in the first place (Suberu 2001). Even if this system had permitted a better management of ethno-religious tensions, it had unfortunately institutionalised a culture of mediocrity, clientelism, and corruption, which have plagued the Nigerian public service for decades (Ademolekun 1997). The Nigerian public service is largely composed of individuals lacking the necessary skills and know-how to do the job required of them. This is because most owe their job to the quota system or to the benevolence of a certain 'big man' with the right 'connections'.

This fact has been adequately reflected in most official statistics published since 1999 on the subject. According to the report of a committee set up by the Federal Ministry of Finance (Committee on Restructuring and Reprofessionalisation of the Federal Ministry of Finance) to conduct a staff audit on behalf of the ministry in 2003, only 8% of the ministry's employees possessed degrees or professional qualifications relevant to the work of the ministry. In all, a total of only 13% had university degrees, while 70% were not qualified to work in the ministry in the first place (*ThisDay*, 28 July 2004). The same scenario has been reported in other public institutions, such as the National Bureau of Statistics (NBS), an institution that emerged in 2005 following the merger of the former Federal Office of Statistics (FOS) and the National Data Bank (NDB). According to its director general, Dr Vincent Akinyosoye, of a total staff strength of 4,100, only 15% possessed any of the professional qualifications necessary for the work of the institution. The other 85% had irrelevant qualifications or none at all. In order to correct this anomaly, 1,153 employees of the NBS were relieved of their positions in February 2006. The fund required for this exercise, estimated at some N1 billion, was supplied by the World Bank (*ThisDay*, 6 February 2006).

Summarizing the decay which has characterised the public service in Nigeria, President Olusegun Obasanjo had this to say:

> I have received reports of a number of pilot ministries, which reinforced the self-review studies undertaken by the Office of the Head of the Civil Service. The results show that the civil service has decayed very badly. It did not retool. Its technology and methods became outdated. Its philosophy became denigrated and its integrity badly compromised and corrupted. The net result was inefficiency, waste, corruption and, in some cases, arrogance. (*The Guardian*, 25 June 2004)

In furtherance of its mission of professionalising the Nigerian public service, the Obasanjo government soon ordered the employment of 1,000 young Nigerian graduates with at least first-class or second-class-upper honours' degrees in various fields to beef up the organisation. Beyond that, it also sought to bring about a change of value among those who are already employed. This largely involved the holding of seminars, conferences, and retreats, during which public officers were reminded of the necessity of observing and internalising the rules of the game, that is, the Civil Service Rules and Financial Regulations.

- Dismissal of inefficient and corrupt officers

The strategy for reinforcing the capacity of the public service finally came down to dismissal or making redundant of corrupt and inefficient public officers, or 'deadwoods' as they are called in Nigeria. The thinking of the government was that its policies which focused on attracting young and talented Nigerians into the public service could not succeed unless there was first a reliable process of identifying and dismissing unwanted hands. The identifying and removing of unwanted civil servants was not, however, a very simple task in Nigeria.

The first issue was that outside the 180,000 individuals working in the federal ministries or 'core civil service', the exact number of public servants at the federal level was unknown. The compilation of any such list would certainly contain thousands of 'ghost workers'. To cite just a single example: After a 2004 audit, the federal government confirmed that it had identified 42,000 ghost workers in the entire federal public service, of whom 3,000 came from the defunct Ministry of Federal Capital alone (*ThisDay*, 5 May 2004). These figures were far from exhaustive. Indeed, following another round of reform in 2005, this time initiated by Minister of the Federal Capital Territory Nasir El-Rufai specifically for the ministry, it was found that the staff strength had tumbled from 26,000 to 18,000. Among the 8,000 that had left, 5,000 were said to be ghost workers. The other 3,000 were those who had no qualification required for the job (*Vanguard*, 5 June 2005).

The phenomenon of ghost workers is a problem common to all the tiers of government in Nigeria. Zamfara, Ondo, and Ekiti states are among the few states that identified and flushed out hundreds of ghost workers during the period covered by this study. In a single incident in 2004, Zamfara State was able to identify as many as 800 ghost workers in its 14 local councils, through the work of a

Special Verification Committee (*The Guardian*, 21 June 2004). In April 2004, following a probe of the payroll of one of its parastatals, Ondo State Scholarship Board, the Ondo State government was able to save a staggering N44 million. Note that the budget of this institution for the same year was just N71.4 million (*The Guardian*, 18 May 2004). In a related development, Ekiti State government also announced it was saving about N33 million monthly, after identifying an undisclosed number of ghost workers on its payroll during an audit (*ThisDay*, 22 June 2004).

The ghost-worker syndrome was unfortunately not the only pathological condition of the Nigerian public service. The service was also characterised by an aging workforce, if official reports are anything to go by.[13] At least 60% of the workforce was said to be above 40 years of age in 2004. These statistics, of course, hide some very important information, one piece of which is the rampant falsification of age among all categories of public officials. As the Head of Civil Service of the Federation pointed out, "it should not be a surprise that a large proportion of staff … are over the age limit for serving officers, but continue to amend their records to stay … We have discovered that except we utilise the modern techniques on scrutinising, we would never be able to clean up our records and determine our actual staff strength" (*The Guardian*, 18 June 2004).

Whatever may be the case, the Obasanjo government tried to implement measures to tackle these problems. With the concept of 'rightsizing', it sought to return the service to its past glory through the removal of unwanted public servants, judged in terms of their inefficiency or involvement in corrupt practices.

- Disengagement for corruption

The notion of rightsizing hinged, first and foremost, on the dismissal or retirement of public officers believed or alleged to be guilty of corruption. Despite controversies that often trail allegations of corruption, this policy surprisingly proved much easier to carry out, at least when compared with the policy of axing people on the basis of inefficiency or redundancy. There is a general feeling in Nigeria that given the level of unemployment in the country, people should not be dismissed from their positions just because their services are deemed unneces-

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[13] According to statistics released in February 2005 by the Bureau of Public Service Reforms (BPSR), the Nigerian public service is also characterised by an aging workforce. This was largely attributed to a 12-year ban on employment. According to the BPSR, a considerable number of these employees were above the optimal age in relation to their qualification and position (Graduate of Optimal Age, GOA). The data showed that the percentages of employees above the optimal age were as follows: Ministry of Works (94%), Labour (95%), Petroleum (95%), Intergovernmental Affairs (95%), Commerce (94%), Industries (94%), Solid Minerals (92%), Women Affairs (92%), Tourism (92%), Housing (91%), Transport (91%), Water Resources (90%), Defence (90%), Aviation (90%), Finance (90%), Energy (89%), Communication (88%), Cooperation in Africa (88%), and Police Affairs (87%) (*The Guardian*, 24 February 2005).

sary. On the other hand, most people accept that corrupt officials should be dismissed. Thus, when in August 2001 the Federal Executive Council approved a resolution giving the President *carte blanche* to sack corrupt public officers (*Vanguard*, 20 September 2001), the resolution passed almost without notice.

Before then, several public institutions had independently announced a purge of 'bad eggs' from their organisations. The Nigeria Police Force, for example, dismissed over 1,000 officers between 1999 and 2004 for various offences, ranging from bribery and extortion to falsification of certificates and records in the quest to enter into the force[14] (Balogun 2004; *Daily Times*, 26 April 2004; *The Guardian*, 2 July 2004; *The Guardian*, 4 August 2004). The Federal Road Safety Commission (FRSC) also dismissed some of its personnel, including 13 who were sacked in February 2004 for various corrupt practices (*The Guardian*, 4 February 2004). Other agencies which took similar steps included the Nigeria Immigration Service, which sacked 200 officers (out of 235 employed in its passport office) in January 2006 for fraud in the issuance of passports or 'official touting' (*ThisDay*, 25 January 2006), and the National Electric Power Authority (NEPA), which in January 2005 dismissed 6 people judged by its Anti-Corruption and Transparency Unit to be guilty of "involvement in unethical conduct, poor attitude to work and rude to customers" (*The Guardian*, 19 January 2005). NEPA, now known as the Power Holding Company of Nigeria (PHCN), also sacked over 500 personnel (including 15 managers) between 2001 and June 2006 for corrupt practices, through its own Anti-Corruption and Transparency Unit (*The Guardian*, 29 July 2006). The Federal Capital Development Authority (FCDA), a parastatal under the Ministry of Federal Capital Territory, was probably one of the worst hit. According to the minister in charge, as many as 300 officials of the FCDA had been dismissed as at 6 June 2005 for fraudulently selling lands belonging to the ministry (*ThisDay*, 6 June 2005).

Retrenchment for corruption is not limited to junior- or middle-level staff, notwithstanding the impression of a highly politicised public service. In April 2004, seven senior managers of the Pipelines Products and Marketing Company (PPMC), a subsidiary of the Nigerian National Petroleum Corporation (NNPC), received their dismissal letters (*ThisDay*, 19 April 2004). In June of the same year, a further three received the same treatment (*The Guardian*, 3 June 2004). These officials, in active collaboration with some fraudulent foreign businessmen, had allegedly engineered a fraud in the importation of petroleum products which cost the nation some $108 million. Similarly, in 2001, 109 senior officials of the Nigerian Telecommunications Limited (NITEL), indicted by NITEL's Anti-Corruption and Other Related Offences Monitoring Committee, were sacked for

[14] Falsification of certificates and bribery were the most common reasons for the dismissals. In one incident alone, 1,220 were dismissed for these offences.

various corrupt practices, including extortion, over-charging of clients, and manipulation of phone lines (Otisi 2001). Similar reforms were also carried out by the National Judicial Council (NJC) in the justice sector, where a number of judges were queried, suspended, retired, or dismissed from service for corruption.

According to the federal government, up to 160,000 public servants were to be disengaged as part of the ongoing reform. This number includes 90,000 in the lower grades, 62,000 from the intermediate grades, and 8,000 from the superior grades (*The Guardian*, 9 January 2006; *ThisDay*, 8 February 2006). It must be emphasised, however, that not all these officers were to be disengaged because of corruption. According to a policy paper approved by the Senate on 7 February 2006, the criteria for retrenchment included the following: Being guilty of gross misconduct, lacking basic entry qualifications, being unfit medically, failing to earn promotion, failing to acquire mandatory skills, and age (*ibid*.).

In the states of the federation, where similar public service reforms were implemented – under the title of State Economic Empowerment and Development Strategy (SEEDS) – dismissals for corruption also took place. For instance, in Imo State, 700 public officers employed in the Secondary Education Management Board were sacked in January 2004, after being indicted by a commission of inquiry established in September 2003, for fraud leading to the loss of N126.5 million. Out of this number, 613 were employed illegally, 27 had fabricated a list of 'ghost pensioners' to defraud the state, 9 were due for retirement but had falsified their records to remain in service, 46 were actually in retirement but continued to receive their salaries, and 33 had earlier retired but were illegally reemployed (*Daily Times*, 28 January 2004). Other states, such as Kwara (*The Guardian*, 3 March 2004) and Cross River (*The Guardian*, 25 November 2004) also dismissed some of their staff, especially school heads who engaged in examination malpractices. Some states, like Gombe State, had to take even more radical measures, such as the sacking in some cases of the entire management parastatals. This, for example, was the case on 23 December 2004, when the entire management of Gombe Floods Relief Management Committee, who were accused of diverting relief materials meant for three local government areas (*ThisDay*, 24 December 2004), were sacked. Ondo State also took the same action, when it sacked six managers in November 2004 at its Ondo State Afforestation Project (OSAP), accused of stealing equipment valued at N20 million (*The Guardian*, 17 November 2004).

The complexities of malpractices witnessed in the various public services of the federal and state governments as presented above show that not only was comprehensive reform urgently needed to reposition the Nigerian public bureaucracies, but also that such reforms required considerable political commitment and time to implement.

- Retrenchment for inefficiency and redundancy

While corruption among public servants has been the major focus of public sector reform and has attracted much attention from Nigeria's leaders, other areas such as inefficiency have not been completely forgotten. During the tenure of President Olusegun Obasanjo, thousands of public officers were sent packing for no other reason than inefficiency or redundancy. While officials often cited multiple reasons for downsizing, many of the reasons were actually linked with the ongoing policy of professionalisation and rightsizing of the public service. For example, when in November 2003 NNPC, which employed 14,000 workers, announced the departure of 1,388 workers and the promotion of 34 to management positions, it claimed that the decision "reflected management's decision to reward hardworking staff and weed out the bad eggs" (*ThisDay*, 19 April 2004). But the reorganization was widely interpreted within the framework of the federal government's adjustment policy. Most organisations, however, did not see any reason to be evasive about their intentions or objectives. Thus, Nigerian Custom Services, with over 17,418 employees, justified its downsizing policy by saying, "many officers were found to be redundant, while there are serious overlapping responsibilities in the existing schedules of duty … The committee had thoroughly reviewed the service and found that the service … is over-bloated at the top and medium levels especially in the comptroller cadre" (*ThisDay*, 22 March 2004). Similarly, in February 2004, over 153 employees of the Nigerian Civil Aviation Authority (NCAA) were relieved of their duties. According to an official statement from NCAA, "the staffs affected were those with disciplinary cases or are redundant, those considered untrainable, cases of ill health as well as length of service put in" (*ThisDay*, 10 February 2004). This exercise, according to the NCAA, would lead to the departure of 500 more workers (*ibid*.).

## The judicial reforms

As was the case with institutions of the executive arm of government, reform of the institutions of the judicial arm of the Nigerian state also received unprecedented attention, even if to a lesser extent, after the launch of the anti-corruption campaign in 1999. The importance of a credible and effective judiciary in the struggle against criminality in general, and corruption more particularly, is no longer in doubt (Langseth & Stolpe 2001; Shihata 1997; Ades & Di Tella 1996; Gurgur & Shah 1999). For obvious reasons, it should be expected that where the judiciary is corrupt or inefficient, the first priority of a war against corruption should seek to reform this institution and ensure that a close collaboration exist between it and the various law enforcement agencies. As the experiences of developed countries show, this partnership holds the key to the rule of law and good governance. Unfortunately, in Nigeria such co-operation was more the ex-

ception than the rule. The relations between the judges and law enforcement agencies were frequently characterised by mutual accusations. Nigerian security agencies, especially the Police and the anti-corruption agencies, regularly blame the judiciary for the high level of criminality and corruption, owing to the judiciary's tendency to grant bail to individuals accused of corruption and other crimes. According to the then EFCC chairman, Nuhu Ribadu, "the judiciary has encouraged financial crime because the … law enforcement agencies and the judiciary often times turned a blind eye to the criminal activities of these 419 perpetrators … Instead of fighting them, they provided the fraudsters with adequate protection via heavily armed police or army escorts and in some cases the courts grant trivial injunctions in favour of the criminals" (*ThisDay*, 29 June 2004). The judges, on the other hand, blamed these agencies for poor investigations.

More troubling is the fact that the Nigerian judiciary itself was not free from corruption. Allegations of corruption and inefficiency against judges are not new phenomena in Nigeria (Osipitan 2005). Indeed, the persistence of these accusations led to the establishment of a commission by the Abacha regime in 1993. During the inauguration of the commission, which was to examine the issue of corruption in the judiciary and suggest necessary reform, General Abacha correctly summarised the state of this institution:

> This administration is aware of some of the public perceptions of the present state of our nation's judiciary, namely: Polarisation of the Judicial System along ethnic, tribal and political lines; corruption and high-profile lifestyle of some of the judges; ineptitude, laziness and incompetence; long period of time in the disposition of cases; ridiculously high cost of obtaining justice; mode of employment of judges which does not facilitate the required calibre of judges into the Service; the terms and conditions of service of judges. (Federal Republic of Nigeria 2004: 6)

Many of these lapses highlighted by Abacha were later confirmed by the report of the Kayode Eso Panel. According to the report of the panel, which was submitted to the Abacha government in 1994, the Nigerian judiciary was chronically inefficient and deficient in credibility. The inefficiency of the judiciary, which manifests itself notably in the area of slow speed of trials and poor quality of judgments, was largely caused by inadequate funding, use of obsolete equipment, insufficient judges, inefficiency of the security agencies, reliance on outdated legislation, and widespread corruption among judges, especially at the lower levels of the judicial pyramid (*ibid*. 20). On the issue of corruption, the commission noted:

> There is a concurrent affirmation that the judiciary has declined by alarming proportions. What is more, and the saddest aspect, is that the pernicious cankerworms of official corruption by gratification, undue influence, ineptitude, laziness have made appreciable inroads into the nation's judicial system all over the country. The lower you descend in the hierarchy of courts, the denser is the cloud of corruption. (*ibid*. 117)

According to the panel, these problems came about largely owing to the institution's lack of independence vis-à-vis other organs of government (notably the Executive), poor remuneration, and absence of a regulatory body. As a remedy, the report called for the immediate retirement of 47 judges across the different levels of the courts' system, including 8 Chief Judges, 21 High Court Judges, and 18 Magistrates, and the establishment of 2 regulatory bodies. These were the National Judicial Service Commission (NJSC), to be concerned with appointments, promotion, and general well-being of judicial workers, especially judges, and the National Judicial Council (NJC), to be charged with the finance, discipline, and independence of the judiciary.

While corruption and abuse of power has been part of the history of the judiciary in Nigeria for decades, under the Obasanjo administration the institution became enmeshed in major scandals, which further undermined its credibility and culminated in the sacking of several judges[15] (*Newswatch*, 9 February 2004). The widening degree of corruption among judges, including judges of superior courts – until recently relatively immune from graft – also became a major source of worry for many senior citizens. A retired judge of the Supreme Court, Honourable Justice Samson Odenwingie Uwaifo, captured this perception when he made the following observation:

> Corruption was once thought to be only in the magistracy because of the disturbing way some of the personnel tended to abuse their office … It gradually crawled to the High Courts and would appear to have had a foothold among a noticeable number of judicial officers there … Now, there is real apprehension that the appellate court may soon be infested if not already contaminated with some of these vices. (*ThisDay*, 25 January 2005)

The multiple challenges facing the Nigerian judiciary were highlighted by another report published in December 2003. The report, *Judicial Integrity and Capacity in Nigeria*, noted:

> The overriding problem was identified as 'the precarious situation of the rule of law in Nigeria caused by insufficient integrity and capacity of the justice system in general and the judiciary in particular'. At the time of the Project's development, the main challenges faced by the Nigeria judiciary were seen as an absence of thorough knowledge and data regarding the extent and nature of and the reasons for the malfunctioning of the judiciary. Finally, there was a lack of a systematic, realistic, time-bound and broad-based anti-corruption action plans, both at the Federal and State levels. (UNODC 2003c: 13)

But despite the depth of the rot in the judiciary and the implications of a corrupt and inefficient judiciary for the declared war against corruption, the Obasanjo administration made little or no attempt to instigate reform in the judiciary. Talks of reforming the judiciary and indeed the entire criminal justice system only began to appear in the second half of the regime's tenure in office. What

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[15] Between 1999 and 2004, at least five senior judges were dismissed for corruption and abuse of power, following investigations by the NJC.

explains this seeming indifference to matters related to the judicial sector? In our view, there are at least three possible explanations to account for this. Firstly, the reform of the judiciary failed to receive much attention largely because it was theoretically an independent institution, constitutionally separate from the executive arm of government led by President Obasanjo. The second explanation is that such reforms required some constitutional amendments, a very cumbersome process in Nigeria, where such a process entails the support of absolute majorities in not only the federal legislature (Senate and House of Representatives) but also in at least two-thirds of the 36 State Houses of Assembly. The third explanation is the poor appreciation of the role of the judiciary; that is to say, there was general ignorance about the implications of judicial corruption for society. This fact only became obvious during the adjudication of the 2003 election petitions,[16] when the government and the population suddenly discovered that the judiciary is an indispensable instrument in any democracy.

The first known attempt by the government to introduce reform of the justice system occurred in July 2004, when the government inaugurated a panel, officially named the National Working Group on the judiciary. The terms of reference of this panel included the following:

> Develop a first draft of an administration of criminal justice (ACJ) bill aimed at reducing delay in the criminal trial and generally modernising the criminal justice system in the country … To organize stakeholders' consultation on the draft bill … on the issue of corruption in the investigation and prosecution of cases, lack of effective coordination amongst the agencies of criminal justice administration, especially the police, the prisons, the prosecutors and the courts. The group is also expected to look at such areas as absence of clear sentencing guidelines, prison congestion, growing number of awaiting trial cases, lack of witnesses, lack of sureties and the issue of missing case files. (*Daily Independent*, 6 July 2004)

The proposed reforms, however, did not represent any serious or comprehensive reform of the judiciary. Indeed, as was clearly obvious in the panel's terms of reference, the government of Obasanjo was very much aware of its limited power over the judiciary. Worse still, the panel, which began its work five years after the arrival of the Obasanjo administration, submitted its report only on 9 August 2005 (Efeizomor 2005), leaving the government with very little time to reflect on its findings and implement recommended reforms. Several other reform measures conceived by the Obasanjo government for the judiciary suffered the same fate. One of them was the proposed Administration of Criminal Justice (ACJ) Bill, which was supposed to be drafted by a panel of eight law specialists (Panel on Criminal Justice Reform), appointed by the government in July 2004.

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[16] The 2003 elections were heavily tainted with violence, fraud, and other forms of electoral malpractices, leading to the filing of approximately 1500 law suits before the various courts constituted to resolve such disputes. The handling of these cases brought the role of the judiciary into the limelight (Enweremadu 2011).

The bill was intended to reduce the delay which often characterises court trials and to modernise the criminal justice system (*Daily Independent*, 6 July 2004). This law did not pass before the end of the Obasanjo administration in May 2007 and remains unpassed to date.

However, the inability of the Obasanjo administration to extend its reforms to the judiciary did not stop other actors, including international institutions and the leadership of the judiciary itself, from stepping in to rescue the institution. What are the nature and goals of these reforms? In general, two types of reforms were implemented in the Nigerian judiciary between 1999 and 2007: Reforms that sought to enhance the capacity of the judiciary, and reforms that were directed at improving judicial integrity. The reforms seeking to boost capacity were spearheaded by international organizations, while reforms aimed at promoting integrity were championed by the leadership of the judiciary itself.

*Reforms aimed at improving judicial capacity*

The first set of reforms – that is, reforms seeking to reinforce capacity within the Nigerian justice system – was led by several international institutions and unveiled during a meeting organized in April 2000 by the United Nations Office on Drugs and Crime (UNODC) in close collaboration with Transparency International. This meeting examined the necessary measures required to reform the various institutions of the judiciary and the areas where the integrity of the judiciary was deficient. After establishing the basic principle of such reform, its precise objectives, and scope, three member states of the UN – Nigeria, Sri Lanka, and Uganda – offered to test the programmes in their respective countries (UNODC 2003a: 3). This point marked the commencement of a series of judicial reform measures in Nigeria.

Following this international meeting, another project, christened 'Strengthening Judicial Integrity and Capacity', was launched specifically for Nigeria. This project, coordinated by the Chief Justice of Nigeria (CJN) in close collaboration with the UNODC, was formally announced in October 2001 during a meeting in Abuja between the CJN and the Chief Judges of the 36 states of the federation (First Integrity Meeting for Chief Judges) (*ibid*.: 4). The first stage of this project involved the collection of a wide range of relevant data concerning the problem of Nigerian judicial integrity and capacity. Three principal sources of data were identified. The first source was the investigation conducted by the International Judicial Group, which had participated at the April 2000 meeting. The second was the report of the April 2001 meeting between the CJN and head of judiciary or Chief Judges of the 36 states of the federation. This meeting had identified four aspects of the judicial system that required urgent reforms, namely, the quality and speed of court trials, access to courts, public confidence in the judiciary,

and efficient management of cases brought before the courts. The third source was the conclusions of the research carried out by the Nigerian Institute for Advanced Legal Studies (NIALS), which itself was financed by UNODC.

The second stage of the project had to do with deciding the specific objectives to be achieved by the project in the context of the problems identified. To this end, the UNODC project sought to facilitate the struggle against corruption in the judiciary with, on the one hand, the production of a "federal action plan for a war against corruption in the judiciary", and, on the other hand, the definition of effective measures to correct the identified deficiencies touching on judicial capacity. The measures aimed to increase access to justice, the quality of services, the level of public confidence in the judicial process, the effectiveness of responses to public complaints, and coordination within the criminal justice system.

A third phase involved the concrete application of all the identified measures in a progressive manner, aiming first at three pilot states (Borno, Delta and Lagos) which were selected between October 2001 and November 2003. The outcome of this exercise was carefully studied and analysed by several experts, in a way that would enable the authors of the project to gradually extend the programme to all the other parts of the country, while perfecting it with respect to lessons learnt from the experience of the pilot states.[17]

Despite the well-conceived nature of these projects, their implementation was undermined by a number of difficulties. According to the report received at the end of the exercise, these difficulties ranged from problems of finance and administration to the limited cooperation (e.g. from the ICPC), if not indifference (from the Police), of key public institutions[18] (UNODC 2003c: 25). There were also problems posed by tensions existing between the institutions concerned (the ICPC, the Police, and the judiciary) on the one hand, and between a secular and an Islamic legal system (*Shari'ah*) on the other hand (*ibid*.: 29). Similarly, the report observed that "the continuing relative poverty and 'non-maintenance' culture which exists in the country will be threats to sustainability" (*ibid*.: 30).

What then was the essence or benefit of the whole exercise? Or, how substantial were the reforms? According to our interviews with people familiar with the system, this phase of the project did produce some remarkable results and can be considered as a relative success. The project is said to be largely responsible for the noticeable improvements seen in the judicial systems of some states of the

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[17] This system is known as the Action Learning Model.

[18] The Police were the worst offenders, as the UNODC report observed: "Chiefs/Commissioners of Police do not routinely attend implementation and sub-committee meetings, if at all. The Police generally do not grant bail in accordance with Project aims, nor will they routinely accept women as sureties. At the other extreme, individual police/entire police stations have removed and/or vandalised Project posters which educate citizens of their rights" (UNODC 2003b: 25).

federation (notably Lagos and, to a lesser extent, Bornu),[19] in addition to attracting popular support. The technical report prepared for the UNODC also stressed this point. According to the report:

> Notwithstanding the absence of empirical evidence, this evaluation finds that there is substantial and compelling anecdotal evidence that the project has been successful in increasing judicial capacity and integrity. Such evidence includes the response to the installation of complaints boxes and attendant complaints process, and rights awareness posters; high levels of interest and enthusiasm for the project has been generated, resulting in high numbers of other Nigerian states lobbying for inclusion in the project; and procedural reform (e.g. Alternative Dispute Resolution (ADR), Multi-door courts, Civil Law Reform, 'holding charge' reform) which has reduced court delays and improved access to injustice. (UNODC 2003b: 6)

*Reforms designed to restore the integrity of the judiciary*

Several years after the launching of the campaign against corruption, the level of judicial integrity remained low. The assistance of the international community had facilitated the improvement of judicial capacity in Nigeria in many ways. Unfortunately, the programme did not do much in the area of restoring the integrity of judges. Similarly, the efforts launched by the Obasanjo administration in July 2004 to improve access to justice, increase the speed and quality of trials, enhance the confidence of the public in the courts, increase the effectiveness and credibility of criminal investigations, and produce a greater coordination between the major institutions of the criminal justice system did not bring much succour. Nevertheless, there have been unprecedented improvements in the level of integrity of judges in Nigeria since 1999. Ironically, much of the progress noticed by way of enhanced integrity of judges was made possible by some of the efforts of the judiciary itself, which took unprecedented steps to bring some of its erring members, especially judges, to book. Three factors encouraged the leadership of the judiciary to move in this direction.

The first factor relates to some unique provisions of the 1999 Constitution. The 1999 Constitution, unlike previous constitutions, made provision for the establishment of two independent regulatory institutions, known as the National Judicial Council (NJC) and the Federal Judicial Service Commission (FJSC), with the sole responsibility of recommending judges for appointment and promotion, enforcing laid-down procedures (as codified in the *Code of Conduct for Judicial Officers of the Federal Republic of Nigeria*), and overseeing the general welfare of members of the judiciary. Under the Constitution, judges are to be appointed by the President, subject to Senate confirmation, but on the basis of the recommendation of the NJC, which itself receives advice or nominations from

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[19] Our information came from a personal interview with a retired Supreme Court judge, Justice Kayode Esho, who also headed the Judicial Panel on the Reform/Reorganization of the Judiciary, established by General Abacha in 1993. The interview took place at his residence on 15 August 2005.

the FJSC. In order to guarantee their independence, the composition of both bodies was made largely independent of the executive and legislative arms of government. Thus, both institutions are headed by the CJN and comprise some of the most senior members of the Nigerian bench and bar, in addition to some representation from outside the legal profession. Despite criticisms that these bodies represent an assault on Nigeria's federal system, they functioned relatively well to promote judicial independence and integrity (Suberu 2008).

The second factor was the personal commitment of successive CJNs, notably Justice Mohammed Uwais, who was Nigeria's Chief Justice from December 1995 until June 2006 (*ibid*.: 457). During his tenure in office, Justice Uwais became extraordinarily committed to the idea of judicial integrity and independence. Under his leadership, the Nigerian judiciary managed not only to adhere substantially to a national, prescribed Code of Conduct, but also enthusiastically submitted to an international judicial code, the Bangalore Principles of Judicial Conduct of 2002. Indeed, the Nigerian judiciary, under Chief Justice Uwais, was one of the major initiators of the code and participated actively in all the stages leading to its adoption in April 2000 in Vienna, Austria.

The third factor was the vigilance of the public, especially court users, lawyers and their clients, civil society groups, human rights advocates and democracy activists, and politicians, especially from opposition parties. These groups had increasingly monitored the activities of judges and in some instances raised the alarm when traces of corrupt practices or abuse of powers were found. Consequently, their petitions led to the launching of several investigations, many of which culminated in the retirement or outright dismissal of scores of judges.

Most of the retirements and dismissals witnessed were in connection with the handling of election petitions. The outcome of successive elections, especially the hotly contested 1999 and 2003 elections, left many political aspirants aggrieved, particularly in the opposition parties. This resulted in the filing of hundreds of appeals before the various election petition tribunals, set up specifically to deal with election-related cases. As should be expected, many politicians desperate to preserve their victory or to secure one resorted to bribing judges to procure favourable judgments. In the past, such acts would have gone largely unpunished. But under the Fourth Republic, the prompt intervention of the National Judicial Council (NJC)[20] resulted in the fall of several judges.[21]

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[20] The 1999 Constitution, in the Third Schedule, Chapters 20(a) and 21(a), empowers the NJC to investigate judges accused of wrongdoing and recommend appropriate sanctions to the President. According to Section 158(1), "in exercise of its power to make appointments or to exercise disciplinary control over such persons, the National Judicial Council shall not be subject to the discretion or control of any other authority or person" (Federal Republic of Nigeria 1999a).

[21] According to one law professor, Taiwo Adebayo Osipitan, the reason why there were so many casualties is that "some people got to bench through some errors, either because they knew one person or the

A few examples will suffice. On 6 and 7 October 2003, the NJC met to examine accusations and petitions against several judges, most of whom were accused of having abused their powers during election-related litigations across the states of the federation. One of the judges under investigation was Justice Wilson Egbo-Egbo, who had given a very controversial judgment in a case involving some parties in Anambra State. After initially suspending him, the NJC sent a recommendation to President Obasanjo that he be dismissed from service. This recommendation was commuted to compulsory retirement (*Newswatch*, 9 February 2004). The next case was that of Justice Stanley Nnaji, from neighbouring Enugu State, who was later found guilty of abuse of power. Specifically, he was said to have delivered a judgment considered illegal in another electoral dispute linked to the political crisis in Anambra State. Justice Nnaji was suspended, pending the conclusion of investigations launched by the NJC (*ThisDay*, 23 March 2004).

The most notable allegation of judicial corruption in Nigeria was the accusation made against the Akwa Ibom Election Petition Tribunal. The judges of this tribunal were accused of favouritism in the legal dispute over the election of the state governor, Victor Attah, after receiving bribes from some of the governor's emissaries. On the basis of this allegation, an investigation was opened by the NJC. It should be noted that before this incident, four judges had been indicted by the NJC for "trying to influence the same tribunal to give judgment in favour of one of the parties in the petition over the governorship election in the state". Following this, Justice Chris P. N. Selong became the first casualty, when he was dismissed on 25 February 2004 by the President (*ThisDay*, 26 February 2004), acting on the recommendation of the NJC.[22] Next came Justice M. M. Adamu, former President of the Akwa Ibom Election Petition Tribunal, who was sacked on 26 February 2004 (*ThisDay*, 16 March 2004), and Justice A. N. Elelegwu, dismissed on 20 April 2004 (*Vanguard*, 21 April 2004), by the governors of Plateau and Delta States, respectively. All the decisions were taken in deference to the recommendations of the NJC. The fourth victim was Chief Magistrate James

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other, and in this dynamic system some of them are found wanting. Hitherto, at the state level, appointments, promotions and dismissals terminated at the state level, such that if you act in favour of a governor, he would assure of securing your position. If you act against him, they can remove you and displace you from office. Now it's no longer possible. A neutral body at the central level consisting of each geographical unit will now decide the fate of judges. So a judge who, either out of corruption or ignorance, gives a questionable decision cannot run back to his employer or godfather and seek protection, because the body that will decide his faith is independent of the Federal Government and also independent of the state government. Most of the time, these Executives do sometimes cajole these judges to give questionable decisions and are unable to protect them. In other words, judges are now on their own". (*ThisDay*, 13 April 2004)

[22] Justice Selong has since gone to court to challenge his dismissal.

O. Isede, who lost his job on 1 March 2004, following the recommendations of the Judicial Service Commission of Edo State (*ThisDay*, 16 March 2004).

These anti-corruption stands taken by the NJC, even though a federal institution, also had substantial indirect impacts on the judicial systems of the other levels of government, particularly the states. For instance, on 18 April 2004, the Chief Judge of Plateau State was suspended by the state government, following allegations of inefficiency, corruption, and abuse of power made by the local branch of the Nigerian Bar Association (NBA) (*The Guardian*, 19 April 2004). This crisis reached its peak on 4 May 2004, when Justice James Samba was retired, following the recommendations of the Plateau State House of Assembly. Investigations conducted by the state legislature had confirmed the accusations made against the Chief Judge by the Bar Association (*ThisDay*, 5 March 2004).

But many allegations of corruption made against judges also went unpunished, just as pressures from the NJC for change did not always lead to the removal of errant judges in all cases. One reason for this, according to Justice Samson Odemwingie Uwaifo, former Supreme Court judge, is the difficulty encountered by the accusers in assembling proofs (*ThisDay*, 25 January 2005). A good example is the investigation launched in Abia State in December 2003 into the activities of the State Chief Judge, Kalu O. Amah, over some allegations of corrupt practices (*The Guardian*, 17 December 2003). The allegations were not the first to be made against the Chief Judge. Earlier, in 2002, he was investigated by the NJC over some financial dealings. The 2003 investigation, however, found him guilty. Indeed, a special committee of the State House of Assembly which probed him even called for his dismissal. Several other groups, including lawyers, civil servants, and labour unions, also came out openly to accuse him of financial abuse and abuse of power. However, the Chief Judge managed to remain in office (*Newswatch*, 9 February 2004). Such cases, nevertheless, could not hide the fact that in Nigeria the fear of the NJC had become the beginning of wisdom for most judges.

## Conclusion

From all indications, the strategies employed to fight corruption in Nigeria since 1999 have also included attempts to reform key public institutions, such as the civil service and the judiciary. This indicates that corruption is systemic and that no major public institution is free from its consequences. The scope of reforms proposed for the judiciary has targeted the improvement of capacity, effectiveness, and integrity of judges and their courts, confirming on the one hand that capacity and effectiveness are directly linked to the integrity of these institutions, and on the other hand that diverse measures are necessary if any significant progress is be made. As for reforms implemented in the public service, the govern-

ment of President Obasanjo, under domestic and international pressure, pursued a broad range of policies, including privatisation of public enterprises and reform of the management of public revenue and expenditure, as well as the design and implementation of new rules on recruitment, compensation, and disengagement in the public service, under the concepts of re-professionalisation and rightsizing of the workforce. All these measures were taken in the hope that they would help alter the rent-seeking behaviour of Nigerian public institutions.

However, given the slow speed of execution of the reforms, the uncertain political environment, and the virulent opposition which some of the measures elicited within civil society, the question arose whether these policies could indeed achieve their goals. The commitment and political dexterity of the Obasanjo government was certainly required, but so also was the support and involvement of the international community, especially the West. Nigerians were aware of the fact that much of the funds looted in Nigeria were comfortably sitting in the vaults of Western banks. The availability of these safe havens, many believe, made corruption a very attractive activity in Nigeria. Indeed, it was the realisation of this fact that prompted the Obasanjo government to include in the anti-corruption campaign measures a policy to persuade Western financial institutions to stop accepting deposits from corrupt Nigerian officials and return whatever had been deposited in their vaults. This constituted the third prong of Obasanjo's anti-corruption fight, the first and second prongs being the creation of new anti-corruption commissions and a general reform of the public services, respectively.

# 4

# International campaign for the recovery of looted assets

## Introduction

> Political leaders in this part of the world (Nigeria) are encouraged in part to be brazenly corrupt because they have safe havens to store their ill-gotten wealth outside the country. And as long as these havens exist, domestic wars on corruption are unlikely to go far. But if the havens are made unsafe, the incentive to steal will be greatly reduced. (*ThisDay*, 12 April 2005)

One of the main features of corruption in Africa in general, and Nigeria in particular, is the regular transfer of looted public funds to overseas bank accounts (United Nations 2002). Indeed, much of the estimated $350 to $400 billion siphoned off by Nigeria's political class is said to be sitting in foreign, mainly Western, financial institutions.[1] The transfer of looted public assets is not a phenomenon unique to African countries. For a long time, corrupt leaders in many Third World countries (Joseph Mobutu of Zaire, Ferdinand Marcos of Philippines, Alberto Fujimori of Peru, and Augusto Pinochet of Chile are good examples) saw Western financial institutions as 'safe havens' to hide their loot (Transparency International 2004: 32). This was not without good reason. Unlike their own local institutions, which were easily susceptible to investigation once their government was overthrown, Western institutions, famous for bank secrecy rules and protection by their home governments, proved more reliable. This reason held particular attraction for African leaders, fleeing the double menace of a chronically unstable political and economic environment, characterised by frequent changes in government, and galloping inflation and depreciation of national currencies (Sindzingre 1997). As African economic crises intensified in the

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[1] According to a UN study, Nigerians hold an estimated $170 billion in foreign bank accounts and assets (usually landed property), most of these in Western countries (United Nations 2002).

1990s, attention shifted to how some of the billions stashed away in foreign lands could be returned to help grow national economies. Effective asset recovery, it was reasoned, would not only assist these poor countries redress the worst effects of corruption; it would also help send a strong message to corrupt officials that there would be no place to hide their illicit assets (Brinkerhoff 1999).

The third aspect of Obasanjo's anti-corruption campaign, therefore, was premised on recovering Nigeria's billions stashed away in foreign banks. The campaign involved a frantic international effort aimed at identifying the hundreds of bank accounts and assets (landed property, companies, shares, etc.) held illegally abroad by corrupt Nigerian officials and then efforts aimed at ensuring that they were duly confiscated and the proceeds repatriated to the country. A second part of this campaign involved persuading the governments whose financial institutions are at the centre of this fraud, and indeed the entire international community, to initiate reforms leading to the adoption of new legislation and treaties to criminalise the fraud and prevent the international financial system from being used to launder stolen funds from poor countries such as Nigeria. These policies were clearly unprecedented in Nigeria,[2] where pursuit of looted funds had largely been localised inside the country. As a consequence, they raised a number of questions. Did the Obasanjo government possess the necessary political will to see this policy through? Where would Nigeria get the technical expertise needed to uncover hundreds, if not thousands, of secret bank accounts owned by corrupt Nigerian officials abroad? Would the foreign financial institutions and their governments be willing to cooperate with Nigeria in its search for funds hidden in their vaults?

As the experiences of a number of other countries who have engaged in similar battles clearly showed, recovering stolen assets from abroad is a Herculean task, requiring not only political will, a reliable legal system, technical know-how, and familiarity with the exigencies of countries holding the assets ('requested states') by those seeking to recover their assets ('requesting states') (U4 online (undated)), but also the financial and diplomatic muscle to overcome the administrative bottlenecks and political manoeuvres usually created by states who receive stolen assets (Turner 2004: 4)**.** Undeterred by these difficulties, the Obasanjo government plunged into the fight, which soon transformed into one of its major foreign policy priorities. Subsequently, the struggle was boosted by several initiatives taken by the international community, aimed at depriving cor-

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[2] In 1984, a move by the Mohammadu Buhari military regime, requesting the aid of the British government in recovering funds embezzled and stashed in British banks by the political-tycoon class of the Second Republic (1979-83), the very first of its kind, was quietly abandoned once the British Prime Minister, Margaret Thatcher, announced her intention to publish a list of Nigerians owning bank accounts in Britain (Graf 1988: 177).

rupt officials around the world of the opportunity of using the international financial system to hide their ill-gotten wealth (Daniel 2004). In this chapter, we will look at how this campaign was elaborated and prosecuted, beginning first as a purely Nigerian struggle before later turning into a major international preoccupation.

## Nigerian initiatives to recover looted assets from abroad

Although widely associated with the Obasanjo administration, the prevention of transfer of public assets and their recovery had long been a standing challenge for Nigerians before the inauguration of the Fourth Republic in May 1999. For instance, the problem was so important in the 1970s that the framers of the 1979 Constitution had cause to include a clause prohibiting the ownership of foreign accounts by top public officials, who had to close any foreign accounts before assuming office (Federal Republic of Nigeria 1979). All public officials were also required to declare their assets, and those of their spouses and children, every four years. However, like most other anti-corruption laws, these provisions, which found their way into all successive constitutions, were more often observed in the breach, so that by 1999 much of Nigeria's wealth was said to have found its way into the foreign bank accounts of a few powerful individuals. The scale of the problem was brought into sharp focus by the sordid revelations that followed the unexpected demise of General Sani Abacha in June 1998.

### *The demise of Abacha: The beginning of the search for looted funds*

Investigations into what came to be known as 'Abacha's loot' began almost immediately after his death in June 1998,[3] when a Special Investigation Panel (SIP) was inaugurated by his immediate successor, General Abdusalami Abubakar. According to media reports, the investigations were provoked by the interception of Abacha's widow, Mariam Abacha, at the Kano Airport, allegedly in possession of 38 suitcases stuffed with hard currency and on her way to Saudi Arabia (*Newsweek*, 13 March 2000: 16). During a press conference on 6 September 1998, General Abubakar announced that investigators had uncovered at least 130 bank accounts in 50 different banks (foreign and local) in which millions of dollars stolen from the Nigerian public treasury were stashed (see Table 4.1 for details). The General also confirmed that in a bid to recover the funds, his government had requested the cooperation of the countries where the funds were kept (*The News*, 31 May 1999).

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[3] Abacha died on the 8 of June 1998, allegedly from a cardiac arrest.

*Table 4.1* Details of withdrawals effected at the Central Bank of Nigeria

| Date of withdrawal | Amount withdrawn |
|---|---|
| 15 February 1995 | $4 million and £2 million |
| 07 February 1995 | $4 million and £2 million |
| 08 July 1995 | $5 million and £4 million |
| 29 December 1995 | $5 million |
| 28 March 1996 | $3.8 million |
| 29 May 1996 | $12.5 million |
| 20 June 1996 | $10 million and £5 million |
| 20 August 1996 | $30 million and £15 million |
| 24 September1996 | $50 million |
| 30 September 1996 | $50 million and £3 million |
| 14 October 1996 | $5 million |
| 11 November 1996 | $5 million and £3 million |
| 18 February 1997 | $6 million |
| 28 February 1997 | $3 million |
| 3 March 1997 | $3.27 million |
| 6 March 1997 | $1.21 million |
| 22 April 1997 | $60 million |
| 28 April 1997 | $60 million and £30 million |
| 30 June 1997 | $4.9 million |
| 9 July 1997 | $5 million and £2 million |
| 8 August 1997 | $10 million |
| 18 October 1997 | $12.3 million |
| 21 October 1997 | £5.88 million |
| 23 October 1997 | £14.76 million |
| 29 October 1997 | £11.76 million |
| 14 November 1997 | $10 million |
| 26 November 1997 | $24 million |
| 10 December 1997 | $24 million |
| 18 December 1997 | £6.15 million |

Source: Ugolor 2002.

By the time he left office in May 1999, General Abubakar had recovered $825 million from the Abacha family, leaving a total of $1.3 billion frozen in several banks in Switzerland, Luxemburg, and Liechtenstein (Daniel 2004: 102). According to the military government, most of the money recovered came from assets (buildings, lands, stocks and shares, vehicles, companies, etc.) and bank accounts of the late dictator and a few collaborators, which were held within Nigeria and had been returned ‘voluntarily’ by the family of the late Abacha and their close allies. Most of these funds were withdrawn directly from the vaults of the Central Bank of Nigeria (CBN) between 1994 and 1997 (Ugolor 2002). According to data released, Abacha and some members of his ‘kitchen cabinet’ may

have grabbed at least $2 billion from the CBN (see Table 4.1). The monies were often loaded into CBN bullet-proof vans and delivered directly to Abacha and his cronies (*Newsweek*, 13 March 2000).

Despite the fact that most of the looted funds were kept overseas, the Abubakar administration placed the emphasis on recovering what was held within Nigeria. The reason for this decision was obvious. The regime was faced with a number of political constraints: The resolution of the political crisis provoked by the annulment of the 12 June 1993 presidential elections; restoration of national unity sapped by the five years of tyranny under Abacha; successful and speedy completion of a democratic transition programme; rehabilitation of Nigeria into the international community after years of international isolation; and of course, lack of time – Abubakar's regime was in power for only one year. Thus, even if we assume that the regime had the required political will and competencies for a more extensive search – which is debatable – the scope of the domestic task before it would have made such an effort impossible.

### *The arrival of the Obasanjo administration: From domestic constraints to external challenge*

The arrival of the Obasanjo government was accompanied by a dramatic change in the campaign to recover Nigeria's stolen assets, from a more local-based initiative to an international campaign, with Western governments and other financial centres where stolen funds were believed to be held coming under increasing pressure. As soon as he assumed office, President Obasanjo wrote to all heads of states and governments concerned, including the leaders of the G7, requesting their support in the recovery of Nigerian assets stashed abroad in general, and in their countries in particular. According to Nigerian officials, this request received favourable responses. The Nigerian government's claim that the responses of these leaders were positive[4] was confirmed by initial progress in the recovery of looted assets, as the amount frozen in foreign accounts rose from $1.3 billion to $1.93 billion within one year. Similarly, according to figures published by the Ministry of Finance, out of a total of $6 billion allegedly stolen by Abacha, $3 billion had been identified and almost $2 billion already repatriated to the country by May 2005. The Abubakar administration was responsible for the restitution of $825 million, while the Obasanjo administration accounted for the remaining $1.175 billion (*ThisDay*, 13 May 2005).

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[4] In March 2000, Vice-President Atiku Abubakar told *Newsweek* magazine that "legislations dealing with secret accounts have now been eased, liberalized. Countries that can demonstrate that their resources were stolen and stashed away can now bring them back. It gives us hope that we will be able to return some of our stolen wealth … We are encouraged with the responses we have so far" (*Newsweek*, 13 March 2000).

As the data in Table 4.2 show, Switzerland, a well-known fiscal paradise, was the principal destination for Abacha and his cronies. Between 2003 and 2005, a total of $750 million frozen in approximately 42 bank accounts was repatriated from that country in different batches (*Vanguard*, 17 March 2005). This gesture was consequent upon intense diplomatic pressure and even threats of legal action by the Nigerian authorities (Ribadu 2005a). The release of the funds was also based on certain conditionalities, including that the Nigerian government first begin prosecution of the accused persons at home, confirm the criminal origin of the funds concerned, and sign an undertaking guaranteeing the transparent use of any funds repatriated. The latter condition was to be supervised by the World Bank. It was after these protracted diplomatic exchanges and bargaining between both governments that the funds were released (*Vanguard*, 10 March 2005). The 'Swiss bargain' was later followed by the repatriation of $149 million from Jersey Island in November 2003 (*ibid.*).

*Table 4.2* Estimates of Abacha funds frozen in Western banks as at July 2000 (US$)

| Country | Amount | No. of accounts | No. of banks |
|---|---|---|---|
| Switzerland | $750 million | 120 | 11 |
| Liechtenstein | $100 million | NA | 3 |
| Luxembourg | $630 million | NA | NA |
| Great Britain | $450 million | 20 | 11 |
| Total | $1.93 billion | NA | NA |

Source: *ThisDay*, 10 July 2000.

After these initial signs of progress, the loot recovery effort ran into stormy waters. Apart from Switzerland and Jersey Island, other countries such as Great Britain, Luxembourg, and Liechtenstein, which also served as safe havens for Nigerian leaders' loot, refused to show enthusiasm in response to Nigeria's request. Their procrastinations were further helped by the capacity of the accused to exploit existing loopholes in the legal systems both at home and abroad to their own advantage. For instance, in April 2002, confronted by mounting legal expenses, a slow legal system, and the uncooperative attitudes of accused persons, the Nigerian government entered into an accord with the family of the late Abacha, which provided that about $1 billion (out of $1.1 billion frozen in accounts in Switzerland, Great Britain, Luxembourg, Liechtenstein, and Jersey Island) be released to the Nigerian authorities. In exchange, all legal processes instituted by the Nigerian government against the Abacha family were to be dropped. According to the terms of the agreement, the Abacha family would also keep $100 million (*The Guardian*, 19 August 2004). This accord, however, was

unilaterally repudiated by Abacha's eldest son, who, once released from detention, claimed that the accord never existed (Ugolor 2002). Fully aware that he could play for time and hoping that a more pliant president would emerge in 2007, he chose to continue his battle with the government in the Nigerian courts.

Throughout the eight years Obasanjo was in office, Luxembourg, which had frozen $600 million 'owned' by Abacha and his cronies (*BBC News*, 9 May 2000), and also Liechtenstein failed to repatriate any funds, despite passing new laws following international pressure. As for Great Britain, another favoured destination for looted assets from Nigeria,[5] only a very tiny fraction of funds held was released (*BBC News*, 8 March 2001). This was despite the many cultural and historical links between Britain and Nigeria and multiple diplomatic pressures from Abuja. The presence of a host of legal instruments on judicial cooperation6 was of no help (Daniel 2003). The British long continued to insist on the need to first initiate prosecution in Nigeria and provide credible proofs linking the accused to the assets. Even when such steps were taken, the British maintained they were insufficient (*The Guardian*, 26 January 2001).

After much pressure, £3 million ($3.9 million) was returned to Nigeria in December 2003 by the British authorities. The return was made possible only by the conviction of one Uri David, who was one of the financiers of Tony Blair's Labour Party, for laundering millions of dollars for the late Sani Abacha (*ThisDay*, 28 December 2003). On 2 February 2005, the British Minister for Africa, Chris Mullin, announced that "we have discovered in British banks about £30 million smuggled out of the country by former Head of State Sani Abacha … the money is frozen pending court proceedings and once the proceedings are resolved the money will be returned to Nigeria" (*ThisDay*, 3 February 2005). This declaration, however, did not lead to the repatriation of any significant sum.

Western governments were clearly not of much assistance to Nigeria's quest for the recovery of its assets. However, the uncooperative attitude of Western countries and their strict legal systems or rules were not the only challenges that confronted the Nigerian government. The less-than-transparent nature of the recovery campaign and daily reports about incumbent officials committing similar crimes ensured that the exercise did not attract much domestic sympathy or support. The editors of *The Punch*, one of Nigeria's most respected newspapers, were every incisive when they observed that "unless the Federal Government re-

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[5] According to Britain's Financial Services Authority (FSA), 42 British banks handled some $1.3 billion for the Abacha family and their cronies between 1996 and 2000. Out of these 42 banks, 15 were guilty of significant control weakness in their anti-money-laundering controls (*BBC News*, 8 March 2001).

[6] These treaties included the pact on Mutual Legal Assistance between Britain and Nigeria, the Harare Scheme of 1987 on mutual assistance in the area of the fight against crime among Commonwealth nations, and the Convention of the Council of Europe of 1990.

assesses its loot-recovery efforts, relief may be far from ordinary Nigerians that bear the brunt of corruption. Apart from lack of transparency that has attended Nigeria's loot-recovery process, much of the national wealth continues to be siphoned into private offshore accounts" (*The Punch*, 27 December 2004).

In other words, aside from the international community, many Nigerian citizens were also worried about the poor level of transparency and accountability that characterised Obasanjo's international loot-recovery exercise. Indeed, it was a known fact that the Nigerian leadership was resisting international and domestic pressure to publish detailed information periodically concerning the loot recovery (the amounts recovered, those from whom they were recovered, banks where funds came from, the agents or intermediaries employed in these operations, the fees or commissions incurred, etc.). These contradictions, no doubt, point to the limited political will of the head of government and the nature of the political stakes involved. The persistence of this same crime under the Obasanjo government only served to worsen the situation. But despite these deficiencies, Obasanjo's loot-recovery efforts did produce some successes, the most notable being the support of critical sections of the international community for his policies.

## International initiatives to facilitate the recovery of looted assets

Even before Nigeria launched its global campaign in 1999 for the recovery of national assets siphoned off overseas, international attitudes towards this crime had been hardening. This change was clearly evident in the growing number of international conventions and treaties signed in the few years preceding Obasanjo's arrival in power and by preventive measures taken by some of the major receivers of such assets, such as the United Kingdom, Switzerland, and even the United States of America. Many of these changes have been due to the activities of a handful of international anti-corruption NGOs, such as Transparency International, and diplomatic pressures from countries that have been victims of such crimes, like Peru and the Philippines. The arrival of the Abacha affair only made the issue more urgent, especially for the world's leading international organizations and recipients of stolen assets.

### *International organizations and the campaign against illicit transfer of assets*

Until relatively recently, international laws and treaties regulating illegal cross-border financial transactions were grossly inadequate, as they tended to focus too narrowly on the bribery of foreign officials and money-laundering activities of international narcotic and terrorist networks. The OECD Convention of 1997 and the Inter-American Convention Against Corruption of 1996 are examples of in-

ternational laws containing this bias. Not unexpectedly, national legislation in this area also reflected similar biases. Since then a host of international legislation seeking to prevent and punish the laundering of stolen assets has come into existence. This process was greatly helped by the September 2001 terrorist attacks on the United States, which forced the world's only superpower to pressurise its allies in the EU, G8, and OECD to tighten their rules and take radical measures to fight money laundering, now seen as an important source of terrorist financing.

One of the international legal instruments touching directly on the criminalisation, confiscation, and repatriation of proceeds of corruption is the Convention of the African Union Against Corruption, adopted in July 2003. Article 6 of this convention prohibits the transfer or receipt of the proceeds of corruption and calls for such assets to be frozen and repatriated under Article 16. It also calls on the states concerned to cooperate with each other under the framework of Mutual Legal Assistance. The European Union has a similar convention, which it adopted in 2005. At a more global level, the United Nations Convention Against Transnational Organized Crime and the United Nations Convention Against Corruption have also been adopted. The first legislation came into existence in November 2000, while the second was adopted in December 2003. Both conventions require that member states take necessary measures to regulate their financial systems, prohibit corruption, prevent money laundering, initiate investigations and prosecutions, and offer international legal assistance and cooperation to countries which require them. While there have not been many successful prosecutions on the basis of these international conventions, the conviction of one of Abacha's sons and the son's business partner by a Swiss court for money laundering, participation in an organized criminal network, and fraud appears to demonstrate the importance of these international efforts.

Several other international groupings have also toed the same line. The G8, the OECD, The Commonwealth, and the FATF have all committed to "… intensifying support for the adoption and implementation of effective measures to combat corruption, bribery and embezzlement by … intensifying international cooperation to recover illicitly acquired financial assets and assisting African countries in their efforts to combat money laundering" (G8 2002). The FATF, which groups together some of the most influential members of the other international organizations, has now emerged as the primary driving force of the global drive to control money laundering. Its annual list of non-cooperative countries and territories is now a major reference point for assessing progress in individual countries. Countries that find themselves on the list are usually subjected to international ridicule and even sanctions. Nigeria itself narrowly escaped sanction in 2002, when it hurriedly passed anti-money-laundering legislation. But how exactly did

these international regulations impact on Nigeria's attempts to recover its looted assets?

International initiatives, such as conventions and treaties seeking to prevent the transfer of illicit wealth abroad, are effective only to the extent that member states are willing to enforce them within their territories. Available data showed that some of the most important safe havens (US, UK, Switzerland, etc.), including those that have been most unwilling to return stolen assets lodged in their jurisdictions (UK), have taken steps to reform their laws and financial policies to ensure that they are no longer used by criminal networks and corrupt foreign officials to hide illicit wealth. While it is true that such reforms were largely driven by international developments, such as pressure from Nigeria for the return of the Abacha loot, rather than by any altruistic desire to correct some observed deficiencies in the system, the impact of these reforms should not be underestimated.

*Reactions of safe havens: Great Britain, Switzerland, and the Abacha affair*

As we said earlier, Switzerland, for practical and professional reasons (bank secrecy and international diplomatic isolation), and Great Britain, for historical and cultural reasons, are among the most preferred destinations for stashing funds stolen by Nigerian leaders. Therefore, any changes put in place in these two countries would probably have the greatest consequences for the war against corruption in Nigeria. For a number of reasons, the policies and laws of these countries have seen quite a number of changes that have tended to strengthen the ongoing Nigerian war against the transfer of national assets abroad. We will begin with Switzerland and then turn to Great Britain.

- Switzerland: The quest for better reputation

For decades, international diplomatic isolation and a culture of bank secrecy made Switzerland a preferred destination for stolen funds. Abacha, for instance, held accounts in at least 19 Swiss banks (see Table 4.3). However, since the beginning of the 1990s, when a series of lawsuits brought by families of the victims of the Jewish Holocaust began to take its toll on its reputation, Switzerland has been forced to alter its laws and policies related to banking. The impact of the lawsuits was made worse by pressure from some foreign governments, notably the US, following the September 2001 terrorist attacks, and Nigeria, desperate to recover billions of dollars stolen by its former dictator, Sani Abacha.

For these reasons, Switzerland went further than any of the other fiscal paradises in the reform of its laws, which are now among the toughest. Its regulatory institution, in line with FATF's recommendations, set in motion rules requiring that financial institutions should be attentive to suspicious financial transactions

*Table 4.3* List of Swiss banks holding Abacha funds

| | |
|---|---|
| 1 | Banca del Gottardo |
| 2 | Citibank N. A. |
| 3 | Goldman Sachs & Co. Bank |
| 4 | Merrill Lynch |
| 5 | UBS AG |
| 6 | Banque Edouard Constant SA |
| 7 | Banque Nationale de Paris (Suisse) SA |
| 8 | Banque Baring Brothers (Suisse) SA |
| 9 | J. Henry Schroder Bank |
| 10 | Pictet & Cie |
| 11 | SG Rüegg Bank AG |
| 12 | Credit Suisse |
| 13 | Bank Hofmann AG |
| 14 | Bank Leu AG |
| 15 | Crédit Agricole Indosuez (Suisse) SA |
| 16 | UBP Union Bancaire Privé |
| 17 | M. M. Warburg Bank (Schweiz) AG |
| 18 | Mirabaud & Cie |
| 19 | UEB United European Bank |

Source: Swiss Federal Banking Commission (2000).

and their perpetrators. In Switzerland, laws criminalising money laundering (Article 305bis) and the non-exercise of 'due diligence' (305te) first entered into force as part of the penal code on 1 August 1990. The former penalised failure to establish the origin of funds and identify and freeze the proceeds of crime, while the latter created the obligation for financial institutions and their intermediaries to verify with reasonable diligence the identity of their clients and holders of accounts (Swiss Bankers Association 2001: 11). Effectively, with this legislation, money-laundering offences abroad could now be investigated and offenders convicted in Switzerland.

In the years that followed, other laws or amendments were introduced. These included a 1994 law authorising the confiscation of assets (Article 58ff) and a July 1998 convention binding all Swiss banks (Banks' Obligation of Due Diligence, CDB) to identify and verify their clients and the sources of their wealth. These rules were made in compliance with Recommendations 10 and 11 of the FATF (GAFI 2003). On 10 October 1997 a more comprehensive law, the Federal Act on the Prevention of Money Laundering in the Financial Sector, was adopted. This law had two new features. One was the extension of rules hitherto applicable to banks alone to other groups (financial intermediaries, *bureaux de change*, dealers in precious stones, estate agents, etc.). The second was the obli-

gation to alert the authorities (Money Laundering Reporting Office, MROS) of suspicious transactions. Any violation was subject to prosecution.

However, the presence of these laws did nothing to keep out Abacha's money, nor did it encourage the Swiss to act without prompting from abroad, until 1999 when the Nigerian government began its search for Abacha's loot. Even the directive on Politically Exposed Persons (Government of Switzerland 2002), prohibiting the acceptance of funds presumed to come from corruption, came too late. Abacha died in June 1998, while the directive was issued in January 1998. In fact, it only became law after the Abacha scandal exploded (Swiss Federal Banking Commission 2000: 13). Nevertheless, the Abacha affair and indeed the changes in Swiss laws, financial regulations, and practices still had consequences for the global campaign against corruption, and the one led by President Obasanjo in particular.

One of the consequences was that henceforth all clients from Nigeria must now be considered high-risk customers by all 342 banks in Switzerland. Following these changes, reports on suspicious transactions to the Money Laundering Reporting Office increased from 303 in 1999 to 652 in 2002, representing a 56% increase, while in 2003 they went up by another 50% (Swiss Federal Banking Commission 2003: 66). Apart from some assistance to the government of Nigeria on recovery of funds, the Swiss also acted more or less unilaterally – for example, when the country requested Germany to arrest Abacha's second son, Abba Abacha. He was picked up in the city of Neuss, Germany, on 9 December 2004 on the order of a Geneva court, allegedly while attempting to close a bank account (*The Punch*, 10 January 2005). He has since been jailed in Switzerland.

- Great Britain: The Abacha affair as a trigger

In January 2004, officers of the London Metropolitan Police received tip-offs suggesting that Governor Joshua Dariye of Plateau State had violated British and Nigerian money-laundering laws. Mr Dariye was said to own eight bank accounts in Britain, containing over £2 million ($2.6 million), in violation of provisions of the Nigerian Constitution, and some landed property estimated at £395,000 ($517,450) in London (*Financial Times*, 3 December 2004). On the basis of these allegations, he was arrested while on a visit to the British capital on 2 September 2004. On the day of his arrest, he was in possession of an undeclared sum of £90,000 ($117,900), in open violation of British legislation on money laundering. After being granted bail, Dariye absconded to Nigeria, where he enjoys constitutional immunity against arrest and prosecution. In swift response, all his assets in the United Kingdom were frozen, while an international warrant for his arrest was issued at the request of the London Metropolitan Police and the Crown Prosecution Service (*ThisDay*, 24 February 2005). Just a few months after

Dariye's arrest, on 17 September 2005 Diepreye Alamieyeseigha, Governor of the oil-rich Bayelsa State, was arrested upon his arrival in London for being in possession of over $100,000 in undeclared cash. Following subsequent raids on his home, $1 million in cash was found in his London home and £800,000 ($1.048 million) in his bank accounts in Britain (*The Times*, 7 September 2005). Alamieyeseigha, who was later arraigned before a Lagos court for embezzling and laundering over a billion dollars between 1999 and 2005 (*The Guardian*, 21 December 2005), also escaped from London after being granted bail. Like Dariye, his property in London, estimated at £10 million ($13.1) million, was frozen (*ThisDay*, 7 October 2005). According to the British authorities, several other highly placed Nigerians were under investigation for similar offences at the time (*ThisDay*, 25 January 2005). These unprecedented measures by the British authorities pointed to changes in British policy which were not unrelated to the September 2001 attacks in the US, but which were also linked to the international embarrassment caused by the Abacha affair.

The role of the British banking system in the Abacha affair was first raised during the investigations conducted by the Swiss Federal Banking Commission on the Abacha loot in 2000. The investigations established that a third of the Abacha money found in Swiss banks had passed through banks in Britain, Austria, and the USA (Swiss Federal Banking Commission 2000: 13). These allegations were subsequently confirmed by the British-based Financial Services Authority (FSA) and the Nigerian government, which believed that at least $1.9 billion had been sent through London. Before the Abacha affair, Britain had no policy on the repatriation of funds linked to corruption. This was largely because confiscated funds until very recently tended to come from or be linked to drug trafficking and without an obvious victim. Therefore, the existing rules and practices favoured the confiscation and retention of such funds by the British authorities (DFID 2002). The arrival of the Abacha scandal brought dramatic changes in these procedures.

In November 2001, under pressure over the Abacha loot, representatives of judicial and banking regulatory institutions of the G7 (including Britain) met at Lausanne, Switzerland at the initiative of the Swiss to discuss the issue of Politically Exposed Persons (PEPs) and the Abacha affair in particular (Swiss Federal Banking Commission 2003: 25). The meeting took a decision to reinforce vigilance measures (Enhanced Due Diligence Procedures) with respect to PEPs. Before this multilateral initiative, the British had even started their own internal process of change. In October 1998, for instance, Prime Minister Tony Blair had inaugurated a committee to examine arrangements in place for the recovery of stolen wealth in Britain and suggest measures to increase the effectiveness of the system. In its report published in June 2000, the committee highlighted a number

of shortcomings in the system. It also stressed the need to consolidate all existing laws on money laundering and confiscation of proceeds of crime into a single piece of legislation (United Kingdom 2000). This legislation was adopted on 31 July 2002, under the title Proceeds of Crime Act of 2000 (POCA), and entered into force progressively between December 2002 and March 2003 (United Kingdom 2002).

The arrival of the POCA opened new opportunities to countries seeking to recover illegally transferred assets in Britain, including Nigeria. Unlike in the past, assets acquired through corruption, along with assets from drug trafficking and other crimes, can now be confiscated and repatriated to their owners (Section 327-329). According to Sections 294 and 370 of the Act, assets may be frozen on the orders of the Crown Courts as soon as investigations (not prosecutions, as in the past) are launched. All countries will now also benefit from mutual legal assistance. The previous arrangement had restricted the privilege to some specifically designated countries and thus excluded a number of developing countries. Similarly, under Section 330, financial institutions are to report cases to the authorities on the basis of suspicion, not actual knowledge. Finally, the POCA established a central institution, Asset Recovery Agency (ARA), to be responsible for the coordination of British asset recovery strategy[7].

Soon after the POCA came into existence, a few Nigerian officials went on to sample its potency. On 10 November 2004 a Director with the Department of National Civic Registration, a parastatal of the Ministry of Internal Affairs, Chris Agidi, became its first victim when he was arrested at Heathrow Airport in possession of £200,000 ($262,000) stocked in a suitcase. It is noteworthy that he was actually arrested on suspicion of belonging to a terrorist network, which highlights the impact of the 11 September 2001 events. Only after further investigations did the authorities confirm that the money was part of bribes paid by a French company (SAGEM SA) to some Nigerian officials to win a national identity card project in 2002. Mr. Agidi made his first court appearance before the Southwark Crown Court in London on 18 January 2006 (*The Guardian*, 19 January 2006). In another incident, on 12 December 2005, the Stratford Magistrates' Court in London, relying on Article 301 of the POCA, ordered the repatriation of N23 million (£117,000 or $153,270) seized from Governor Joshua Dariye following his arrest in London in September 2004. This move, according to one British official, Sgt. Bob Ingram, was intended to "send out a clear message to Nigerian politicians that if they bring any illicit money to this country (United Kingdom), we will seize them and return the money to Nigeria, because the money belongs to the Nigerian people" (*The Guardian*, 13 December 2005.).

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[7] The ARA has since been merged with another institution, known as the Serious Organized Crime Agency.

One of Dariye's accomplices, Joyce Bamidele Oyebanjo, who aided in laundering £1.4 million ($1.8 million), was convicted by the same court in April 2007. Mrs Oyebanjo, who must serve a three-year sentence, was also ordered to refund £198,045 ($259,438) to the Nigerian government (*The Guardian*, 6 June 2007). On 6 July 2006, the British government said it intended to repatriate up to £250 million ($327.5 million) to the Nigerian government (*The Punch*, 12 July 2006). According to the Head of the Specialist Crimes and Anti-Money Laundering Team, Mr. Peter Clarke, all this "demonstrates the success of our application of the Proceeds of Crime Act to stop criminals benefitting from illegally obtained money … We believe these types of seizures will help deter financial crime in both London and Nigeria" (*ThisDay*, 7 July 2006).

## Conclusion

After a prolonged silence, the international community began supporting efforts aimed at combating corruption, notably illicit transfer of looted assets abroad by public officials in developing countries, an epidemic that has been ravaging the political economy of many developing countries for decades. This support involved not only giving technical support to countries that are interested in preventing the illicit transfer of public assets overseas, but also diplomatic help to those seeking the recovery of assets, already siphoned off by corrupt officials from those states, to help meet national development needs (Daniel 2004; Turner 2004). It was within this context that the Nigerian campaign, launched in 1998 to recover public funds looted under the Abacha regime and stashed in Western banks, can be situated.

While in power, President Obasanjo sought to intensify this effort, taking advantage of the changed attitude of the international community. Much of his efforts, widely believed to have had a salutary effect on the global fight against international money laundering, failed to achieve their intended results, however, owing to a combination of several domestic and international factors. Even though President Obasanjo's effort cannot be considered a total failure, given the positive way it has impacted on the global financial system (witness the many reforms that have taken place in Switzerland in the last few years), the effort did not lead to any substantial repatriation of looted Nigerian funds held in foreign banks. Several factors combined to limit the impact of his campaign, one of them being an inefficient judicial system and limited investigative skills in Nigeria. There was also a noticeable shortage of political will, both at home and abroad.

To the dismay of many Nigerians and members of the international community, public funds continue to be siphoned off by incumbent Nigerian officials.[8]

[8] For instance, in July 201 the erstwhile Chairman of the Economic and Financial Crimes Commission, Nigeria's most feared anti-corruption agency, estimated that some of Nigeria's state governors had transferred at least $10 billion between the time the current democratic experiment began in May 1999 and when he left office in December 2008. See *ThisDay*, 21 July 2010. Some of these governors have already been convicted for money laundering, or illegally operating foreign accounts, while many others are currently standing trial for the same offences.

# 5

# Anti-corruption agencies and the challenge of capacity

## Introduction

From all accounts, fighting corruption was certainly a top priority in the policy of the administration of President Olusegun Obasanjo, which during its eight years in office pursued a number of wide-ranging reform measures aimed at checking corrupt practices and raising the credibility of public officials and institutions in Nigeria. Given all the energy and resources that were committed to prosecuting this struggle, the question that now arises is this: What was the impact of Obasanjo's initiatives on the Nigerian governance landscape? To what extent did Obasanjo's anti-corruption policies achieve their goals? If they achieved great success, what are the explanations for such a result? And if they produced little or no impact, what are the reasons for this?

Assessing the impact of any reform policy, and an anti-corruption policy in particular, is a difficult task for a number of reasons. The first problem is that it is not always easy to determine what specific goals anti-corruption policies are designed to achieve (Dye 1984: 356). Anti-corruption crusades, as we have seen, often involve not only publicly stated goals (ridding society of corruption and corrupt individuals) but also some undisclosed political ends, such as procuring political legitimacy or eliminating the political enemies of a regime. Perhaps the best one can do is to focus on the attainment of officially stated objectives, which in almost all cases will be centred on reducing corrupt practices through removal of all incentives for corruption, detection of corrupt acts, and punishment of the perpetrators of corrupt acts. But even when policy objectives are clear, other analytical problems surface.

First, corruption is a phenomenon that can hardly be measured empirically. Knowing whether corruption levels have decreased, increased, or remained the

same requires first that corruption at any given time can be measured. There are two reasons why this measurement is impossible. First, there is the shortage of reliable data on corruption. Most corrupt acts are perpetrated in secrecy and so are not captured in official or academic data. Cases reported to the police or sourced from court records are only the tip of the iceberg and therefore are not representative of reality. One common fallacy is to regard the increase in the outbreak of corruption scandals as evidence that corruption has increased. Nothing could be further from the truth. Increasing outbreaks of scandals can, in fact, be a sign of improvement brought by increasing scrutiny of the activities of officials, which itself can be explained by the presence of a regime that has made the fight against corruption a major policy and thus has every incentive to create the impression that corruption is serious. It can also be linked to the arrival of a more liberal political regime, ushering in a freer press, a wider role for non-state actors, separation of powers, and checks and balances among public institutions. Second, the understanding of corruption itself is not static, varying from one country to another and from one time to another within the same country.

Another problem is that because corruption is a complex and multi-dimensional phenomenon, prescribed measures are often multi-dimensional, involving a host of policies implemented over a long period of time. The problem that then arises is how to know when evaluation should commence and which particular reform has produced which effect or what the contribution is of each policy. Since reforms commence at different dates, we can defer evaluation until such a time as all policy intervention is over – for example, at the end of the administration. If we focus on a specific aspect of reforms or policies, can the result obtained from such a study be used as a yardstick for analyzing the anti-corruption drive as a whole? If we focus on the overall policy objective (to achieve a reduction in corruption), how do we determine the relative effectiveness of each individual policy? The reduction in the level of corruption depends on several separate policies. If corruption fails to drop, how do we determine which policy is to blame (anti-corruption institutions, privatisation, reform of public revenue and expenditure process, new policies on reward, employment, and retrenchment in the public service, or international campaigns aimed at recovering stolen assets?).

These challenges, however, will not deter us from attempting to evaluate Nigeria's anti-corruption reforms under Obasanjo. In the first place, this book, for practical reasons, does not seek to evaluate the impact or effectiveness of all the anti-corruption measures put in place by the Obasanjo government, a task which is clearly impossible. Our goal in this section is a much narrower one, focusing on the impact of a few policies and institutions, such as the work of specialised anti-corruption commissions. This choice is informed by the fact that not only are these institutions regarded as the major pillars of Obasanjo's anti-corruption cru-

sade, but there are sufficient data on their work to enable an assessment, and their impact is also easier to observe than the other aspects of reforms put in place to fight corruption. How then can one assess the effectiveness of these aspects of the anti-corruption reform? To do this, we have decided to rely on evaluation criteria suggested by Vasant Moharir. He argues that for any public policy to succeed, it must be effective (be able to achieve stated goals), efficient (achieve its goals with reasonable cost and time), innovative, and feasible both politically (meet the interests and aspirations of all major actors) and administratively (possess political will and the capacity of organs of implementation) (Moharir 2002: 113; Fischer 1995). To avoid unhelpful repetitions, Moharir is simply saying that the effectiveness of a policy – in this case, Nigeria's anti-corruption crusade's ability to achieve its goal, as in reducing corruption quickly – depends on institutional capacity (powers, resources, and leadership of implementation organs), political will, and the role or behaviour of major actors (Goodin 1996: 41), including national leaders, local elites, and civil society.

Findings of numerous studies conducted on the work of anti-corruption commissions around the world have confirmed Moharir's hypothesis. Robert Williams, Alan Doig, and Robin Theobald, in a comparative study focusing on such commissions in Africa, find that their effectiveness is hampered by what they called the 'seven sins': 'economic sins', or lack of resources; 'political sins', or absence of political will; 'legal sins', or inefficient legal system; 'organisational sins', or leadership weakness such as lack of independence and poor administrative style; 'governance sins', or lack or effective complementary institutions such as the police; 'performance sins', or level of efficiency; and 'public confidence sins', or lack of public trust and confidence (Williams & Doig 2004). Robin Theobald put these arguments in a more precise language when he observed that effective anti-corruptions agencies must have or be built around the following:

> [C]onsiderable long-term resources, human capital, highly specialised skills … that must also be highly motivated; must be endowed with considerable legal and administrative powers; administrative clout … often taken to mean that such agencies need the strongest possible backing, perhaps even that of the head of state; appropriate levels of accountability and transparency; a strong institutional environment, especially in immediate ancillary areas such as the police service and the judiciary and availability of records particularly in the area of finance. (Theobald 1999: 152)

In 1998, a World Bank report pointed out that Tanzania's anti-corruption drive was greatly sapped by the poor performance of the Prevention of Corruption Bureau (PCB), which it said had been "generally weak and ineffective, lacking adequate staff, facilities, equipment and training. Staff is paid on civil service scale". According to the report, "considerable time and effort in recruiting and training will be required to turn the PCB into an effective instrument in the anti-corruption struggle" (World Bank 1998a: 17). A similar report on Uganda argued:

> Uganda has a comprehensive legal and regulatory framework which is essentially sufficient to combat corruption. However, the judiciary and enforcement agencies are weak, underfunded, and lack human and material resources … The institutions most directly involved with anti-corruption – the Inspectorate of Government (IGG), Directorate of Public Prosecutions (DPP) and Police – are severely constrained by limited resources, including low pay. (World Bank 1998b: 12)

Official reports published by anti-corruption agencies themselves have also highlighted the same problems (DCEC 2000).

As we will show in the following three chapters, Nigeria's anti-corruption drive could not escape this predicament. The major anti-graft agencies which were at the heart of Obasanjo's anti-corruption fight – the EFCC and ICPC – were victims of weak administrative capacity (limited powers, insufficient human and material resources, and inefficient legal system). A lack of broad-based support and commitment from the major political actors – national government, sub-national authorities, and civil society – further compounded the problem, contributing substantially to the continued prevalence of endemic corruption in the polity. The evidence was first and foremost the festering atmosphere of graft at all levels of government, despite the well-publicised anti-corruption war. Another factor was the continuing open hostility of key political heads in Nigeria, notably state governors, to the anti-graft war.

In this section of our book, we discuss the three most important challenges that confronted the Nigerian anti-corruption reforms: Limited capacities of the anti-corruption bodies, strong opposition of state governments, and weak engagement of civil society. In the first of the three chapters, which examines the impact of poor administrative capacity on the struggle against corruption, we will demonstrate that although the decision to create the ICPC and EFCC was well-intended, these institutions unfortunately failed to contribute to the reduction of corruption in a significant way. Despite their wide powers and relatively extensive administrative structures, which set them apart from similar institutions created by past regimes in the country, the EFCC, and more particularly the ICPC, grappled with problems of administrative capacity caused by inadequate political will at the highest level and an uncooperative political class dominated by people who were committed to the preservation of the status quo. We shall examine each of the two institutions in turn, beginning with the ICPC.

## The ICPC and the war against corruption: A disappointing balance sheet

Before the establishment of the ICPC in September 2000, Nigeria had not convicted anybody for corruption in a regular court.[1] The inauguration of the ICPC, with unprecedented powers and promise of support from the highest level, therefore raised hopes of a new dawn. As Table 5.1 shows, within its first year, covering October 2000 to September 2001, four cases were brought before the courts for various corruption offences. This figure rose to 14 at the end of the ICPC's second year in September 2002, before peaking at 27 at the close of its third year in September 2003.[2] According to some ICPC officials interviewed, these stemmed from a total of 800 petitions submitted to the ICPC by different individuals and groups in conformity with the 2000 ICPC Act. At the end of the day, the ICPC could not secure convictions in these cases or many more that followed. The consequence was that by 2007, after more than seven years in existence, it had become more synonymous merely with its anti-corruption jingles advertised repeatedly on local television stations and with the term "toothless bulldog". Indeed, the ICPC could only secure one conviction involving two relatively minor individuals (the medical director of the famous Ahmadu Bello University Teaching Hospital and his finance director). The limits imposed by its

*Table 5.1* Index of performance of the ICPC (July 2005)

| | Oct. 2000 - Sept. 2001 | Oct. 2001 - Sept. 2002 | Oct. 2002 - Sept. 2003 | Oct. 2003 - Sept. 2004 | Oct. 2004 - July 2005 | Total |
|---|---|---|---|---|---|---|
| Total petitions received | 264 | 365 | 367 | 451 | 399 | 1846 |
| Petitions approved for investigations | 20 | 185 | 439+ | 327 | 209 | 1180 |
| Investigations concluded | 11 | 19 | 17 | 16 | 17 | 80 |
| Cases filed in court | 4 | 10 | 13 | 8 | 14 | 49 |
| Convictions won | 0 | 0 | 1* | 0 | 0 | 1 |

* Two individuals were convicted during this trial.
\+ Some of these petitions included those submitted during earlier years
Source: ICPC (2006).

[1] The first major attempt in this regard was made in 1984 by the Muhammadu Buhari regime (1984-85). This effort, however, suffered a major setback when the regime was displaced from power after only 18 months in office. Prosecutions of corrupt officials were replaced by a gradual institutionalisation of corruption by the regimes of Ibrahim Babangida and Sani Abacha.

[2] Those charged included a High Court judge, a prominent lawyer (senior advocate of Nigeria), chairmen of private and public companies, heads of government parastatals and local councils, some director-generals and permanent secretaries, ministers, former governors, senators, and a former Senate president.

own legislation, poor investigative skills and its own mishandling of investigations, insufficient human and financial resources, its management style, an inefficient judicial system, and constant attacks from politicians, especially federal legislators, all combined to create the basis for poor results and progressive loss of credibility.

The task of the ICPC was not restricted to arresting, investigating, and prosecuting suspected corrupt individuals. It was also expected to do the following: Design and implement measures aimed at preventing corruption in the country, such as a nationwide public enlightenment campaign; provide support to the formation and development of other institutions, such as NGOs and anti-corruption units in other public institutions committed to the fight against corruption; conduct research on the practices and procedures of public institutions which encourage corruption; and suggest ways of eradicating such practices and procedures (ICPC 2006). Although the ICPC gave substantial attention to these functions, these efforts were to be in vain if it could not invoke sanctions against corrupt officials and individuals through criminal investigation and successful prosecution. The willingness and capacity to detect corruption and impose sanctions, ranging from conviction and imprisonment to confiscation of corruptly acquired wealth, are among the most important indices for evaluating the performance of an anti-corruption institution. This is the real deterrence, and not the level of information available to the organ or the number of studies performed on and recommendations made for corrupt public institutions and systems. Unfortunately, the ICPC performed, according to these indices, very inadequately. Table 5.1 makes this point clearly. The reasons, as we have said, are numerous. We will highlight some of the most important ones.

*Chronic underfunding and insufficient manpower*

The lack of sufficient human resources, resources which define the capacity and effectiveness of all bureaucratic organisations, was a major source of constraint for the ICPC. The effects manifested not only in the scale and speed of investigations but more importantly in their quality – and thus in the results of trials. The question of the shortage of human (qualified staff) and material resources (funds, functional offices, equipment) at the ICPC has already been discussed in some detail in Chapter 3 of this book; thus, it will be unnecessary to recount it here. It suffices to note, however, that this foremost anti-corruption body did not possess sufficient numbers or quality of personnel and the administrative structures required to make an appreciable impact in the war against corruption in such a huge country as Nigeria. Availability of high-quality manpower and administrative structures are a direct function of adequate budget. An institution which lacks adequate budgetary support cannot hire or mobilise a competent workforce,

nor can it run and maintain a robust physical structure. As the data presented in Table 5.2 shows, the Nigerian authorities did not understand this fact or had chosen to ignore it.

Even though its weak financial base did not allow it to hire the brightest lawyers (Ribadu 2004: 9)[3] or the full complement of investigators required, the manner in which the managers of the ICPC applied their resources – relative to recruitment of staff – raises some questions about their managerial skills. From its own data, the ICPC clearly favoured the employment of administrative staff over specialists in its core areas (investigators and prosecutors). In 2004 for example, four years after its establishment, it could boast of only 26 investigators out of a total of 294 workers (*ThisDay*, 17 June 2004). The figure improved slightly to 32 for investigators and 17 prosecutors out of a total of 271 workers in July 2005 (ICPC 2006: 104). One can easily contrast this with what obtained at the Independent Commission Against Corruption (ICAC) in Hong Kong, which had 1,148 employees in December 1991, 794 (or 69%) of whom were working in the department of investigation. A mere 7% of its total workforce was employed in the administration department (Quah 1995: 402). The consequence of such disequilibrium, especially in a country of more than 140 million people and marked by several decades of endemic and systemic corruption, was obvious. The ICPC could not conclude investigations in good time nor was it able to speedily prosecute corrupt individuals reported to it, resulting in many accusations being made against it. More importantly, its activities were mainly visible in Abuja (see Table 5.3).

*Table 5.2* Budgetary allocation and staff strength of ICPC (2000-5)

| | Oct. 2000 - Sept. 2001 | Oct. 2001 - Sept. 2002 | Oct. 2002 - Sept. 2003 | Oct. 2003 - Sept. 2004 | Oct. 2004 - July 2005 |
|---|---|---|---|---|---|
| Budget proposed by ICPC | N2,558m | N9,027m | N1,652m | N943m | N1,208m |
| Amount released | N990m (38.7%) | N415m (4.6%) | N410m (24.9%) | N497m (52.7%) | N262m* (21.7%) |
| Number of personnel | 137 | 261 | 293 | 294 | 271** |

* This amount represents the sum that had been released as at the end of May 2005. This will probably have doubled by the end of the year.

** The reduction in the number of staff, compared with the previous year, was explained largely by the departure of several staff who were on secondment from other public institutions.

Source: ICPC (2006).

[3] Nuhu Ribadu, the EFCC chairman, estimated that it costs between N5 and N10 million to prosecute a major fraud case (Ribadu, 2004).

*Table 5.3* Geographical distribution of court cases initiated by ICPC (March 2005)

| State | Location of court | No. of cases |
|---|---|---|
| Abuja | Abuja | 15 |
| Kaduna | Kaduna | 3 |
| Rivers | Port Harcourt | 1 |
| Edo | Benin | 2 |
| Kano | Kano | 2 |
| Imo | Owerri | 1 |
| Benue | Markurdi | 2 |
| Kwara | Ilorin | 1 |
| Lagos | Lagos/Ikeja | 2 |
| Niger | Minna | 1 |
| Kogi | Lokoja | 3 |
| Plateu | Jos | 1 |
| Ebonyi | Abakaliki | 3 |
| Ondo | Akure | 1 |
| Kebbi | Birnin-Kebbi | 1 |
| Delta | Asaba | 1 |
| Total | | 40 |

Source: ICPC (2005a).

In October 2005, the ICPC took steps to improve and restructure its staff situation by recruiting more staff. During that exercise, a total of 152 new employees were brought in to boost its operations, 45 of whom were investigators (ICPC 2005b). Many thought, all things being equal, this improvement in staff strength was going to impact positively on the ICPC's performance, especially in the key areas of investigations and prosecutions. But as the saying goes, all things are never equal. The ICPC's problems were much deeper than the issue of funding or staffing. Inefficiencies in Nigeria's criminal justice system in general and the uncooperative attitude of the political leadership at the time, particularly the notoriously corrupt federal legislature, proved to be greater sources of problems for this anti-corruption body.

*Constitutional loopholes and ineffective criminal justice system*

According to the authors of a recent UN report on judicial integrity, "a fair and efficient judiciary is the key to all anti-corruption initiatives" (Langseth & Stolpe 2001: 3). Nigerian courts, especially at the lower levels, are notorious for corruption, perversion of justice, snail-speed of trials, and political interference (Oyebode 1996; Federal Republic of Nigeria 1994). Despite the much-vaunted intention to reform these institutions (Ojo 2005), the Obasanjo government failed to

push through any major reform before leaving office in May 2007. Although the judiciary went on to witness considerable reforms following the intervention of some international organisations and the increasingly independent National Judicial Council (see Chapter 4), most of the progress recorded was in the area of improving the integrity of judges. In the area of efficiency, that is speed of trials, very little change took place. Although part of the problems had to do with constitutional immunity against arrest and prosecution granted to some political leaders, and an insufficient number of judges, the courts were also guilty of unnecessary adjournments of cases and indulging in granting incessant interlocutory injunctions to accused persons (Ribadu 2004: 6).

The consequence of this for the ICPC was that its court cases, some of them as old as the commission itself, were buried in complex judicial processes, as accused persons, aided and abetted by their lawyers, continued to exploit these loopholes to frustrate the course of justice.

Court cases could last between five and ten years, or even longer. This is especially the case where the individual facing trial has sufficient resources, enough to hire one of the senior advocates of Nigeria (SAN). The SANs are the most successful lawyers in the country. Among them are those who are very conversant with the numerous loopholes in the legal system, which can enable an accused person to delay justice, if not escape it completely. With this information in mind, we will now proceed to review some of the most ‘celebrated cases’, which highlight the role of an inefficient judiciary in Nigeria’s faltering anti-corruption drive.

- The case of Milton Paul Ohwovoriole and others

The ICPC launched its first major operation in 2000 with the arrest of four individuals accused of offering N3.5 million in bribes to a member of a commission of inquiry established by the federal government to probe the financial activities of the defunct Nigerian Airways Limited (NAL). The four included a senior advocate, Milton Paul Ohwovoriole; Adebiyi Olafisoye, a multi-millionaire and proprietor of an insurance company, Fidelity Bond Ltd.; and one of the latter’s managers, Adeyemi Omowunmi. The three, according to the ICPC, conspired to offer the bribe through Adeyemi Omowunmi to the fourth accused, Alhaji Mika Anache, a member of the commission of inquiry on NAL. The money, which was paid on the 16 November 2000, according to investigators, was intended to procure a favourable report from the commission of inquiry. Alhaji Anache, an influential member of the governing Peoples Democratic Party, said he kept the money in his personal bank account because “the commission was on recess”, with the intention of reporting the matter to the commission. He failed to do so, however, until another member reported that he had received information that a

member of the commission of inquiry had received N3.5 million in gratification. This was two months after the money was paid. The action constituted an offence under Sections 10(a)(ii) and 231(1) of the ICPC Act.

This case immediately raised hope of a quick breakthrough in Nigeria's perennial struggle with corruption, given its straightforward nature and the social backgrounds of those involved. Unfortunately, the hope soon turned unfounded, as the ICPC's attempts to prosecute the offenders suffered one delay or the other owing to incessant adjournments, injunctions, and counter injunctions granted by the trial courts. More disturbingly, the Nigerian Police, well known for their corruption and inclination to collude with criminals seeking to escape justice, soon announced that the principal suspect, Adeyemi Omowunmi, who investigators said had personally ferried the money to the indicted member of the commission, had escaped from its detention under 'mysterious' circumstances (*The News*, 25 June 2001). As at the end of March 2012, this case had yet to be concluded. In fact, the trial had not yet gone beyond the Abuja High Court, which was the first court of trial. In other words, even if conviction was secured at that level, the accused persons could still appeal to the Appeal Court at Kaduna, before proceeding finally to the Supreme Court were the Appeal court to uphold the judgment of the Abuja High Court.

- The case of the Ondo commissioners

Another case that underlined the ICPC's battle with an inefficient, sluggish criminal justice system was the one involving two commissioners (equivalent to ministers at the federal level) from Ondo State. It is important to recall that Ondo State was one of the states which mounted a legal challenge against the ICPC Act between June 2000 and July 2001 at the Supreme Court of Nigeria, challenging the constitutionality of the ICPC and its enabling Act. This state, therefore, has a long history of hostility to the ICPC and everything connected with it. Indeed, its hostility was further reinforced when the ICPC decided to open investigations against officials of the state for alleged corrupt practices. The investigations followed a petition to the ICPC, alleging that the Ondo State government had acquired a property valued N500 million, in Lagos, the nation's commercial capital, 'under very dubious circumstances'. Some top government officials, including the state governor, were said to have derived undue benefits from the deal, in violation of their oath of office and indeed the ICPC Act. Following this, an invitation was issued to the State Commissioner for Finance, requiring him to appear before the anti-graft body with all documents related to the acquisition of the property (*Newswatch*, 3 March 2003). This invitation was ignored by the official concerned, prompting the ICPC to issue a warrant for his arrest and the arrest of the Ondo State Attorney-General, which did not produce any result either. The

two officials, with the active connivance of the state government, simply disappeared or went into hiding each time officials of the ICPC were in the state to effect their arrest.

When they finally decided to come out of hiding, these officials, again with the open support of the Ondo State government, sued the ICPC and its chairman, whom they accused of defamation (*Vanguard*, 24 May 2002). According to them, the ICPC boss had referred to them as "fleeing criminals", while featuring in some radio and television programmes held on 4 and 7 January 2002, respectively. They alleged that the aforesaid invitation was signed only on 9 January 2002. The ICPC's action, according to them, constituted an infringement of their "fundamental human rights" (*The Guardian*, 18 January 2002). Political sentiments were soon introduced, when they alleged that their investigation was a "deliberate attempt by the ICPC, which has become an instrument in the hands of their political rivals, to bring down the leadership of the state" (*Newswatch*, 3 March 2002).[4]

By evading physical arrest and possible arraignment on 11 counts of infractions bordering on corruption and then filing a civil suit against the ICPC, these accused persons managed to escape justice. Their schemes were helped by deficiencies in the criminal justice system. For instance, a general lack of security had ensured that one of the accused (the Attorney-General) managed to flee the country, leaving the ICPC with very little proof. It was not surprising that at the end of their first trial at the High Court of Akure, the capital of Ondo State, in March 2004, the accused were acquitted for want of "substantial evidence" (*ThisDay*, 23 March 2004), leaving the ICPC with no option but to appeal.

The failure of the ICPC before the Akure High Court was also due in part to loopholes in its own law (the ICPC Act). According to Section 26 (2) of the Act, "(p)rosecution for an offence under this Act shall be initiated … in any superior court of record so designated by the Chief Judge of a State or the Chief Judge of the Federal Capital Territory, Abuja" (Federal Republic of Nigeria 2000a). In other words, it is the responsibility of the head of the judiciary or chief judge of the 36 states of the federation (for all offences committed in any of the 36 states) or the chief judge of the federal capital, Abuja (for offences committed in Abuja), to inaugurate a "superior court of record" and appoint "competent" judges to hear cases brought by the ICPC. The term "superior court of record" in Nigeria means any of the 36 State High Courts (under the 36 state governments) or any of the

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[4] These officials had actually traced their problems to a "certain ex-commissioner" who was dismissed for fraud by the state government. Determined to get back his own pound of flesh, this individual was said to have sent a petition to the ICPC and distributed forged documents on the acquisition of the controversial property, with the aim of discrediting the state government. This was during the period leading to the run-up to the 2003 general elections.

Federal High Courts scattered across the country, including the one based in Abuja, the federal capital (under the federal government).

The consequence of this provision of the ICPC Act is that any offence committed in any of the 36 states (such as the one involving the Ondo commissioners) is brought before a court controlled by the state in question and judged by a judge appointed by an appointee of the same state government. In countries such as Nigeria, where judges are hardly independent of appointing authorities, it is difficult to see how a case brought against an official of a state government can receive a fair trial in its own court. If the Ondo State government does not want its officials convicted, as was clearly the case, it is almost impossible for the ICPC to secure victory before an Ondo State High Court. The ICPC subsequently launched an initiative to have this aspect of its law repealed, to ensure that its cases are taken only before the federal high courts and to avoid any interference by the state governments, largely seen as indifferent to the ongoing war against corruption. The ICPC's proposed amendment had still not passed through the National Assembly by the time President Obasanjo left office, and nor has it been passed to date.

- The case of state governors

Beyond incessant adjournment of cases by judges and the use of counter litigation by accused persons, which tend to delay the application of justice, there are other important legal factors which have limited the capacity of the ICPC enormously, and indeed all the other anti-corruption bodies in Nigeria (including the Nigerian Police, the EFCC, and the Code of Conduct Bureau). One of these loopholes is certainly the constitutional immunity against arrest and prosecution granted by Section 308 to major political leaders: The President, Vice-President, and all 36 state governors and their deputies (Federal Republic of Nigeria 1999a). This provision was partly intended to protect these political leaders or heads of government and their deputies from incessant and frivolous litigation, which would distract attention from the serious business of governance. However, this nobly intended provision also served other functions, notably as a *carte blanche* for some of these officials to engage in treasury looting.

Certainly, relevant sections of the ICPC law prescribe some procedures under which the President, Vice-President, and governors and their deputies can be investigated and impeached for corruption. According to Section 52 of the Act, when an allegation of corruption has been made and found to be true (by the ICPC), the report of such investigation must be submitted to the Chief Justice of Nigeria, who will then appoint an independent jury to further investigate the accusations. Where the jury confirms the veracity of the allegations, it will then foreword its findings to the National Assembly (in the case of the President or

Vice-President) or the state legislature (in the case of the governors or their deputies), which can then initiate proceedings for impeachment in accordance with Section 52(1) (Federal Republic of Nigeria 2000a). Unfortunately, all attempts by the ICPC and other institutions to apply this difficult rule were blocked by the courts, which held that the provision was illegal to the extent that it is in conflict with Section 308 of the Constitution.

Similarly, as in all presidential systems of government, the Nigerian Constitution anticipates some type of legislative control of the Executive. Unfortunately, the actual practice is such that the Executive (the governors especially) exercises greater control over the legislature than does the legislature over the Executive. Rather than check the excesses of their governors, much of the legislature acts more like a rubber stamp for the governors. As the cases that follow show, unless constitutional immunity is completely removed or at least modified, all these provisions will remain ineffective in the face of the wanton corruption perpetrated by some of these protected officials, particularly the governors.

Between 1999 and 2007, petitions alleging one form of corruption or another against the governors, who collectively control about half of Nigeria's vast oil revenue, flooded the ICPC. After initial hesitation, the ICPC decided to act. In January 2003, it issued a statement confirming that investigations involving at least 15 of the 36 governors, who belonged mostly to the ruling PDP, had almost been concluded and that those who had cases to answer would soon be prosecuted (*The Guardian*, 28 March 2003). Of course, this statement raised many political concerns, given the fact that it had been preceded by an earlier request by the National Chairman of the PDP, addressed to the ICPC, seeking to ascertain the 'status' of all those who wanted to contest elections (in April 2003) under its platform. Fears were raised about the possibility that the leadership of the party, in active connivance with the Presidency, might be seeking to scuttle the political ambition of some governors perceived to be hostile or disloyal to the President. All the same, the statement by the ICPC was welcomed by a considerable number of Nigerians, who had become overwhelmed by stories of massive corruption by government officials, particularly by governors of oil-producing states. These individuals were frequently associated with massive embezzlement of public funds, money laundering, ownership of numerous overseas accounts and property, ostentatious displays of wealth, and frequent and unexplained trips abroad. These accusations were not unfounded, as some of the events described in the next chapter will show. But the challenge for anti-corruption bodies such as the ICPC remained how to bring these powerful officials to book in view of the immunity which the Constitution accords them.

Subsequently, the ICPC announced that investigations were completed and that a formal request had been forwarded to the Chief Justice of Nigeria (CJN) in

line with Section 52 of its Act, requesting him to appoint an independent jury to investigate allegations against five governors indicted in its report (*The Guardian*, 28 March 2003). Apart from Governor D. S. P. Alamieyeseigha of Bayelsa State, whose file was the first to be sent to the CJN on 8 January 2003, the other governors were not named. Alamieyeseigha was accused of corruption and abuse of office by one Festus Gbassa, a citizen of his state (*ThisDay*, 21 January 2001). Specifically, he was said to have approved "contracts and payments to the tune of N1.7 billion to 8 fictitious companies" with respect to construction works in the state-owned Niger Delta University. The Bayelsa State Tenders Board, presided over by him, also awarded contracts valued at N667.3 million to fictitious companies. Another allegation was that this governor, with the help of some local banks, transferred public funds running into billions of naira into his private bank accounts abroad. Mr Alamieyeseigha was also said to own numerous landed properties at home and abroad, including a five-star hotel in Abuja, the nation's capital (*Newswatch*, 3 March 2003).

But the ICPC's case file on Alamieyeseigha contained at least two important weaknesses. First, as the agency itself noted, it could not confirm or verify the authenticity of all the claims, such as the property he allegedly owned in his state. This, according to the ICPC, was because all attempts to do so were frustrated by the state's Commissioner of Lands and Housing, who refused to cooperate with agents of the commission during their investigations. When the ICPC declared its intention to commence criminal prosecution against Alamieyeseigha, a second weakness emerged. Five of the eight companies classified as "fictitious" by the ICPC and as having benefited from the Bayelsa governor emerged with proof of their existence to challenge what they called "false accusations and attempts to intimidate them". According to them, not only did they exist as legal entities (the ICPC apparently had not crosschecked this fact with the Corporate Affairs Commissions charged with the registration of companies, nor did it invite the companies for a discussion), but they had had no business relations whatsoever with Alamieyeseigha or the government of Bayelsa State. They thereafter instituted their own suits before the Abuja High Court requesting damages and, of course, that the entire report on Alamieyeseigha be set aside.

While these suits failed to secure a reprieve for Alamieyeseigha, which was clearly the intended goal – the trial court upheld the ICPC's powers to prosecute the governor in line with Section 52 of its Act – it dealt a decisive blow to the credibility of the ICPC. The indiscretion and poor investigative skills of the ICPC were highlighted by the trial judge, who noted in his 25 November 2005 judgment that "there was an attendant irregularity in the probe conducted by the ICPC to the extent that the companies were not given the opportunity to defend themselves in line with the principle of fair hearing" (*The Guardian*, 28 November

2005). For a long time, these gaps in the case of the ICPC were capitalised upon by Alamieyeseigha and his supporters, who spearheaded a media war in an attempt to weaken the commission and force it to back down on its pledge to press charges against the governor. When the ICPC refused to back down, Alamieyeseigha's immunity against investigation and prosecution became an alternative escape route.

On 20 January 2003, barely two weeks after his case file was sent to the CJN for action, Governor Alamieyeseigha filed his own suit before the Abuja High Court against the ICPC and the CJN. In his suit, Alamieyeseigha did not contest his indictment over allegations of grand corruption. He simply wanted an order (interlocutory injunction) by the court restraining the CJN from appointing an independent counsel, as demanded by the ICPC, to investigate allegations of corruption against him (*ThisDay*, 21 January 2001). The principal ground for his suit was that "all governors (and their deputies) enjoy immunity against investigation and prosecution in line with Section 308 of the Nigerian Constitution" and, therefore, that "Section 52(1) of the ICPC Act on the basis of which the ICPC had demanded the CJN appoint a jury was unconstitutional, null and void". In Alamieyeseigha's estimation, the action demanded by the ICPC – his appearance before an independent counsel – would violate his immunity as guaranteed by the Constitution. Governor Alamieyeseigha also sued the CJN himself over the same issue (*ThisDay*, 17 June 2004).

Governor Alamieyeseigha's request was fully granted by the court, which issued a restraining order that all investigations and prosecutions be stopped. Alamieyeseigha's victory had an immediate consequence on the activities of the ICPC, notably the quiet decision by the anti-corruption agency to abandon prosecution of the other four governors whose files were already before the CJN, whatever may have been their crimes. By the same measure, all future attempts to prosecute state governors, believed to be among the worst offenders in terms of corruption, were also rendered practically impossible,[5] subsequently granting a charter of impunity among these categories of officials. After its failed attempts to bring Alamieyeseigha to justice, the ICPC carefully avoided taking on the governors despite public pressure to do so, leading to a gradual loss of credibility. Its defence was often that it lacked sufficient financial resources to do so. Other sister organizations which had sought to challenge the constitutional immunity granted to governors encountered the same defeat. One of them was the Code of Conduct Bureau (CCB), which in a close collaboration with the EFCC wanted to prosecute Governor Joshua Dariye of Plateau State over allegations of

[5] At this time, the ICPC had already forwarded the dossiers of 15 governors indicted for corruption to the CJN.

operating foreign bank accounts, corruption, and money laundering but was stopped by the court (*The Guardian*, 7 December 2004).

The negative impact of constitutional immunity in a country ravaged by endemic high-level corruption was widely acknowledged. Indeed, not many Nigerians, outside the group who benefit from this provision, hold the view that it should be retained. Gani Fawehinmi, a senior lawyer and one of Nigeria's irrepressible anti-corruption and human rights' crusaders, warned that "the entire Section 308 has to go. If it does not go, corruption will not end. If Section 308 is not removed, executive lawlessness will never stop. If Section 308 is not thrown out of our constitutional order, abuse of power will continue to heighten in the body polity" (*The Guardian*, 15 April 2004). Even in his ruling restraining the CCB from prosecuting the Governor of Plateau State for corruption, Justice Steve Jonah Adah of the High Court of Abuja warned that "this immunity is the albatross that hangs on the neck of Nigeria. Until it is cut off there will be no unity between politics and probe" (*The Guardian*, 7 December 2004). The National Judicial Council (NJC), Nigeria's highest judicial regulatory body, also expressed a similar view. In a proposal submitted to the Senate (Sub-Committee on the Review of the 1999 Constitution), the body argued that "immunity from criminal prosecution granted to specified officers of State … is being abused and is capable of being abused in a manner that could endanger the nation and its democratic system of government … In view of all the following, the NJC is of the opinion that (it) be reviewed with a view to closing avenues of abuse".[6]

There were also several discussions within government circles about a possible modification of the immunity clause, to allow for the nomination of an independent jury that could launch criminal pursuits (but not civil) if good grounds existed against indicted officials. This was also among the recommendations of a National Political Reform Conference inaugurated by President Obasanjo, which brought together some of the most important members of the Nigerian elite in Abuja between February and May 2005 (Federal Republic of Nigeria 2005). This proposal had earlier been advanced in a bill sent to the National Assembly by the CCB, which had suffered legal defeat at the hands of Governor Dariye of Plateau State and three others (in Abia, Oyo, and Jigawa states) accused of maintaining foreign bank accounts in violation of existing rules (*ThisDay*, 20 May 2005). However, political reality on the ground did not favour such changes. Any amendment of the Nigerian Constitution requires the approval not only of both houses of the National Assembly, most of whose members had expressed their discomfort with a powerful anti-graft body, but also that of at least 24 state assemblies. This means the support of the state governors is necessary, those who

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[6] The NJC in fact wanted to exclude criminal and electoral offences from the cover of constitutional immunity.

stand to lose most if they support the amendment. Any such move on their part will amount to committing a form of class suicide, something that is rather uncommon in Nigeria.

In many ways, therefore, the problem of weak capacity (insufficient human and material resources, limited powers, and an obstructive criminal justice system) that confronted Nigeria's foremost anti-corruption agency is also dependent upon and closely linked to the issue of political will and support and the attitudes of key political actors. This point was clearly demonstrated by the frosty relationship between the National Assembly and the ICPC during the Obasanjo era, especially during the period 2000-4.

*Political leadership and the ICPC's anti-corruption campaign*

Since the publication of Gaetano's ground-breaking work on elite theory (Gaetano 1939), the dominant role of national elites in political life in general, and in the policymaking and implementation process in particular, in all countries – democratic and authoritarian – has been the subject of much intellectual interest (Dye 2001; Kalu 2004; Daloz 2002). In a study touching on the role of customs' agencies in the fight against corruption, Irene Hors noted that "reformers need to be centrally concerned with the attitudes, perceptions and actions of elites, as they will be fundamental to any efforts to initiate and sustain reform" (Hors 2001: 54). The will and political behaviour of a national elite form what Vasant Moharir calls the "political feasibility" of a public policy, which according to him is a decisive factor that cannot be ignored or underestimated in the explanations for success or failure of government policies and programmes (Moharir 2002), including anti-corruption crusades. This hypothesis is largely true of Nigeria's anti-corruption policy, as reflected in the predicament of the ICPC at the hands of Nigeria's governing elite, of whom the national lawmakers form an important component.

Although it may not be the sole or even the strongest holder of political power, the support and behaviour of the parliament is crucial for the success of government policies and programmes for many reasons, notably the parliament's power over the control of public funds and laws. Strong political will and support for public policies by the political class (including the legislature), which controls public resources in a democratic state, can be measured by their willingness to do all that is necessary to raise the capacity and effectiveness of institutions charged with the implementation of public policies. This usually involves appropriation of sufficient funding required for running such institutions and achieving policy goals, such as recruitment of qualified staff, acquisition of necessary structures and equipment, granting such institutions sufficient powers, and providing the necessary enabling legal environment for these institutions to operate. Similarly,

the presence of strong political will should also be seen in the absence of political interference and in the refusal to politicise or manipulate such institutions for selfish ends. Political leaders must also be willing to respect and observe the regulations advanced by the policy and thereby show a good example and encourage public confidence.

These conditions were largely absent as far as the crusade against corruption spearheaded by the ICPC was concerned. The political leadership at the national level, particularly the federal legislature, did more to undermine the capacity of the ICPC than empower it to fight corruption. We have already noted how the federal legislators' refusal to allocate sufficient funds and to give favourable consideration to the request from the anti-graft agencies for legal amendments to correct observed legal loopholes undermined the potency of these institutions. Yet it appears that the greatest weapon employed by the legislature to weaken these institutions was their open indulgence of corrupt practices and their politicisation of the work of the ICPC.

Until 2003, the National Assembly did nothing overtly to interfere in the operations of the ICPC. It was content with its decision not to allocate sufficient funds and not to give favourable consideration to the request from the anti-graft agencies for legal amendments to correct observed legal loopholes. Friction between both institutions and open interference from the Assembly emerged only when the ICPC announced that following the petitions it received from some members of the national legislature alleging corruption on the part of its leadership, it had opened investigations into the financial activities of the leaderships of both houses of the National Assembly, that is, the Senate and the House of Representatives.

The ICPC's statement did not come as a surprise. For many years, both institutions, which together make up the federal legislature, were considered the bastion of political scandals and large-scale corruption. Only six months after the Assembly's inauguration, its entire leadership was swept away following allegations of falsification of age and certificates. These were no mere allegations. In July 1999, Mr Salusi Burahi, Speaker of the House of Representatives, was sentenced to two years in prison (with the option of a N2,000 fine) for falsifying his educational and birth certificates (*ThisDay*, 25 July 1999). A few months later, the new leadership, including the Senate President (also the Chairman of the National Assembly) became enmeshed in yet another serious allegation of corruption. The allegation included the charge that the leadership of the legislature had awarded contracts to themselves, members of their families, and cronies at inflated prices and in utter disregard of existing regulations. These allegations were so widespread that they forced the National Assembly to allow an internal probe. The report of the probe submitted in August 2002 indicted the leadership, includ-

ing the Senate President and his deputy and virtually all the senate committee chairmen, paving the way for the loss of their leadership positions (*ThisDay*, 26 July 2000). The new leadership that emerged after this scandal did not show much interest in transparency either. Repeated pleas and law suits initiated by some members of the legislature to force the new leaders to hand over the report of the Senate committee that had indicted the departed officers to the ICPC for possible prosecutions were spurned (*Vanguard*, 24 May 2002).

The failure of the National Assembly to keep its own house in order and repeated petitions against its leadership made the ICPC's intervention and the subsequent clash between the institutions unavoidable. The ICPC intervention was first prompted by a petition by one Senator Arthur Nzeribe, to the effect that Senate President Anyim Pius Anyim (the third since the birth of the National Assembly in May 1999), was constructing three mansions in different parts of the country, supposedly with state funds. The Senate President also allegedly "approved contracts to fictitious companies at inflated prices and paid huge sums to his loyalists in the Senate for some official duties that were never carried out" (*The News*, 7 May 2001). Similar allegations were also made against the Speaker of the House of Representatives, Alhaji Ghali Umar Na'abba, in petitions addressed to the ICPC in August 2002 by some members of that institution (ICPC 2002). On the basis of these petitions, the ICPC decided to write to the leadership of both institutions, demanding their cooperation in its investigations. But instead of cooperation, the leaders of the National Assembly were spoiling for a fight.

The Speaker of the House of Representatives initially agreed to cooperate with the ICPC, but on the condition that a copy of the report of investigation on him be made available to him. This request was turned down by the ICPC, which cited provisions in its Act stating that the contents of investigations can only be divulged to the accused person when preliminary investigations are concluded. At this point, Mr Na'abba adopted a more confrontational posture. Initially he demanded assurances from the ICPC that the agency would not allow itself to be used as an instrument of blackmail and intimidation by politicians, in a veiled reference to the President, who was then embroiled in a bitter struggle for power with the leadership of the National Assembly over the latter's attempt to impeach him. Mr Na'abba later stated that allegations against him, which he said were false, were instigated by the President, who wanted to undermine the impeachment process put in place against him by the National Assembly. When the ICPC completed its preliminary investigation and found that sufficient grounds existed to interrogate the Speaker, Mr Na'abba promptly went to court, which gave him an interlocutory injunction halting further action on the matter by the ICPC.

The Senate President also pursued a similar strategy. But in addition to a law suit against the ICPC, Mr Anyim also wrote petitions to the President, in which

he criticised the *modus operandi* adopted by the ICPC. For instance, he complained that the ICPC had gone to the houses he was said to be building, in the company of agents of his accuser (Senator Nzeribe). In his opinion, it was also unacceptable for the ICPC to enter the premises of an accused without notifying him or her. For these reasons, Anyim accused the ICPC of becoming a "weapon in the hands of certain people" and therefore corrupt (*Newswatch*, 3 March 2003).

Tension between the ICPC and the National Assembly increased when the two leaders secured the support of the majority of their colleagues in the Senate and House of Representatives, most of whom wanted the anti-graft commission to be tamed, if not abolished completely. Thus, on 19 November 2002, the Senate inaugurated a committee to investigate the activities of the ICPC since inception (*Newswatch*, 9 December 2002). This decision signalled the preparedness of the legislators to move finally against the commission, which the legislators had now come to perceive as a threat or, in the words of the Deputy Senate President, Ibrahim Mantu, as a "terrorist institution". There were only two ways through which this move could be achieved: Abolition of the ICPC or amendment of its Act. For obvious reasons, the legislatures settled for the second strategy. This process commenced on 6 February 2003, when procedures for the amendment of the ICPC Act were unveiled in the Senate (*ThisDay*, 7 February 2003), amidst criticisms from the Executive and a number of civil society organisations, including Transparency International, Zero Corruption Coalition, and the Nigerian Bar Association (*The Guardian*, 24 February 2003; *ThisDay*, 4 March 2003; *ThisDay*, 7 March 2003). After some very harsh criticisms directed at the ICPC, the bill was adopted by the Senate on 26 February 2003, that is, less than three weeks after the bill was introduced (*The Guardian*, 27 February 2003). Even the House of Representatives could not wait longer. On 13 March 2003, it followed the same path, despite a subsisting court order to the contrary (*ThisDay*, 14 March 2003). These decisions were unprecedented departures from established legislative tradition in the country. While it took the same legislators a whole year (June 1999 to July 2000) to consider and pass the 2000 Act, seven weeks was more than enough to complete both a probe of the activities of the ICPC and the passage of a new Act (the 2003 ICPC Act). Spirited attempts by the Executive to halt the process and save the 2000 Act, through a presidential veto, produced little effect. The two houses of the national legislature simply met in a joint sitting on 7 May 2003 to overturn the veto (*ThisDay*, 8 May 2003).

The lawmakers had premised their action on the need to safeguard the independence and integrity of the ICPC. But their real intention could hardly be concealed. In addition to the speed with which the bill was passed, its contents also spoke volumes about the real intention of the lawmakers. The new law contained

several important changes, which were obviously intended to weaken the anti-corruption agency and eliminate any control the Executive (President) had over it. According to The Corrupt Practices and Other Related Offences Bill 2003, the chairman of the ICPC would now be a serving judge of an appeal court, appointed by the CJN and subject to confirmation by the Senate (*Newswatch*, 24 March 2003). The consequence was that the then chairman of the ICPC, a retired judge, had to quit his position, and the President was no longer in a position to appoint future chairmen to the commission. The new law also contained other new provisions, such as the one requiring that the commission must inform accused persons that it has received a petition against them or that they are under investigation for corruption. The scope of imposable sanctions (i.e. prison terms), and even the powers of the ICPC, were also dramatically reduced. Clearly, the lawmakers wanted to cripple the commission permanently.

The actions of the lawmakers did not bring the ICPC to its knees, but their long-term impact was very damaging. While the ICPC was subsequently rescued by an Abuja High Court order, which invalidated the new Act on the grounds that lawmakers did not follow due process in amending the 2000 Act as required by the Constitution, its confidence and capacity was greatly eroded by the actions of the legislature (*The Guardian*, 9 October 2005). After this incident, it began to shy away from launching 'high-profile' investigations. All the leaders of the National Assembly whom it accused of corruption left their posts without being questioned subsequently. The National Assembly had clearly succeeded in intimidating the ICPC. The agency was so intimidated that it began to talk about the need to make its existence (and those of other anti-corruption bodies) a "constitutional requirement" (*The Punch*, 17 March 2005), to make it more difficult for hostile politicians to repeal the Act.[7] Credibility also suffered, to the extent that there were growing calls for the ICPC to be scrapped, or merged with other similar institutions (Onyekakeyah 2006). But despite this compelling evidence of political interference and poor performance, a focus on the ICPC alone cannot reveal the full extent of difficulties involved in the quest to deploy specialised anti-corruption agencies in Nigeria. A more complete view will emerge after evaluation of the activities of the second major anti-corruption institution created by President Olusegun Obasanjo: The EFCC.

## The EFCC and the politics of anti-corruption crusade

On 11 April 2003, President Obasanjo inaugurated a second anti-corruption agency, known as the Economic and Financial Crimes Commission (EFCC). Ac-

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[7] This view was strongly canvassed by the ICPC during the National Political Reform Conference, which took place in Abuja between February and May 2005.

cording to information posted on its official website, the EFCC was created to "curb the menace of corruption that constitutes the cog in the wheel of progress; protect national and foreign investments in the country; imbue the spirit of hard work in the citizenry and discourage ill gotten wealth; identify illegally acquired wealth and confiscate it; build an upright workforce in both the private and public sectors of the economy and; contribute to the global war against financial crimes".[8] In other words, the EFCC was created to fight corruption, among other crimes.

The establishment of yet another anti-corruption commission can easily lead to the conclusion that Nigeria's problem of corruption and financial crimes can best be overcome by the creation of more anti-corruption institutions rather than the strengthening of existing ones. Indeed, in one of his earliest interviews as chairman of the EFCC, Nuhu Ribadu even exaggerated this view a little further by suggesting that "in Nigeria today we need 10 EFCCs, 10 ICPCs for us to make even a meaningful progress" (*ThisDay*, 4 June 2005). However, the limited success recorded by Ribadu's men since their arrival in 2003, especially in the area of successful prosecution of corruption-related offences, punctured this argument. While not trying to provide excuses for the lacklustre performance of the ICPC or underestimate the relevance of a second or even more institutions to fight corruption where institutional capacity and political support exist, the experience of the EFCC, at least under Obasanjo, showed that Nigerians must first address the issues of internal institutional capacity (adequate human and material resources), poor judicial environment, and lack of commitment among key political actors – all of which have undermined the effectiveness of existing institutions – if they hope to win the war against graft in the Fourth Republic. Before elaborating these challenges, we will first look at the relative contributions of the EFCC to the war against corruption, particularly in the areas of arrest, investigation, prosecution, and recovery of looted funds or proceeds of crime. These achievements can be best appreciated if placed side by side with the balance sheet of the ICPC.

*Comparing the ICPC and the EFCC*

By all standards, the performance of the EFCC under Obasanjo was unprecedented in the history of anti-corruption institutions in Nigeria. In many areas that can be considered as central to financial crime – investigation, prosecution, conviction and recovery of illegally acquired assets – the EFCC has recorded significant successes. For instance, between the time of its creation in April 2003 and October 2005, it received a total of 3,758 petitions, out of which 526 were inves-

[8] www.efccnigeria.org

tigated (*The Punch*, 23 October 2005). By 2 June 2006, the number of petitions received had reached 5,400, while the number of cases under investigation and prosecution was put at 2,103 and 550, respectively (*The Guardian*, 2 June 2006). The agency also recorded similar success in the area of loot recovery (cash from banks, buildings and other landed properties within and outside the country, vehicles, ships, aircraft, company stocks, etc.). The total value of what was recovered stood at $5 billion in June 2006. The proceeds usually returned to the victims, such as individuals who had been victims of 419, the well-known Nigerian scam. In one such case, celebrated in the media, $4.48 million taken from a Hong Kong national by fraudsters was returned to the owner on 26 September 2005. In other cases, funds were paid back to the public treasury, especially those seized from former and serving government officials,[9] or those recovered from private companies which had defrauded the government,[10] in such areas as tax evasion (*ThisDay*, 2 June 2004). The EFCC also helped to reduce losses in other public institutions, such as in the NNPC, where barrels of crude oil lost to illegal bunkering fell drastically from 110,000 to 3,000 barrels per day, according to official statistics (*The Tribune*, 2 June 2006).

*Table 5.4* Comparative performance of the ICPC and the EFCC

| | ICPC | EFCC | Total |
|---|---|---|---|
| No. of petitions received | 1,846 | 5,400 | 7,246 |
| Estimation of funds/assets recovered (in naira) | 3.9 billion | 725 billion (June 2006) | 728.9 billion |
| No. of investigations concluded | 80 | 550 | 630 |
| No. of persons arraigned | 185 | 300 + | 485 |
| No. of persons convicted (2007) | 20 | 145 | 165 |

Note: Except where indicated, these data are valid as at 10 October 2006.
Source: Gashinbaki (2004).

In the area of arrest and prosecution, more than 3,000 persons were arrested and interrogated between April 2003 and June 2006. Furthermore, by 2 June 2006 there were at least 550 ongoing criminal prosecutions (*Vanguard*, 2 June 2006). The list of those prosecuted included at least one governor (Alamieyeseigha of Bayelsa State); a former President of the Senate and some of his colleagues; a former Inspector-General of the Nigerian Police; ministers (at state

[9] This included, for example, the £3 million retuned by Britain as part of the Abacha loot and more than N17.7 billion recovered from convicted former police boss, Tafa Balogun.

[10] The recovered funds includes those recovered by the Federal Inland Revenue Service and initially lost through tax evasion by private firms, such as the N80 million paid by Halliburton in 2004.

and federal levels); chairmen and managing directors of banks, private companies, and public parastatals or corporations; local government chairmen; businessmen; high-profile fraudsters; and common criminals. The list of convictions was also impressive, standing at 20 in November 2005, 35 in April 2006, and 55 on 2 June 2006 (*ibid.*). The figure rose to 82 in August 2006. The relative success of the EFCC was not unconnected with the scope of its powers but also the commitment of its leadership and staff. In many ways, however, it was also a function of the availability of resources,[11] made possible by international pressure and support (*The Guardian*, 11 October 2006; *The Punch*, 26 November 2005). Table 5.4 shows a comparative index of performance of the two anti-corruption bodies.

But despite this level of achievement, the EFCC was widely criticised, even much more so than the relatively underperforming ICPC. The major source of criticisms was, firstly, that the agency was selective in its fight against corruption in the public sector, in the sense of going after only those that were perceived as not being in the good books of the powers that be. Secondly, the EFCC was also harshly criticised for its tendency to violate fundamental human rights. This second criticism became much more pronounced when information emerged that one of its high-profile detainees, Maurice Ibekwe, a member of the Federal House of Representatives, had died in its custody (*ThisDay*, 23 March 2004). Thirdly, and perhaps more disturbingly, critical review of the list of convictions secured by the EFCC shows that the agency had very little success in prosecuting senior public officials, the brains behind much of the Nigerian corruption story. Most of those convicted were non-public officials.

One of the EFCC's first major convictions was secured on 6 June 2005, when a former bank chairman (Fidelity Bank Plc.) and owner of a stock-brokerage firm (Thomas Kingsley Securities), Kingsley Ikpe, was sentenced after a nine-month trial to a total of 153 years in prison, without option of fine, on 39 counts of stealing and falsification of documents. His prosecution began in August 2004, following a petition from one of his clients, who accused him of fraudulently receiving N135 million from the client under pretext of procuring for him some shares in Nigeria Breweries Plc., a brewing firm based in Lagos (*ThisDay*, 7 June 2005). Mr Ikpe was also ordered to pay N61 million in damages to his client and N7.55 million in fines to regulatory authorities for the offences he committed between May 2002 and September 2003.

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[11] In November 2005, the EFCC received 24.7 million euros (or N3.8 billion) from the European Union. The funds were to "provide the EFCC with required equipment and technical support, further improve the knowledge of the agency's staff through training, in-country and overseas, as well as to strengthen the capacity of the judicial system to handle economic and financial crimes". The total financial assistance from the EU was put at $32 million (or N4.16 billion) in October 2006.

Another major conviction came on 15 July 2005. This involved one Mrs Amaka Anajemba, who was arrested and detained by the EFCC in January 2004 for participating in a financial scam which cost a Brazilian bank some $242 million, leading to its collapse. After a 12-month trial, Mrs Anajemba was sentenced to two and a half years in prison, following a plea bargain. Mrs Anajemba was also ordered to forfeit assets estimated at N3 billion and pay a further $25 million as restitution to the victims, excluding $5 million and N2 million in fines to the government of Nigeria. Mrs. Anajemba was not the 'principal accused' in this case; she was said to have taken part and benefitted from the crime by virtue of her marital connections. Her husband, Ikechukwu Anajemba, one of the principal accused, died before the trial commenced.

On 17 November 2005, Emmanuel Nwude, a wealthy businessman and owner of several companies, and Nzeribe Edeh Okoli, two of the other principal actors in the $242 million Brazilian scam, were jailed for a total of 25 (5 counts of 5 years each) and 12 years (3 counts of 4 years each) respectively, by a Lagos court. Nwude was ordered to forfeit several fraudulently acquired assets, including 14 houses (situated in the states of Lagos, Abuja, Enugu, Anambra, Rivers, and in London), six luxury cars, and more than 100 million units of shares acquired in some local banks and other companies. He was also ordered to pay $110 million as restitution to the victims of the crime and a further $10 million in fines to the Nigerian government. The second convicted, Nzeribe Edeh Okoli, for his part, was ordered to forfeit several landed properties, including a petrol station under construction and an undisclosed number of buildings in his home state of Enugu. In addition, he was also forced to part with three of his companies (Emrus, Ocean Marketing, and African Shelter Bureau), which were to be liquidated by the state, and pay $11.5 million to the federal government in fines (*ThisDay*, 18 November 2005). The trial of both individuals, which started on the 23 July 2004, was concluded within 15 months.

But while the EFCC was successfully prosecuting high-profile private individuals on fraud-related charges, it consistently failed to do so with members of the political class, whether appointed or elected. What explains this discrepancy? Does this mean that it has been too afraid to take on the 'big political fish'? Or was it a deliberate strategy? On the contrary, the EFCC had consistently placed this group of citizens at the centre of its operations, arguing that the political class is the major cause of the endemic corruption that has held Nigeria down for decades. The problem, however, was that taking on members of the political class required not only substantial institutional capacity but also a considerable amount of political support. Just as in the case of the ICPC, this support was largely non-existent.

To backtrack for a moment: At the time it was created, the EFCC did not elicit the kind of strong reaction that greeted the birth of the ICPC. This was in spite of the overwhelming, some say draconian, powers that were given to it. Ironically, the same legislators that held up the ICPC Act for over a year rushed back from their Christmas holidays to consider and pass the bill on the EFCC into law within days without any significant change to the original bill presented by the Executive. Outside the threat of international sanctions (by the FATF), which had played a decisive role, these legislators, and Nigeria's political class by extension, never considered the EFCC as a potential threat. The EFCC and its enabling Act were, as we noted earlier, essentially regarded as instruments specifically designed for individuals outside the political class, such as the '419-ers' and fraudsters in the banking sectors. This understanding pushed the Speaker of the House of Representative, Ghali Umar Na'abba, to argue that "the EFCC was meant to fight 419 and money laundering, and not corruption in public places, which is, according to him, the duty of the ICPC" (*ThisDay*, 6 February 2006). This was also the general view among the public.

But soon after its creation, the EFCC gradually began to refashion itself, taking advantage of its almost draconian enabling legislation. This move, as it should be expected, brought it into a head-on collision with the political class, helping to expose the limits of institutional capacity and political backing for the war against corruption available in Nigeria. The inefficiency of the judiciary also did not help matters.

## The judiciary as a drag on the EFCC's capacity

According to the EFCC's chairman, Nuhu Ribadu, Nigeria's inefficient judicial system is by far one of the most important obstacles to the effectiveness of the EFCC (Ribadu 2004), which explains the limited number of convictions secured. As at October 2005, the EFCC had won only 20 convictions, arising from over 300 prosecutions, launched in various courts (Lagos, Abuja and Kaduna), in spite of 3,758 petitions received and 526 investigations concluded (*The Punch*, 23 October 2005). As we have noted already, the EFCC's record of conviction rose to 82 in June 2006. Apart from hiding the fact that very few outside the private sector are included in that list, 82 convictions was still a dismal record in seven years, especially in a country with such a high incidence of corruption as Nigeria. Indeed, in countries with similar institutions, but with far more people and comparatively lower levels of corruption, such as Hong Kong (Klitgaard 1988), Botswana (Kawana 2001), or even Zambia (Doig *et al.* 2005), anti-corruption agencies were known to have achieved far better rates of conviction (see Tables 5.5 to 5.7). In Zambia, for instance, 5,841 petitions were received, 334 criminal prosecutions launched, and 91 convictions won within a period of four years (1997-

2001). In Hong-Kong, the figure was even higher. Over a period of four years (1999-2003), 21,108 petitions were received and 2,672 pursuits initiated, out of which 302, 309, and 217 convictions were won in 1999, 2002, and 2003, respectively. How did the judiciary impact on the performance of the EFCC?

One way in which the criminal justice system impacted negatively on the operations of the EFCC and slowed down the rate of conviction is the exercise of constitutional immunity by the heads of governments, particularly the 36 state governors. The question of constitutional immunity has already been dealt with in relation to the performance of the ICPC; thus, a detailed analysis is unnecessary here. It suffices to say, however, that like the ICPC, the EFCC's attempts to probe and jail these functionaries were equally frustrated by their immunity against arrest and prosecution. Joshua Dariye of Plateau State and Diepreye Alamieyeseigha of Bayelsa are good examples. Both were accused of massive corruption by the EFCC, but for a long time could not be prosecuted owing to their constitutional protection. The prosecution of the latter was launched in December 2005, after he was impeached by legislators of his own state, who were compelled to act following his arrest in London on money-laundering charges. Governor Alamieyeseigha was subsequently convicted by a Lagos court for corruption and money laundering. Like Mr Alamieyeseigha, Governor Dariye of Plateau was also arrested for money laundering by the London police and managed to return to Nigeria in violation of his bail conditions. But unlike the former, he remained in office as governor for over two years without being charged with any offence. When pressure from the EFCC on his state's legislators to impeach him became unbearable, Dariye simply disappeared. Governor Ayo Fayose of Ekiti State also took the Dariye option after he was impeached by state legislators for allegedly looting over a billion naira in public funds. Just like Dariye, his immunity served as a cover for him to escape justice.

*Table 5.5* Performance index of the Independent Commission Against Corruption of Hong Kong (1999-2003)

| Year | Petitions received | Investigations completed | Prosecutions launched | Convictions won |
|---|---|---|---|---|
| 1999 | 3,561 | 2,453 | 504 | 302 |
| 2000 | 4,390 | 2,993 | 608 | NA |
| 2001 | 4,476 | 3,093 | 535 | NA |
| 2002 | 4,371 | 3,516 | 604 | 309 |
| 2003 | 4,310 | 3,185 | 421 | 217 |
| Total | 21,108 | 15,240 | 2,672 | NA |

Source: Hong Kong (1999-2003).

*Table 5.6* Performance index of the Directorate on Corruption and Economic Crime (DCEC) in Botswana (1994-2001)

| Year | 1994-1996* | 1997 | 1998 | 1999 | 2000 | 2001 | Total |
|---|---|---|---|---|---|---|---|
| Petitions received | 2,528 | 1,511 | 1,525 | 1,023 | 1,475 | 1,841 | 9,903 |
| Investigations completed | 536 | 675 | NA | 382 | 233 | 503** | NA |
| Prosecutions launched | 141 | 173 | NA | NA | NA | 46 | NA |
| Convictions won | 59 | NA | NA | 23 | 20 | 24 | NA |

* The DCEC began work in September 1994.
Source: DCEC (1994-2001).

*Table 5.7* Performance index of the Zambian Commission Against Corruption (1997-2001)

| Year | Petitions received | Investigations launched* | Prosecutions launched | Convictions won |
|---|---|---|---|---|
| 1997 | 865 | 495 | 69 | 5 |
| 1998 | 1,485 | 538 | 63 | 29 |
| 1999 | 1,325 | 460 | 100 | 30 |
| 2000 | 1,263 | 403 | 49 | 10 |
| 2001 | 903 | 392 | 53 | 17 |
| Total | 5,841 | 2,288 | 334 | 91 |

* Available data on the Zambian Commission Against Corruption did not contain information on investigations completed.
Source: Doig *et al. (*2005).

Apart from constitutional immunity, which was enjoyed by only a handful of officials anyway, other legal loopholes connected to the Nigerian judicial system also had a negative impact on the anti-corruption work of the EFCC. These included Sections 35(2) and 36(11) of the Nigerian Constitution. Nuhu Ribadu, then EFCC chairman, gave a full account of the relationship between these provisions and the war against graft:

> Section 35(2) gives a right to any person arrested or detained to remain silent or avoid answering questions until after consultation with his/her lawyer. Section 36(11) also provides that any person tried for a criminal offence shall not be compelled to give evidence at the trial. When the rights are claimed, they may at times lead to over-protection of the accused person while restricting the means of protecting the rest of the society in the sense of making it difficult to prove a case against them. (Ribadu 2004: 6)

In political systems where there are very experienced investigators and prosecutors and an efficient judiciary, an accused's refusal to talk may not necessarily pose such an insurmountable obstacle. But a lack of institutional capacity in Nigeria has ensured that this refusal has posed a significant problem to the anti-corruption institutions.

A more serious obstacle, however, was the inadequacy of the law known as the Evidence Act, which regulates what can be accepted as exhibits in the courts and what cannot. Part of Nigeria's colonial legacy, the Evidence Act was enacted by its colonial masters for an agrarian and pedestrian society. In recent times, it has become grossly inadequate to cover the present advancement in technology with the concomitant sophistication employed in the commission of economic and financial crimes. The legislation did not, for example, anticipate the arrival of new technologies: Computers, the internet, fax, mobile telephone, credit cards, etc., now widely used in the conduct of financial frauds. The presence of such technical loopholes has been successfully exploited by accused persons and their lawyers, to the detriment of prosecutors.

While the Nigerian judiciary has often been criticised for being either too slow or too lenient on individuals accused of corruption, thereby contributing to the current atmosphere of systemic corruption, the fact remains that judges are mere interpreters of law and not makers of law. Anti-corruption laws, like all laws, are made by politicians, who also retain the powers of amending them when they become obsolete or ineffective in achieving their original goals. Unfortunately, politicians that thrive on graft have no incentive to pass laws that have the potential of undermining their positions – unless, of course, a law is targeted at political opponents. If for any reason such legislation is passed, perhaps unintentionally and involuntarily as was the case with the EFCC Act, we can expect these politicians to move to hobble its effective implementation. The politicisation of the EFCC's activities by Nigerian politicians, which we discuss in the next section of this chapter, can be understood within this context.

*The politicisation of the anti-corruption war: The EFCC and the 2007 elections*

Any close analysis of the EFCC's record will reveal one glaring anomaly: An apparent difficulty in obtaining conviction of political figures, whether appointed or elected, serving or retired. This is in spite of the preponderance of this group in the anti-graft body's investigations. Many people in Nigeria will easily point to the fact that political elites are often wealthy people, who can afford to hire the best lawyers and wage protracted legal battles with anti-corruption agencies. In a judicial system riddled with technical loopholes, it is not difficult to see why these individuals often escape justice. Yet, this is not the only explanation. Another part of the explanation is that Nigerian governments at all levels have a historical bias towards 'big men' in general, and 'political notables' in particular, in terms of willingness to apply sanctions. To begin with, existing legislation often displays discriminatory sanctions, such that sanctions imposable for large-scale corruption (the domain of politically powerful persons) can sometimes be relatively mild compared with those prescribed for the relatively minor offences usu-

ally committed by ordinary criminals. Even the discovery of large-scale fraud committed by a 'powerful man' is never a guarantee that sanctions will follow. The individual, if well-connected, can often be provided an escape route or what is commonly referred to as a 'soft landing' or 'political solution' in Nigeria. The process typically involves some form of subterranean negotiations or lobbying, spearheaded by 'concerned friends' or 'elders', usually made up of traditional rulers and leading politicians from the community of the accused (Adekoye 2005; *The Punch*, 7 April 2005). When this is successful, the 'soft landing' or 'political solution' can take the form of total clemency or, where that is not politically feasible, a light sanction which will then be followed by a gradual process of political rehabilitation.

Examples are not difficult to find. During the regime of General Ibrahim Babangida (1985-93), a number of political figures indicted for corruption during probes or judicial trials carried out by previous regimes, notably those of Generals Murtala Mohammed (1975-6) and Mohammadu Buhari (1984-5), were pardoned and rehabilitated with attractive political appointments. One example was General Samuel Ogbemudia, who was indicted as military governor of former Midwestern State for serious financial malpractices by an 'Assets Investigation Panel' set up by General Mohammed, but was pardoned and later appointed as chairman of Nigerian Railway Corporation (Nwankwo 1999: 56). Similarly, Seaka Miner, a former Secretary to the Military Government in Benue State, who was indicted by another commission of inquiry for massive diversion of funds in the period 1968-75, to the extent of being declared "unworthy of occupying a public post", was also rehabilitated by Babaginda, who appointed him chairman of a public bank, the Nigerian Merchant Bank (*ibid.*: 57).

This practice continued under the Fourth Republic, despite the declared war against corruption. As we have already noted, in 1999 the Speaker of the House of Representatives, Salusi Buhari, was forced to resign his position, paving the way for his arrest and conviction (for two years with an option of fine) by an Abuja court for falsifying his age and academic records, which had enabled him to contest and win election as a member of the lower house of the federal legislature. But after a few years, Mr. Buhari was granted a presidential pardon (obviously after some subterranean negotiations), paving the way for his appointment in 2005 as a member of the board of the Nigerian Educational Research and Development Council. Mr Buhari was known to have played a crucial role during the election of President Olusegun Obasanjo in 1999, and after that remained a loyal and influential member of Obasanjo's party, the PDP. In yet another example, Chris Ekpenyong, a former deputy governor of Akwa Ibom State, who was forced to resign his position following the commencement of impeachment proceedings against him by his state's house of assembly, for "gross misconduct and

abuse of office",[12] was also rehabilitated with the chairmanship of the Federal Tourism and Hospitality Board (*The Guardian*, 2 September 2005). These are only a few examples of a practice that has become well institutionalised at all levels of government in Nigeria.

One achievement upon which the EFCC regularly prided itself was the demystification of the concept of the 'big man' who is above the law. The most visible evidence of this achievement was the successful prosecution by the EFCC of former Inspector General of Police, Tafa Blogun, on 21 November 2005. Mr Balogun, a former boss of the EFCC chairman, was convicted by an Abuja court for offences linked to the embezzlement and laundering of police funds in excess of N18 billion, in violation of the EFCC Act. Ironically, the Balogun case did more to confirm the important place of the 'big man' in Nigeria, a kingdom where "some animals are more equal than others" (Jason 2005). Mr Balogun not only obtained a "negotiated retirement" (*ThisDay*, 20 January 2005); he received what amounted to little more than a slap on the wrist. After being arraigned on 56 counts, Mr Balogun ended up being convicted for the lightest of offences: Concealing vital information from the EFCC over his alleged business concerns and interests in some companies amounting to over N17.7 billion, in violation of the EFCC Act, for which he spent only six months in jail and paid half a million naira in fine (*ThisDay*, 22 November 2005). This was consequent upon a 'plea bargain' between Balogun and the EFCC. According to the latter, the decision to abandon other weightier charges, including the embezzlement and laundering of over N18 billion, was to "minimise the cost of prolonged litigations" and also to escape an unknown outcome (*ibid.*).

The Balogun case, therefore, clearly underlined the lack of confidence in the capacity, effectiveness, and integrity of the judiciary in Nigeria. But more importantly, it also showed the wide scope for manoeuvre open to politically influential individuals in the country. However, a political solution or soft landing does not tell the whole story about the impact of local politics on the attempts to fight corruption. What do individuals, who for any reason (such as membership of rival political factions) fail to procure a political solution or soft landing, do when they are indicted for corruption? Nigerian political elites have other ways of undermining any attempt to scrutinise their records while in office. Politicisation of the work of the anti-corruption organs in order to weaken such bodies and protect oneself from imminent sanction was one of the most frequently employed options (Ribadu 2006: 6). As preparations for the 2007 elections drew near in the

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[12] Specifically, the allegations against Mr Chris Ekpenyong included "diversion of public funds to purchase a family house in Texas, United States … failing to declare his assets to the Code of Conduct before assuming office … influencing the diversion of contract awards to his numerous companies and fronts, etc." (*The Guardian*, 2 September 2005).

last few years of Obasanjo's rule, this politicisation took two worrying dimensions.

The first was the subtle but increasingly apparent instrumentalisation and manipulation of anti-corruption agencies, particularly the EFCC, by the government. The main goal was to undermine political enemies or rivals, while at the same time protecting supporters of the government (ruling faction of the government in power) from sanctions. This move was greatly facilitated by the fact that, quite unlike the ICPC Act, the EFCC law did not insulate the EFCC chairman from the influence of appointing authorities (i.e. the President).[13] Thus, it was not uncommon to hear the President ordering the EFCC to investigate this or that person, and to see the EFCC submit reports of such investigation to the President instead of going straight to the courts. In such a system, one can expect that enemies of the administration will more easily be prosecuted, just as friends or supporters of the regime will be handled with kid gloves.

To cite just one example among very many cases: Following relentless allegations of massive corruption, particularly in the awarding of contracts, in one of Nigeria's richest public institutions, the Nigerian Ports Authority (NPA), President Olusegun Obasanjo inaugurated a Committee on the Review and Verification of Contracts Awarded by the Nigerian Ports Authority for the period 2001-3. The panel was inaugurated on 1 April 2005 with Nuhu Ribadu, the EFCC chairman, as the head. The report of this panel confirmed that the managers of the NPA, including its board, were guilty of various corrupt practices, including refusal to observe existing financial regulations, inflation of contracts, payments for fictitious contracts, purchase of items that had no relevance, and mismanagement of funds (notably pension funds), which cost the NPA billions of naira. To quote the report submitted by the EFCC head:

> All contract approving authorities in NPA, including the Board and Management of the NPA, Managing Directors, Executive Directors, General and Ports Managers, other categories of approving authorities, as well as the appraising officers who served during the period under review should be held responsible for deliberate and flagrant violations of extant government rules and regulations, governing the award of contracts (and) … appropriately sanctioned for contract splitting and inflation of contract price in utter disregard to laid-down government rules and regulations. (cited in *Sunday Punch*, 5 March 2006)

What was the government's reaction to such flagrant disregard of its anti-corruption policy? Contrary to the expectation of many people, the government

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[13] Indeed, Section 43 of the EFCC Act provides that "the Attorney-General of the Federation may make rules or regulations with respect to the exercise of any of the duties, functions or powers of the Commission under this Act". More importantly, Section 3 (2) states that "a member of the Commission may at any time be removed by the President for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misconduct or if the President is satisfied that it is not in the interest of the Commission or the interest of the public that the member should continue in office" (ECCC Act 2004 *op cit*.).

simply rejected the report for being "inconclusive" and asked that it be reviewed by the EFCC. The outcome of this review was never made public. Moreover, up until the day Obasanjo left office, no action had been taken against the indicted officers.[14] The handling of this particular case raised many questions about the government's preparedness to sacrifice its allies when they are fingered in corrupt deals. It should be borne in mind that the chairman of the NPA at this time, Bode George, also doubled as the vice-chairman of the ruling PDP, in addition to being a key ally of President Obasanjo.

Allegations that the anti-corruption policy was being misused or being selectively applied are again confirmed by another incident which occurred in 2006. In the middle of 2006, the local media was flooded with allegations that huge sums of money (between N50 and 200 million, according to some sources) were being paid to members of the National Assembly through some local banks, based in Abuja, by Obasanjo's foot soldiers. The payments were allegedly made to secure the support of the lawmakers, who were considering a constitutional amendment bill, which among other provisions sought to extend the tenure of President Obasanjo. Faced with relentless public criticism, the President directed the EFCC to investigate the allegations. When it had completed its investigations, however, the EFCC said it could not substantiate the claims (*Reuters,* 16 May 2006).

While the government's penchant for ignoring the malfeasances of its closest allies has contributed greatly to undermining the effectiveness of anti-corruption agencies such as the EFCC, the government has not been the sole actor in this politicisation of the anti-corruption war. Members of the political opposition also did much to politicise the war against graft. When politicians in opposition point to the massive corruption by those in power and the selective application of sanctions, which is likely to be true anyway, they do this not necessarily out of any principled opposition to corruption. Often they do so to cleverly position themselves as a credible alternative to those in power, or more commonly, to discredit those who are accusing them of corruption in order to avoid possible arrest and prosecution.

During the period under review, it was very common to hear members of the opposition, especially those who were positioning themselves for the 2007 elections, say that the anti-corruption drive being conducted by Obasanjo was nothing but a weapon to intimidate and eliminate political rivals or enemies, especially those who were opposed to his failed attempt to obtain a third term in office. This argument was not completely without its merits. As a matter of fact, the EFCC head had at least on one occasion openly stated that both himself and

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[14] The indicted officials were, however, later arraigned and convicted for corruption under President Umar Yar'Adua, Obasanjo's successor in office.

his institution were committed to depriving 'corrupt politicians' the chance of using the 2007 elections as an avenue for returning to power[15] (*Daily Trust*, 26 May 2006; *The Guardian*, 8 September 2006). The truth, however, was that politicisation of the anti-corruption campaign was driven by political calculations on both sides of the political divide. No case illustrated this paradox better than the bitter political pitched battle which took place between then Vice-President Abubaka Atiku and his boss, President Olusegun Obasanjo, in 2006-7.

The quarrel between Vice-President Abubakar Atiku and President Olusegun Obasanjo came into the open in 2006 when Atiku declared himself a candidate for the 2007 presidential election, apparently without the approval of Obasanjo. However, Abubakar Atiku had been at loggerheads with Obasanjo since well before 2006. According to media sources, their quarrel started just after the 2003 election, when both were re-elected for a second term of four years in a highly disputed election. Atiku was said to have betrayed his boss by nursing a secret ambition to stand against him in that election. He was said to have dropped his plans only at the last minute when it became apparent that the plot would not succeed. Matters grew worse between the end of 2005 and early 2006, when Atiku refused to endorse Obasanjo's bid for a third term in office, choosing instead to ally himself with members of the opposition, who were mobilizing against the third term project (Ndibe 2006). Obasanjo, of course, lost his much-cherished third term bid but not without a word for his deputy. On several occasions, he had, even without mentioning Atiku's name, left no one in doubt about his determination to scuttle his deputy's presidential ambition. What other weapon could be deployed to achieve this goal but the anti-corruption war?

On 24 August and 26 September 2006, Vice-President Abubakar Atiku was indicted by the EFCC and an administrative panel instituted by the President, respectively for "abuse of office" and "diversion of public funds to companies controlled by friends and business associates" (*ThisDay*, 7-8 September 2006). The importance of this indictment will become clearer when viewed within the context of Section 137 (1)(i) of the 1999 Constitution, which provides that

> [A] person shall not be qualified for election to the office of President if he has been indicted for embezzlement or fraud by a judicial commission of inquiry or an administrative panel of inquiry or a tribunal set up under the Tribunals of Inquiry Act, a tribunals of inquiry law or

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[15] In one statement the EFCC boss boasted that **"**[w]e are going to work and work across and we will cover all areas and directions. For example if you are in public office today and you want to seek re-election, we will check your assets declaration. When you resumed office you declared your assets. Today we know what you have. You cannot deceive anybody, we know what you have. If we see anything that you cannot explain, then we take you through the justice process and therefore I think such a person is unfit to hold public office again. We are going to charge such people to court". In another forum he stressed: "For what we are doing to succeed, we won't allow those who stole money to come and compromise the process (elections) … By fighting corruption, you are likely going to eliminate such people" (*Daily Trust*, 26 May 2006; *The Guardian*, 8 September 2006).

> any other law by the Federal or state government, which indictment has been accepted by the Federal or state government respectively. (Federal Republic of Nigeria 1999a)

Contrary to the administration's own established practice, the reports of both commissions were immediately accepted and gazetted by the government, further underlining the extent of political stakes involved in this case.

While Atiku's culpability may not have been conclusively established by his indictment by these commissions, established and controlled by his accuser, his subsequent response only served to reinforce our hypothesis that accusations and counter-accusations of corruption launched by politicians are mainly intended as weapons to discredit political opponents and/or avoid arrest and prosecution for corruption. For while the Vice-President consistently denied the allegations – which one of his spokesmen called "lies, fabrications, evil machination and contrived attempt to stop him from the 2007 election" (*Daily Independent*, 13 September 2006) – Atiku, as should be expected, did very little to prove his innocence. Instead, he spent much of his capital trying to prove that the President, his supposed accuser, was equally corrupt if not more corrupt. After the publication of the reports which indicted him for corruption, Atiku released scores of very embarrassing documents, including photocopies of bank cheques, bank statements, receipts, and even official documents, to press home his point that the President was equally engaged in corrupt practices (*ThisDay*, 12 September 2006). This strategy proved very successful for Atiku from the point of view of public opinion, hardened by very disturbing allegations of corruption against the President (Ajaero 2006). The Vice-President was widely portrayed as a victim of 'political victimisation', in a complex web of political struggle in which the anti-corruption campaign was a mere political resource.

Other political figures accused of corruption immediately took a cue from the Vice-President, thus adding to the crisis of credibility already rocking Nigeria's most powerful anti-corruption agency. Sooner or later, it became the standard practice to portray every accusation of corruption as the creation of political opponents, especially the government of the day, seeking to undo political enemies ahead of the 2007 elections. These types of allegations, according to such views, were undeserving of any serious attention; therefore, those who were accused of corruption did not need to defend themselves against specific allegations. It became more rewarding to blame the government for witch-hunting its political opponents. But what was the cumulative effect of such behaviour on Nigeria's war against corruption? Politicians largely succeeded in moulding public opinion to see anti-corruption organs as 'mere political tools'. In the end, despite its relative success, the EFCC, just like the ICPC, had to occupy itself not only with the war against corruption, but also with a battle to preserve its reputation, tarnished by the activities of a corrupt and obstructive political class.

## Conclusion

At the time of their inauguration, Nigeria's new anti-corruption commissions, especially the ICPC, were widely considered as crucial actors in the country's fledgling fight against corruption. This perception was partly informed by an awareness of the relative success of similar organisations in other parts of the world (notably Hong Kong and Singapore). However, after several years of their existence, these institutions failed to make as much impact as anticipated and, therefore, justify their existence. Despite their determined efforts to investigate, arrest, and prosecute corrupt elements within the government and civil society, corruption did not cease, nor were there signs suggesting that Nigeria's corrupt politicians and public officials were going to be deterred. On the contrary, several challenges surfaced which undercut the impact of these institutions, notable among them being legal loopholes in their establishing laws, insufficient funding and manpower, Nigeria's slow and inefficient judicial system, and most importantly, successful attempts by politicians at politicising the work of these agencies, resulting in a crisis of legitimacy for them.

# 6

# Federalism and the campaign against corruption

## Introduction

Our discussions on the limitations of the Nigerian fight against corruption under the Obasanjo regime have so far centred on the poor capacities of the anti-corruption agencies, the ICPC and EFCC, set up to advance the fight against corruption. As we have seen, insufficient capacity, limited commitment of the political leadership to the independence of these bodies – as seen in the apparent willingness of the former President to employ these institutions as tools to undermine his political rivals – and of course, the inefficiency of the Nigerian judicial system were not helpful to these bodies. Yet these explanations are only part of the story. Other factors equally left their own negative impact on Nigeria's campaign against corruption in the Fourth Republic. One of the most important of these factors is perhaps Nigeria's federal structure of government, adopted, ironically, to facilitate good governance in one of Africa's most diverse countries. How did federalism scupper Nigeria's latest quest to promote good governance?

The Obasanjo-led anti-corruption campaign was, to all intents and purposes, a policy of one level of government, whereas the country, being a federal state, is made up of three levels of government, each relatively autonomous. Any successful implementation of a national policy, such as the anti-corruption campaign, clearly requires the active support of all the three levels of government, a large challenge in such a huge and diverse country as Nigeria. During the era of military rule, finding such support would never have posed any problem. The military logic of strong centralisation of power and *espirit de corps* had often ensured that national policies were more often than not decided by the central government and imposed on states and local governments, without provoking argu-

ments or open resistance from the heads of these sub-national authorities, who were usually appointed by the central authorities. Under a supposedly democratic regime, complete with a federal constitution, the question arises: To what extent can a national policy, such as the Obasanjo-initiated anti-corruption policy, be imposed on all of Nigeria's 36 states and 774 local councils? If the states and their local authorities withhold support for the programme, can such a policy ever succeed?

In this chapter, we will try to show that the implementation of the Obasanjo-led anti-corruption policy in Nigeria failed partly because various sub-national authorities were not fully committed to its success and took many steps to ensure its failure. It is true that the level of resistance to the anti-corruption fight varied from one state to another, depending on several factors, such as the level of resources available locally, the leadership in each of the states (the personality of the state governor), and the character and level of local pressures for change or transparency. On the whole, however, Nigerian states demonstrated not only a very strong aversion to the anti-corruption agenda of the central government, but also a common unwillingness to initiate their own local anti-corruption measures that would have strengthened the drive against corruption.

When the war against corruption began, it was widely promoted as a national struggle enjoying the support of all segments of Nigerian society. However, as the anti-corruption drive moved from the realm of official rhetoric in mid-1999 to the domain of practical implementation in the year 2000 and beyond, two tendencies became immediately observable among Nigerian states. On the one hand, some states refused absolutely to appropriate the policy of the federal government by putting in place the equivalents in their states and hid behind the 'federal system' to challenge every attempt from 'above' destined to control corruption by local officials. Oil-rich Bayelsa State led this group. At the other end of the spectrum, other states openly supported the anti-corruption policy for strategic political reasons (electoral gains), even if they had no genuine intention to fight corruption in their respective states. A good example of this second group was Zamfara State, which pioneered the *Shari'ah* legal code in 1999 – in part to check corruption among citizens of the state – but showed little zeal to implement its most important anti-corruption provisions. First, we will take a look at the collective responses of the states, as a whole, to the federal anti-corruption agenda, before turning the searchlight on the unwillingness of the states to implement local anti-corruption measures.

## A federal anti-corruption policy and the revolt of federating states

The Obasanjo-led anti-corruption policy was launched amid promises that the reforms would be felt in every nook and cranny of the federation. Yet, when designing his anti-corruption programme, there was hardly any evidence to suggest that President Obasanjo held any prior consultation with the 36 state governors – or indeed with the 774 local government chairmen which the 1999 Constitution had effectively placed under the governors – on his proposed anti-corruption drive. Perhaps President Obasanjo was swayed by the popular assumption that, given the damage corruption had done to the nation's quest to develop and the pressures for change being heaped daily on the incoming civilian leaders, everybody would be in full support of his declared anti-corruption war. The fallacy in this thinking soon became apparent when the governors and their state legislatures began to voice strong opposition and even took several successful measures against some of the actions taken by the central government in its quest to fight corruption. The role of Nigerian states and their local government councils in undermining the anti-corruption campaign championed by Obasanjo, however, was most clearly observable in their reactions to the enactment of new national anti-corruption legislation and subsequently in their reactions to the establishment of national anti-graft agencies, notably the ICPC and EFCC.[1]

### *Reactions of state governments to national anti-corruption legislation*

During the civilian administration of President Obasanjo, Nigerian states reacted strongly to virtually all laws proposed by the federal government which they consider potentially 'intrusive'. But their reaction to the passage by the National Assembly of the national anti-corruption law in July 2000 was unprecedented. The Corrupt Practices and Other Related Offences Act 2000, which came into effect on 13 July 2000, contained several important provisions, among which was the one establishing the ICPC, charged with the responsibility of investigating and prosecuting corrupt public officials at all levels of government.[2] Immediately the law was passed, a constitutional conflict between the federal government and most of the states of the federation ensued. Regardless of the fact that a great majority of the states were under the control of the same political party (PDP) as

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1 Other aspects of Obasanjo's reforms, including his policy of privatisation and economic liberalisation, reform of the public services, and recovery of looted funds diverted abroad also did not attract any serious attention from the governors.

2 Section 7(3) of the Act provides that the Act shall apply to "all public officers in Nigeria", defined as "any person employed in any capacity in the public service of the federal, state or local government, public corporations and private company wholly or jointly floated by any government or its agency, including the subsidiary of any such company whether located within or outside Nigeria and including judicial officers and serving magistrates in area/customary courts or tribunals".

Obasanjo, this conflict culminated in a challenge before the Supreme Court at the initiative of 32 of the 36 states of the federation. The position of the aggrieved states, which were not against an anti-corruption fight in principle, was that the federal government, according to the 1999 Constitution, had no power to adopt or implement an anti-corruption law across the whole federation as anticipated by the ICPC Act. For these governors, the federal government could make laws only to punish corrupt practices committed at the federal level of government and not in the states or local governments.

The idea that the enactment of national anti-corruption legislation was a violation of Nigeria's federal constitution was shared not only by Nigeria's powerful state governors. It also found strong support in certain institutions of the civil society, notably cultural and ethnic associations. The position taken by the Middle Belt Forum – a socio-political association which supposedly represented all the ethnic minorities of the Middle Belt or North-Central region[3] – over the conflict between the EFCC and the leadership of Plateau State, over allegations of corruption against the latter, illustrated this fact. During the crisis, this association took a very critical position against the EFCC, which was seeking to prosecute the then Plateau State governor, Joshua Dariye, and some of his aides for corrupt practices. From the point of view of this association, the EFCC Act of 2004, upon which this anti-corruption agency relied to investigate the alleged corrupt practices of the Plateau government, constituted some kind of "meddlesomeness in the affairs of states in a Federal system, which guarantees the rights of states as federating units … (and which) is gradually returning the nation to the unitary system which Nigerians rejected and discarded in the 1960s" (*ThisDay*, 11 October 2006).

This type of state/civil society alliance was perhaps explained by the fact that many of these ethnic associations and movements were financed directly or indirectly by the state governors. However, some more or less independent voices also opposed the idea of an application of the federal anti-corruption policy in the 36 states. The constitutional status of Nigeria's anti-graft legislation and its negative implications for federal practice in Nigeria were also a source of great concern to many leading legal luminaries. In this category were Rotimi Williams (now deceased) and Ben Nwabueze. While the former was essentially concerned with the limited powers of the federal government (National Assembly) imposed by the 1999 Constitution (*ThisDay*, 6 July 2000), for the latter, it was more a question of a grave infraction on the theory and practice of federalism. According to Nwabueze, who authored several newspaper articles denouncing the legislation, particularly the ICPC Act:

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[3] The North-Central region comprises the following states: Plateau, Benue, Adamawa, Kwara, Niger, Taraba, Kogi, Kaduna, Nassarawa, Bauchi, and Gombe.

> More than being an infraction of the constitution, it is subversive of one of the foundation pillars of Nigeria's governmental system, federalism, whose two cardinal principles it totally disregards, namely, the principles of the autonomy of the state government vis-à-vis the federal government and the exclusiveness of the power of each over certain matters as demarcated in the constitution … President Obasanjo's anti-corruption crusade deserves our applause and full support, but not at the expense of the cardinal principles of our federal system on which depends, to a considerable extent, the stability and unity of the country. (*The Guardian*, 1 August 2000)

Owing to the legal and political challenges mounted by the state governments, the ICPC could not commence full operation after it was inaugurated in September 2000, even as public criticism mounted. It remained in limbo until 7 July 2001. On that date the power of the federal authorities to enact an anti-corruption law which is applicable to the entire federation was upheld by a landmark Supreme Court judgment. Ironically, this did little to alter the hostile and antagonistic behaviour of state governments vis-à-vis the anti-corruption campaign. After the Supreme Court judgment, the states simply doubled their determination to challenge any extension of the federal government's anti-corruption crusade to their states and local government councils.

Indeed, the frustration of these sub-national authorities was compounded by the decision of the federal government to roll out more anti-corruption legislation and proposals, such as a proposal to reform Nigeria's 774 local government councils in 2003 and the adoption of the Monitoring of Revenue Allocation to Local Governments Act in 2005. The local government reform was conceived to improve efficiency and accountability within the 774 local governments, while the adoption of the Monitoring of Revenue Allocation Act was intended to punish state governors and their finance commissioners (equivalent to the Minister of Finance at the federal level), who were frequently associated with massive diversion of local government allocations. The local government reform was killed by the combined political opposition of the 36 state governors, who insisted on their undivided constitutional powers to control and monitor these highly corrupt political units (*The Guardian*, 30 June 2003). The Monitoring of Revenue Allocation to Local Governments Act, on the other hand, was challenged by three states: Abia, Lagos, and Delta. In 2005 these states, with the tacit approval of many others, jointly launched a legal challenge against the federal government at the Supreme Court, challenging the constitutionality of the Act. In their challenge, they averred that "having regard to the provisions of Section 7 and 128 of the Constitution … (the Federal Government) cannot by the 'Monitoring of Revenue Allocation to Local Governments Act', 2005 or any other Act of the National Assembly exercise oversight functions over Local Government administration in any State of the Federation" (*ThisDay*, 15 November 2005).

During their conflict with the central government, the states also received the endorsement of other critical segments of their communities, notably their vari-

ous Houses of Assembly. Thus, while the decision of the Supreme Court was being awaited, the chairman of the Conference of Speakers of State Houses of Assembly (a body which unites the heads of all the 36 State Houses of Assembly), Rotimi Amaechi, issued a statement on behalf of his colleagues to the effect that:

> The recent policy adopted by the Federal Government to fund (i.e. monitor) the local councils directly was a gross negation of the provisions of the Constitution and disrespect for the rule of law … If care was not taken the decision would make the councils not only more inept in responding to the yearnings of the people, but corrupt and undisciplined. This policy is also capable of breeding anarchy and weakening our democratic process … the Conference had resolved to tackle the matter maturely even under provocation ... Our respective governors have pledged to handle the issue with the President or challenge the policy in court. (*ThisDay*, 23 June 2005)

This struggle came to a climax in July 2006, when the Supreme Court invalidated the Monitoring of Revenue Allocation to Local Governments Act (*The Guardian*, 7 July 2006). The nullification of the revenue monitoring legislation probably brought some temporary improvement in the relations between the federal and state governments, but one important question was left open. If the mere enactment of anti-corruption legislation could provoke such outrage and strong negative reactions among state governments, would the implementation of the contents of any of such laws – particularly the establishment of implementation agencies such as the ICPC and the EFCC to fight corruption across the nation – not lead to a systemic breakdown?

*State governments' reactions to national anti-corruption agencies*

Of course, if state governments had been angered by the mere enactment of national anti-corruption legislation, surely the establishment of anti-corruption agencies to implement provisions of the contentious anti-corruption laws could only result in a showdown between the two most important levels of governments. This was exactly what happened. After the creation of the ICPC and EFCC in 2000 and 2004 respectively, several state governors began launching all kinds of verbal assaults on these institutions, which many of them immediately dismissed as "illegal" and "intrusive". One such governor, Ibrahim Turaki of Jigawa State, went as far as describing them in the following terms: "What is EFCC? What is ICPC? They are not even in the constitution. I think Nuhu Ribadu (chairman of the EFCC) is going beyond his brief" (*Daily Trust*, 9 July 2004). Another governor, Victor Attah of Akwa Ibom State, was even less diplomatic, describing the EFCC as a "chicken without a head … (a) body which was set up to chase people all over the place" (*Vanguard*, 4 October 2006).

This perception of anti-graft bodies as an unnecessary distraction in governance and a threat that must be dealt with at all costs was not a phenomenon that was limited to a few disgruntled state governors. It was a widely shared percep-

tion among Nigeria's 36 state governors. At the beginning of his tenure as chairman of the ICPC, Justice Mustapha Akanbi[4] wrote letters to all 36 state governors soliciting their cooperation for his new organization. Justice Akanbi's letters, however, did not raise the enthusiasm of their intended beneficiaries. Many of the governors promised to respond later but never did. Some governors who did respond claimed that the ICPC was an "illegal" or "unconstitutional" body. Many others simply ignored the ICPC's letter completely (*Vanguard*, 24 May 2002). At the end of the day, only four governors promised to support the institution (*ThisDay*, 4 April 2005).

Apparently not satisfied with merely criticising and contesting before the courts the legality of the anti-corruption bodies set up by the federal government, actions that had so far produced limited results, state governors soon began to take other more concrete steps aimed at undermining the effectiveness of the anti-corruption policy in their respective states and beyond. While a considerable number of the governors generally remained discrete in their battle with the agencies, there were a few who could not hide their disgust towards these institutions, openly banning their officials from all cooperation with the two national anti-corruption agencies. According to their directives, their officials were not to answer to the invitations of these agencies for the purpose of investigations or offer any information whatsoever, including official documents and materials which could facilitate investigations.

Abia State, in the south-eastern part of the country, was one of the most hostile of the states. In June 2004, following the receipt of a petition alleging the illegal diversion of federal allocations meant for local government councils in Abia State, the EFCC launched an investigation of the financial activities of the state government. Rather than cooperate with the EFCC, the government of Abia State went to court and obtained a temporary injunction restraining the EFCC from commencing any investigation of the financial activities of local governments in the state. Before going to court, the governor of the state, Orji Uzor Kalu, warned his officials against any form of cooperation with the anti-graft body (*Tell Magazine*, 29 November 2004). In the end, the state managed to prevail over the EFCC. Thus, two years after he began his open battle, on 7 July 2006 Governor Kalu won a final and conclusive legal victory against the EFCC, when the Supreme Court invalidated the Monitoring of Revenue Allocation to Local Governments Act of 2005, upon which the EFCC relied to conduct its investigations (*The Guardian*, 7 July 2006). This victory was felt very far beyond the borders of Abia State. It had a chilling effect on the effectiveness of the EFCC and greatly emboldened other states to openly challenge its authority.

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[4] Justice Mustapha Akambi was the chairman of the ICPC between September 2000 and August 2005.

Similar challenges were encountered by the ICPC. This fact was laid bare during its battle with Ondo State, in the southwest. The ICPC's struggle with Ondo State began in 2001, when the state, without prompting from outside, launched an investigation against one of its commissioners, who was accused of fraudulently inflating the price of a public contract from N12 million to N35 million. The said official was later brought before a local court, Ondo State Chief Magistrate Court. Some three days after his arraignment, other senior officials of the same government, including a director-general and two other directors of a public parastatal, Owena Mass Transport Corporation (OMTC), were indicted by an official inquiry for various corrupt practices leading to the effective collapse of their parastatal. The accused officials were subsequently ordered to refund a total sum of N8.7million, N230,000, and N100,000 respectively to the state (*The Punch*, 2 September 2001). Coincidentally, these incidents came at a time when the Supreme Court was adjudicating on a legal challenge to the constitutionality of the ICPC Act, brought by all of the 36 state governments. When the ICPC indicated its interest in the files, the Ondo government refused to release them or cooperate in any way with the anti-corruption agency. To top matters off, the state government banned the agency from setting foot in its territory (*ibid.*).

This type of hostility and obstructive behaviour was also encountered in several other states. The cumulative effect was to render the work of these anti-corruption institutions difficult if not impossible. The then chairman of the ICPC, Mustapha Akambi, highlighted the effectiveness of the actions of the state governments against the ICPC in the following words: "When we have cases in the States, we find that some of the governors … tend not to make necessary facilities available to us … When we are prosecuting someone in a state, may be the person belongs to the same party with the governor or they relate in a certain way, they make it difficult for us" (*ibid.*).

Confrontations between state governments and the various national anti-corruption bodies went beyond mere refusal of the state governors to make necessary facilities available to the anti-graft agencies. In some states of the federation, the activities of both anti-corruption agencies also resulted in varying degrees of physical violence, usually at the instigation of governors accused of corruption. The case of Governor Joshua Dariye of Plateau State was a good example. Between 4 and 7 December 2005, some officials of the EFCC sent to arrest three close collaborators of this governor – Miss Christabel Bentu,[5] a bank chief (the branch manager of All States Trust Bank in Jos), and one of the governor's younger brothers – all of whom were accused of helping the governor loot over

[5] Miss Christabel Bentu and Governor Dariye were both arrested in London on 2 September 2004 for money-laundering offences. They both escaped to Nigeria, having been granted conditional bail by a British court.

N1.16 billion from the state treasury, were attacked by supporters and employees of the Plateau State government before they could complete their mission (*The Punch*, 8 December 2005). As a consequence of the attacks, some of the EFCC officials suffered grave bodily injuries, and their vehicles were severely damaged by their attackers. These attacks, which were allegedly directed by the governor with the assistance of his security agents,[6] also resulted in the damage of all evidence and the escape of one of the key suspects, the younger brother of the governor (*The Guardian*, 12 February 2006).

Why did the federal government prove so impotent in protecting its own officials against aggression by state governments? The obstructive activities of Governor Joshua Dariye and his men represented a gross violation of provisions of both the EFCC and ICPC Acts, which in theory could be punished by imprisonment upon conviction.[7] According to Section 38 of the EFCC Act, an obstructive act of such a kind will attract fines of up to N5,000 and/or 5 years' prison term upon conviction (Federal Republic of Nigeria 2004). In reality, however, such provisions were rarely invoked or applied, the reason being that the constitutional immunity against prosecution granted to state governors and their deputies, the initiators of these acts, as well as the limited powers of the federal government imposed by Nigeria's federal Constitution, had made any such application inconceivable. The devastating consequences on the performances of these agencies can only be imagined. Even though an overwhelming majority of the governors were consistently fingered in several serious cases of corruption, only one governor (Governor Alamieyeseigha of Bayelsa State) was successfully tried for corruption under the Obasanjo administration. Even then, this was only possible after he was impeached by his state's legislators.

Why would these anti-corruption institutions not try to get around their problems with the governors through some other innovative methods? The process of impeachment could have been a short-cut to that goal. Fully aware of its limited powers under a federal constitution, the anti-corruption agencies, especially the

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[6] Governor Dariye's violent disposition was later confirmed by a public warning he issued to the EFCC that "enough is enough for EFCC ... I am from Mushere and we eat dogs, my brothers from Pankshin eat dogs also, likewise Anaguta and Berom; if these dogs (EFCC) come from Abuja again, we will eat them. When next they come, they might end up in our pot of soup" (*The Guardian*, 12 February 2006).

[7] For example, Section 41 of the ICPC Act (2000) provides clearly that "any person who refuses any officer of the Commission access to any premises, or fails to submit to a search by a person authorised to search him … assaults, or obstructs any officer of the Commission or any person authorised by the Commission in the execution of his duty … fails to comply with any lawful demand, notice, order or requirements of an officer of the Commission in the execution of his duty … fails to produce to or conceals or attempts to conceal from, an officer of the Commission any book, document, or article, in relation to which such officer has reasonable grounds for suspecting or believing that an offence under this Act or any other law prohibiting corruption has been committed, or which is liable to seizure … shall be guilty of an offence punishable with imprisonment for one (1) year without option of fine".

EFCC, did on several occasions turn for succour to state legislatures, who can in theory remove corrupt governors from power through the process of impeachment. The problem, however, was that such a political approach can hardly be effective in Nigeria's clientelist political system. Nigerian state assemblies most of the time sided with their governors – who were more often than not their political godfathers – instead of supporting the war against graft being spearheaded by the federal government. The record of the Plateau State House of Assembly provides yet another illustration.

As already noted, on 2 September 2004 Governor Joshua Dariye was arrested during a visit to London, by agents of the London Metropolitan Police, who suspected him of laundering the proceeds of corruption. On the basis of information received from the British officials, the EFCC decided to open an investigation into the 'Dariye affair', which established the culpability of Mr Dariye. Given his constitutional immunity against arrest and prosecution, the EFCC had no choice but to pass on his file to the Plateau State legislature for further action (*The Guardian*, 15 December 2005). The alternative was to suspend action on the case until Dariye left office at the end of his tenure on 29 May 2007. In the face of widespread public demand for action against executive banditry on the part of the state governors, such an alternative would have been a public relations' blunder. As was the case with several other state legislatures which had ignored reports of serious corrupt practices involving their governors, the Plateau lawmakers bluntly refused to take any action. Instead, they offered their unflinching support to the embattled governor, proving again that decentralisation has not been very helpful to Nigeria's war against corruption.

But was federalism actually to blame for the collective hostility of Nigerian states to the Obasanjo-led anti-corruption war? The governors often argued that their opposition to Obasanjo's anti-corruption drive was born out of a genuine quest to protect constitutionally guaranteed fiscal and political autonomy, the hallmarks of federalism. The hollowness of this argument, however, was underlined not only by the massive corruption authored by some of these governors, but also by the refusal of a great majority of states to initiate local measures to check corruption in their states, as well as by the seeming incapacity of those who had announced their own anti-corruption initiatives to go beyond official rhetoric, underlining at the same time their insincerity and their capacity to frustrate the federal anti-corruption policy. The experiences of two states, Zamfara and Bayelsa, can be used to illustrate this fact.

## A new era of state-based anti-corruption initiatives? Between local autonomy and electoral gimmick

In their official pronouncements, state governors regularly declared their intention to combat corruption in their respective states. Yet, in reality, few state governors showed much interest in replicating the various anti-corruption programmes introduced by the Olusegun Obasanjo administration at the national level in their own state, despite overwhelming evidence of corruption. The states, and by extension their local governments, were content with challenging the anti-corruption policy of the federal government. While the majority of the states (Bayelsa State is a leading example) failed to design or implement even a single local anti-corruption initiative, a few states – such as Zamfara – took some symbolic steps in this direction, including passing anti-corruption laws and establishing anti-graft bodies, but demonstrated incapacity or unwillingness to bring corrupt officials to book in practice, thereby encouraging the spread of corruption in the country, especially at the grassroots level. In the remaining sections of this chapter, we will highlight the experiences of Bayelsa and Zamfara states, which in our view represent these two contradictory tendencies among Nigerian states.

*Bayelsa State: Anti-corruption war and the 'Devil's excrement'*

During the presentation of his 2005 appropriation bill to his State House of Assembly in December 2004, Governor D. S. P. Alamieyeseigha declared that his "government was determined to restructure, re-professionalise and fortify public institutions, eliminate waste, inefficiency and corruption, and ensure greater transparency, accountability and efficiency in the delivery of services" (*The Guardian*, 20 December 2004). Paradoxically, just twelve months after that speech, Mr Alamieyeseigha was impeached by the same body for "gross misconduct", corruption, and abuse of power. Alamieyeseigha's impeachment on 8 December 2005, the very first under the Fourth Republic, followed his arrest and detention in London on 15 September 2005 for money-laundering offences (*Newswatch*, 12 December 2005). The uproar and international embarrassment which his arrest provoked,[8] as well as the covert political pressure and threats emanating from the central government,[9] paved the way for his speedy removal

[8] A few weeks after his arrest, Governor Alamieyeseigha was arraigned before a London Court on charges of laundering funds derived from corruption. Rather than wait for the conclusion of his trial to prove his innocence, Alamieyeseigha, taking advantage of a temporary bail granted him by the presiding judge, fled to Nigeria on 21 November 2005, where he enjoys constitutional immunity against arrest and prosecution.

[9] The legislators were allegedly threatened with possible criminal prosecutions for funds they had diverted in the name of "constituency development projects" if they should refuse to impeach the governor.

and subsequent arraignment before a Lagos High Court on charges of corrupt enrichment (*Daily Independent*, 24 November 2005).

Although the factors that enabled Alamieyeseigha's impeachment were inseparable from his ordeal in London, the events which culminated in his removal in disgrace from office had their roots at home. Prior to his arrest in London, the governor and several high-ranking officials of his government had figured prominently on the list of corrupt officials being investigated by the two main federal anti-corruption agencies (the ICPC and EFCC) for massive fraud and diversion of billions of naira in public funds into overseas accounts. Just to recap, in one particular case, following from a 2003 investigation initiated by the ICPC, the governor was accused of "approving several dubious contracts and payments totalling N1.7 billion in favour of eight fictitious companies", in respect of construction projects effected at the site of a new university floated by the state, the Niger Delta University (NDU). The governor was also said to have awarded other contracts totalling N667.3 million to another set of fictitious companies through the Bayelsa State Tenders Board, presided over by him. Despite these flagrant abuses, the ICPC could neither arrest nor arraign Governor Alamieyeseigha before the law courts, thanks to Section 308 of the Nigerian Constitution which grants all 36 state governors and their deputies' immunity against such legal actions. The EFCC had to adopt a very innovative approach to get around this dilemma, by transferring Alamieyeseigha's files to the British authorities. The strategy paid off when the British arrested him while on one of his numerous foreign trips.

This air of pervasive corruption that reigned in Bayelsa State is perhaps explained by several factors. One of them is certainly Nigeria's oil-defined political economy, or what is commonly referred to as the "oil curse" and the "Devil's excrement", to borrow the expression of a former Venezuelan oil minister and founder of OPEC, Juan Pablo Perez Alfonso. Following the persistent demand for local resource control, championed by Nigeria's oil-bearing states, the adoption of Nigeria's fourth post-independence constitution, the 1999 Constitution, came with a provision requiring the payment of 13% of all oil revenue to Nigeria's nine oil-producing states according to their productive capacity (the principle of derivation).[10] But rather than serve as a source of prosperity and happiness, the decentralisation of oil wealth only sharpened the greedy appetites of the local power elite in these states, while at the same time serving as a source of incentive for them to oppose the federal anti-corruption campaign.

Bayelsa State was by all accounts among the worst offenders. Created in October 1996, Bayelsa is a relatively new state in Nigeria. Yet, it is considered one

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[10] This formula came into effect in the year 2000, even though it had been a constitutional requirement since 29 May 1999.

of the richest, accounting for some 30% of Nigeria's 2.5 million barrels of daily crude oil production. Thanks to the new revenue allocation, the state, along with Akwa Ibom, Delta, and Rivers states, which collectively account for roughly 80% of Nigeria's crude-oil production, have received huge funds in federal allocations since the democratic experiment began in 1999. Between June 1999 and December 2005, for instance, it received some N300 billion (or $2.5 billion) in federal transfers. In comparative terms, Zamfara State, which has zero oil production, received only a little more than a third of that amount (N80 billion) during the same period (see Table 6.1).

*Table 6.1* Federal allocations to Bayelsa and Zamfara (in billions of naira) (1999-2005)

| Year | Bayelsa State | Zamfara State |
|---|---|---|
| 1999 (May-Dec) | 2,729,569 | 2,470,778 |
| 2000 | 20,170,579 | 7,383,901 |
| 2001 | 24,601,106 | 9,401,386 |
| 2002 | 28,028,005 | 10,252,025 |
| 2003 | 40,164,821 | 12,757,507 |
| 2004 | 68,388,398 | 17,673,425 |
| 2005 | 94,575,383 | 19,027,521 |
| Total* | 287,678,678 | 80,872,600 |

* This amount excludes the allocations for the month of May 2002 for both states, which were unavailable at the time the data were being compiled, as well as funds received from the Excess Oil Revenue Accounts (non-anticipated revenue received thanks to rising crude oil prices).

Source: Federal Government of Nigeria (undated).

But despite this huge windfall, Bayelsa State was characterised by socio-economic backwardness, poverty, and youth unrest. Many of these problems were rooted in corruption and official mismanagement. Governor Alamieyeseigha was later found guilty of diverting over $1 billion in the five years he was in office (*The Guardian*, 21 December 2005). Most of the $2.5 billion he collected as his state's share of Nigeria's oil rents was wasted on white-elephant projects which provided avenues for top officials to siphon off millions of dollars. Social spending was neglected. As a consequence, all socio-economic indicators collected between 1999 and 2005 pointed to a state marked by a high incidence of poverty (see Table 6.2). Not surprisingly, the state also became one of the major theatres of youth violence, with kidnappings and sabotage of oil installations by local people demanding a fair share of the oil wealth as a regular feature of social life (Donnelly 2005). At the same time, widespread poverty engendered a sense of total dependence on the state, which in turn encouraged political

clientelism. Attempts to address these problems – many of which are also validly attributable to the many years of criminal neglect and marginalisation by the federal government – through large-scale construction of social amenities and other projects resulted in massive diversion of funds by local officials, particularly in an era of huge influx of oil rents.

The Bayelsa predicament clearly underlines the difficulty inherent in any attempt to promote accountability and good governance in resource-rich communities (Sachs & Warner 1995; Jacques 2005; La Commission pour l'Afrique 2005) and the resistance this usually provokes. During the period June-July 2005, for instance, an independent and comprehensive evaluation of the state of governance in the 36 states was organized by the National Planning Commission, in collaboration with several international institutions (donors active in Nigeria, such as the World Bank, DFID, EU, and UNDP) and members of civil society. This exercise, the first of its kind since 1999, was based on four measurement indices: (a) policy; (b) fiscal management and budget process; (c) service delivery; and (d) communication and transparency. According to the evaluators, none of the four main oil-producing states (Bayelsa 0%, Delta 45.1%, Rivers 49.8%, and Akwa Ibom 37.6%) figured among the seven best performers (Enugu 62.0%, Ekiti 61.7%, Abuja FCT 55.7%, Kano 55.4%, Lagos 55.3%, Jigawa 51.3%, and Ebonyi 51.0%) (Ekwedike 2005). Ironically, Bayelsa State was the only state that was not evaluated, having refused to submit itself for such an exercise, for reasons undisclosed (*ibid.*).

*Table 6.2* Comparative socio-economic data for Bayelsa and Zamfara states (2004)

| | Bayelsa | Zamfara | National |
|---|---|---|---|
| Population* | 1,703,358 | 3,259,846 | 140,000,000 |
| Literacy level (English language) | 59,3 | 10,0 | 44,2 |
| Literacy level (Nigerian languages) | 62,8 | 69,2 | 45,2 |
| Rate of primary school enrolment | 96,1 | 69,9 | 81,2 |
| Access to energy (gas/electricity) | 4,8 | 12,5 | 32,2 |
| Access to potable water | 13,2 | 64,9 | 50,5 |

* Federal Government of Nigeria, *National Population Commission*, Abuja, 2007.
Source: Federal Government of Nigeria (2005).

The impact of natural resources on good governance in Nigeria was also highlighted by several other works, including a 2002 comparative study of three Nigerian states (Kano, Delta and Ondo), authored by Leonard Wantchekon and Tamar Asadurian, which found that, in general, the "states that are highest recipients of transfers have experienced increased income inequality and poor eco-

nomic indicators, suggesting that there is little accountability. While states that have benefited the least from oil rents have fared much better" (Wantchekon & Asadurian 2002: 4). The same fact was vividly demonstrated again by statistics published in 2004 by the National Population Commission, showing that apart from its superior attainment in Western education, which is largely explained by historical factors (Aka 2000), Bayelsa State, as shown in Table 6.2, hardly showed any advantage in the area of socio-economic development over states with far slimmer resources or budgetary allocations, such as Zamfara State.

The style of management of public budget in Bayelsa State under Governor Alamieyeseigha (1999-2005) can provide insight into why the state had little or no real advantage in the area of socio-economic development over states with far slimmer resources or budgetary allocations. By 2004 and early 2005, the usual award of inflated contracts to oneself, relations, and political cronies, which had hitherto characterised politics in Bayelsa gave way to a much more destructive form of neo-patrimonial governance, where budgetary appropriations were systematically exploited to enrich those who were in charge, including the state governor. One way of achieving the latter goal consisted in concentrating huge public expenditures on over-priced white-elephant projects with little or no relevance to public welfare, but which offered unlimited opportunity for officials to line their pockets through kick-backs paid by contractors. Conversely, important social services such as education, health, potable water, and other anti-poverty initiatives, offering far less opportunities for criminal enrichment, were underfunded. An analysis of the state's 2004 and 2005 budgets reflected this fraud.

According to figures compiled from the state's N76 billion (or $560 million) 2005 budget proposal (*The Guardian*, 20 December 2004), as posted on the state's official website, the total capital vote for education was only N130 million. According to the breakdown, the state's secondary schools (managed by the Bayelsa State Post-Primary Schools Board), which numbered 149 in 2004, received N118 million for renovation and maintenance, purchase of learning materials and equipment, etc. For the same purposes in 2004, N106 million was offered. To purchase books (N5 million) and equipment/furniture for libraries in the state, managed by a central agency, Bayelsa State Library Board, a total of only N7 million was on offer. The budget for 2004 was more or less identical. The pattern of expenditure showed little deviation even in the health sector, where the Ministry of Health, charged with running all state health institutions, including 16 newly established hospitals, received a total of N38.5 million as budgetary allocation for capital expenditure in 2005, against the N29.2 million received in 2004. A breakdown shows that N9.5 million was voted for office furniture and equipment, N10.5 million represented funds set aside to equip the new hospitals, while N18.5 million was for medical equipment.

Other key social services suffered the same fate. For example, water supply, under the supervision of the Bayelsa State Water Board, did not fare any better, with a meagre N20.5 million allocation. Of this amount, N500,000 was voted for office equipment and furniture, while N20 million was for the purchase of reagents/water analysis equipment. The same sum was given in 2004. Electricity supply, under the Bayelsa State Electricity Board, also received scant attention. In 2005, a total of N7 million – N2 million for office equipment and furniture and N5 million for spare parts – was all that was voted. This was even higher than the N2 million spent on the same item in 2004. In order words, all the four critical social sectors, education, health, water supply and electricity, received a combined N196 million, representing only a minute fraction of the state's N76 billion. But by far the most ridiculous expenditure contained in the 2005 budget drafted by Governor Alamieyeseigha was the N2.9 million offered to a certain "Poverty Eradication Committee", an institution whose functions were never clearly stated but widely understood to have been created to fight poverty in the state.

The self-serving inclination of the Bayelsa leadership is not apparent until one considers a list of some carefully crafted expenditures in the same budget, designed to benefit only those in power. Thus, a clinic serving the Office of the Governor was granted a massive N100 million for the year 2005. The same Office of the Governor received another hefty N100 million for office equipment and 'minor' repairs, while a further N85 million was expended on unknown expenses, bringing the total expenditure on the governor's office to N285 million. A total of N145.1 million was set aside for the same expenses in 2004. Even more revealing, the largest chunk of the N76 billion budget was reserved for a number of white-elephant projects, such as the construction of a secretariat for civil servants in the state, which gulped some N1.7 billion (excluding the 400 million expended on the same project in 2004), and the construction of a new official residence for the governor and his deputy at the cost of N1.2 billion. To secure and equip this huge edifice, N800 million and N300 million were voted respectively in the 2005 budget, bringing the total cost of the new government house to N2.5 billion. It should be noted that this sum does not include the N600 million spent on the project in 2004. Thus, while the total capital budget for education, health, water supply and electricity in 2005 was a mere N196 million, the construction and equipment of a single residence for the governor has cost the state close to N3 billion as at 2005. Other independent estimates are even considerably higher (Polgreen 2005).

Disturbing as this case may be, this pattern of misallocation of funds is in no way unique to Alamieyeseigha's Bayelsa State. Other oil-producing states were also neck-deep in similar malfeasance, a good example being Rivers State, gov-

erned by Peter Odili. In his own 2006 budget, estimated at N160 billion ($1.2 billion), Governor Odili spent N10.7 billion (roughly 6% of the budget) to maintain his office (the Governor's Office). This sum excluded the N500 million spent on 'gifts' and 'souvenirs' for his visitors, N4.3 billion used as 'grants' and 'donations', and a hefty N5 billion in security budget, to be spent according to his discretion. In the same budget, Governor Peter Odili had also reserved another N3 billion (equivalent to $60,000 per day) to take care of his frequent overseas trips (Transport and Travel Allocation), far above even what the President of Nigeria was getting. The 32 members of his state legislature received N690 million (about $5.4 million at the time) for their own travel expenses, of which $2.8 million was earmarked for foreign trips. This is separate from the $2.8 million given to the legislatures as sitting allowance (not salaries). Like Mr Alamieyeseigha in Bayelsa State, Peter Odili was not as generous when it came to vital social services to benefit a greater number of his poor citizens. It suffices to know that a meagre sum of N2.8 billion was all that was given to the state's Ministry of Health, out of a budget of N160 billion, in spite of its pre-eminent status as a "priority ministry" (*Africa Confidential*, 21 July 2006).

One may well ask why Nigeria's decentralised system proved so incapable of instigating bottom-up pressures for political or financial accountability. The answer perhaps can be found in Nigeria's unique brand of clientelist politics: Selective distribution of patronage, which served to legitimise what ordinarily would have been considered a criminal breach of public trust. During his reign in office, Governor Alamieyeseigha perfected the well-known strategy of redistributing the dividends from oil rents among top officials and co-opted members of the political class in the state, apparently to stave off demands for greater transparency and accountability. In furtherance of this strategy, for instance, the governor approved and paid N100 million to each of the 24 members of the state legislature in 2005, under the pretext of financing constituency development projects in their respective constituencies, despite the apparent illegal nature of this decision.

To begin with, the payments were never contained in the original version of the state 2005 budget submitted to the State House of Assembly in December 2004, suggesting that it was an afterthought. Furthermore, the payment was a flagrant violation of the principle of separation of powers, which underlies the presidential system prescribed by the 1999 Constitution. Under a presidential system, such functions are normally reserved only for the executive arm of government. Not surprisingly, the move generated considerable controversy in the state. To make matters worse, Governor Alamieyeseigha regularly purchased and distributed luxury cars to top officials of the state government. These cars became a major distinguishing factor between an affluent and flamboyant politico-bureaucratic elite and a dispossessed population mired in miserable poverty.

One of the consequences of such high-level waste and corruption by the man charged with the responsibility of steering the ship of the state government was the spread and proliferation of similar malfeasances at the lower levels of administration in the state – that is, in all the 24 'local councils' in the state.[11] A clear picture of the extent of decay among these lower levels of government was given by the governor himself, in a February 2000 speech:

> The expectation was that the new local government areas would provide a veritable training ground for up-coming leaders. This is in spite of the numerous advantages of decentralising government programmes. In the same vein, the new local government areas were created to check the spate of rural-urban drift, and to provide employment opportunities for our teeming youth population. From our observation, however, most of the people entrusted with the responsibility of administering the new local government areas lacked basic leadership qualities. They were found wanting in probity, transparency, mature judgement and sense of direction. I have learnt to my utmost dismay that some of the former chairmen exhibited financial indiscipline through over-inflation of contract values, frivolous spending and gross mismanagement, among other sharp practices. Some chairmen used their station in the local government councils as conduit-pipes to siphon scarce resources. These vices are not only damnable, but negate the very purp.ose for which the local government areas were created. (Nengi 2001: 173)

Governor Alamieyeseigha's lamentations were intended only to fool the Bayelsa public. The governor had no intention of acting to bring these venal local officials to book. Indeed, when complaints against the officials persisted, they were simply replaced (*ThisDay*, 6 June 2005). None of them was charged or punished for any offence, underlining the governor's already well-known position on the war against corruption. Just as Governor Alamieyeseigha was unwilling to promote accountability, such attempts from other institutions or individuals were also not tolerated. Indeed, he left no one in doubt about his preparedness to crush any potential rival or state institution seeking to act as a check on his power over Bayelsan oil resources. The governor, who also went by the appellation of the "Governor-General of the Ijaw Nation", even boasted that no one could challenge him in Bayelsa State (*Newswatch*, 24 October 2005). Indeed, his desire to monopolise the control and redistribution of oil rents in Bayelsa State was legendary. Throughout his tenure in office, Mr Alamieyeseigha ran a policy requiring that all expenditures (contracts and purchases) by the state or any of its agencies amounting to a million naira and above be conducted with the formal approval of the governor. All challenges to this policy were met by swift and harsh response. One such move in 2002 by the State House of Assembly, in the form of a bill seeking to empower each of the three arms of government (executive, legislature, and judiciary) to control its own budgetary allocations, with a view to insuring their independence vis-à-vis the executive, provoked an epic political battle be-

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[11] The official number of local governments in Bayelsa State is 8. The additional 16 local councils created by the State government were not recognised by the federal government.

tween the legislators (who were constitutionally charged with overseeing the activities of the executive) and the governor. This conflict ended with the impeachment of the incumbent Speaker of the State House of Assembly and, subsequently, the abandonment of the proposed bill, titled the Self Accounting Bill.[12]

The corrupt and wasteful style of the Bayelsa governor, and most especially his patrimonialist style of administration, provoked deep-seated discontent and widespread complaints among the population. But in the absence of any effective institutional checks and balances to executive power, such as the legislative arm of government or an organized and independent civil society, such popular demands for accountability could only amount to mere wishful thinking. Certainly, there were a few courageous moves instituted by concerned citizens seeking to force a change of policies. Unfortunately, however, these efforts either failed or were ignored. In 2001, for instance, a former collaborator of Governor Alamieyeseigha filed a suit against him before an Abuja High Court, alleging widespread mismanagement of resources.[13] This complainant specifically requested the court to order the establishment of a "special committee" for the purpose of managing or overseeing the proper utilisation of all available resources for the development of the state, contrary to what obtained under the administration of Mr. Alamieyeseigha (*Newswatch*, 24 October 2005). Unfortunately, this request, and indeed the entire suit, was rejected by the court. A second suit brought by a group of two indigenes of the state in 2005, seeking to halt payments being made to the state legislatures (in the name of constituency development projects) and all projects already commenced in this respect, also suffered the same fate (*The Guardian*, 10 August 2005). Having bought the support of other members of civil society (several armed militia groups, NGOs, traditional rulers, cultural movements, etc.), the looting of Bayelsa State resources simply continued uninterrupted until the day the governor was impeached.

In effect, a local anti-corruption campaign for Bayelsa State was not even an issue to be envisaged. Apart from a 2003 decision to set up the Bayelsa State Project Monitoring and Implementation Committee, allegedly to encourage transparency in public contracts and expenditures (but in actual fact to calm critics of the government), no other anti-corruption measure was adopted or imple-

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[12] This information was given to the author during a personal interview with a member of the state legislature, Nelson Belief, in September 2004. The interview took place in his office at Yenagoa, the state capital.

[13] Perekeme Richard Kpodoh, one-time governorship aspirant under the platform of All Nigeria People's Party, ANPP, and Director of Operations in the state between 1999 and 2001, said he took his former boss to court because "this restiveness we have been witnessing in the State is as a result of his reckless spending. If our money is judiciously used you will find peace in the State and the youths would be appropriately engaged … When the head is rotten, everybody in the government is rotten … They keep on misbehaving, building houses of their own everywhere, buying flashy cars, while the masses are suffering on the streets" (*Newswatch*, 24 October 2005).

mented. To further illustrate the state of anti-corruption efforts in Bayelsa State under the administration of Governor Alamieyeseigha, it should be noted that throughout his over six years' tenure in office as governor, not a single piece of legislation with the potential of controlling corruption was proposed or passed, nor was any individual put on trial for corruption. Even if this had been done, it would almost certainly have amounted to mere window-dressing. As the case of Zamfara clearly shows, states that had no intention of fighting corruption could still pass anti-corruption legislation and even establish anti-graft bodies, while doing nothing to arrest and prosecute corrupt officials.

*Fighting corruption in the name of God: Zamfara State and the Shari'ah debacle*

In 2000, two important pieces of legislations entered into force in Zamfara State. These were the Shari'ah Penal Code Law (No. 10) 2000 and the Shari'ah Criminal Procedure Code Law (No. 18) 2000 (Zamfara State of Nigeria 1999, 2000a, 2000b, 2001). These laws, in some ways, represented a concretisation of a promise made by the governor, Sani Ahmed, during his election campaign, to reform the state criminal justice system along the lines of the *Shari'ah* model. *Shari'ah*-based legislation is not an entirely new phenomenon in Nigeria, despite the controversies and protests that have greeted the adoption of these laws. But before now, *Shari'ah* was essentially a civil code, adopted to regulate disputes and civil affairs among Muslims in the northern part of the country. The transformation of *Shari'ah* into a penal code caused many problems, notably bloody inter-ethnic and religious conflicts. Many of these problems have been examined in detail elsewhere and therefore need no further elaboration here (HRW 2004). However, one of the dimensions of *Shari'ah* implementation in Zamfara that has so far received little or no attention was its effectiveness or ineffectiveness as a tool for curbing corruption. As one of the officials charged with its implementation rightly pointed out, the legislation aimed not only to satisfy religious obligations, but also to help purge society of all forms of corruption:

> The first objective of *Shari'ah* implementation is to make our peace with our creator, to live in the knowledge that we have submitted to His supremacy and accepted Him as the sole law-giver. The second objective is to establish a just, compassionate and fair society bonded in brotherhood. Such type of society however can only be built on the qualities of honesty, transparency, selflessness and piety. It must therefore be part of the mission of a *Shari'ah*-guided society to promote and inculcate these qualities. This is why the fight with corruption is an integral part of *Shari'ah* implementation. (Gusau 2002: 1)

How did the *Shari'ah* code address the corruption question in Zamfara State? The law, as a matter of fact, did contain several important anti-corruption provisions. Apart from outlawing several forms of social immorality and crimes – theft, fraud, prostitution, fornication and adultery, the possession, sale and consumption of alcohol, rape, sodomy, incest, homosexuality, and murder, all of

which would now attract severe punishment (caning, amputation, execution by stoning) – other more 'secular' corrupt acts were equally covered. These included illegal diversion of funds by public officials or agents of private institutions ("criminal breach of trust") and illegal acquisition (for example, through an intermediary) of public assets. These acts were to be punished by 10 to 15 years' imprisonment. The said assets would also be confiscated, possibly followed by some 40 strokes of the cane to be publicly administered. Other corrupt acts prohibited included the falsification of documents (5-14 years' imprisonment), giving or acceptance of bribes (5-7 years), and abuse of powers by judicial and police officers (5 years). These offences would also attract between 30 and 50 strokes of the cane.

Aware of the high level of poverty in the state (Federal Government of Nigeria 2005: 64) and particularly the hostility of the central government to any implementation of *Shari'ah* as a criminal code, a number of new local institutions were created supposedly to facilitate the implementation of the code. These included the Zamfara State Poverty Alleviation Programme (ZAPA), Zamfara State Hisbah Commission (also known as the *Shari'ah* Police), *Shari'ah* Courts, and the Zamfara State Anti-Corruption Commission (ZSACC). Within the framework of the ZAPA, salaries of civil servants were increased by 60% in 2000 (Salihu 2004: 23), and soft loans to workers to build houses or purchase vehicles were also offered. Others measures taken within the framework of the ZAPA included purchase and distribution of fertiliser and agricultural equipment for farmers, and soft loans to unemployed youths to establish small businesses, such as the purchase of commercial motorbikes.[14]

The Zamfara State Hisbah Commission was the second local institution created to help implement *Shari'ah*. According to its enabling law, the functions of the Commission included measures to "ensure proper compliance with the teachings of Shari'ah throughout the State", and to "take every measure necessary to sanitize the society of all social vices and whatever vice or crime is prohibited by Shari'ah" (Zamfara State of Nigeria 2003). The phrase "take every measure necessary" seemed to be a kind of *carte blanche* for this organization to arrest, detain, and prosecute those who contravened the codes of *Shari'ah*, a move that would certainly bring it into direct confrontation with the central authorities, especially the national police. But this was not the case, as the law in Sections 27-38 also provided that "in exercising its powers … the Commission and all its staff at Local Government Councils and ward levels shall have power to arrest … and thereafter hand over the arrested person(s) to the Police".

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[14] The exact number of motorbike purchases is unknown. However, one journalist during our interview estimated that the state may have spent over N947 million on bikes alone. This was in October 2004.

Lastly, the Zamfara government also created several *Shari'ah* courts in different parts of the state to try Muslim offenders only. According to the law, trials had to commence in the Lower *Shari'ah* Courts and proceed to the Upper *Shari'ah* Courts, before going to the *Shari'ah* Courts of Appeal, all administered by the state. But where any of the parties was not satisfied, he or she might proceed to the Federal Courts of Appeal (the nearest being in Kaduna) and possibly to the Supreme Court of Nigeria (in Abuja).

One major lacuna in the *Shari'ah* code was probably the decision to exclude non-Muslims from the jurisdiction of these courts,[15] a decision that was intended to minimise conflict between the adherents of the two dominant faiths in Nigeria, Christianity and Islam. Even then, this loophole was effectively corrected with the adoption on 15 September 2000 of the Zamfara State Anti-Corruption Commission (establishment) Law No. 17 2000,[16] more-or-less a copy of the Corrupt Practices and Other Related Offences Act 2000, adopted by the federal government only a few months earlier. This law established the Zamfara State Anti-Corruption Commission (ZACC), a body similar to the ICPC. The ZACC even had powers to arrest and prosecute for corruption in the private sector and could launch an investigation without waiting for formal petitions from members of the public, quite unlike the ICPC. In addition, some offences under the Zamfara Act could attract far more severe punishments, a good example being diversion of public funds or assets, which could attract up to 15 years in jail as against a maximum of 7 years under the ICPC law.

At face value, the adoption of *Shari'ah* in Zamfara State showed that this state had gone some way to support the anti-corruption drive of the federal government. In spite of its religious and therefore controversial character, this legislation and indeed some of the institutions created under it had the potential to strengthen or extend the fight against corruption spearheaded by President Obasanjo, if they were faithfully implemented. However, as Daniel Bach has argued, its application, even in its most cruel forms (amputation of hands for stealing), in the end did nothing to check the total impunity enjoyed by local political elites frequently associated with the diversion of huge sums of money (Bach 2003). It could even be argued that fighting elite corruption was never the central

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[15] Section 3 of the Code clearly stated: "Every person who professes the Islamic faith and or every other person who voluntarily consents to the exercise of jurisdiction of any Shari'ah Court established under the Shari'ah Courts (Administration of Justice and certain consequential changes) Law, 1999, shall be liable to punishment under the Shari'ah Penal Code for every act or omission contrary to the provisions thereof of which he shall be guilty within the State."

[16] The Zamfara State Anti-Corruption Commission (Establishment) Law 2000 was later replaced by another Act, the Zamfara State Anti-Corruption Commission (Establishment) Law, 2003. The latter contains more or less the same provisions associated with the former, except that henceforth one member of the commission must be a lawyer, and that in the exercise of its functions the commission should not be subjected to the control of any other authority.

question or preoccupation. According to this view, the adoption of *Shari'ah* by Zamfara, and 11 other states in quick succession, was only a part of internal political struggles and electoral mobilisation (Nouhou 2005: 265). Facts gathered from a close observation of politics and governance in the state between 1999 and 2007 largely support this claim.

Contrary to frequent claims made by officials of the Zamfara State government that the provisions of *Shari'ah* had largely been applied (Zamfara State of Nigeria 2004), there was no evidence at the time of our fieldwork pointing to a strict and unbiased application of the code. As a 2004 Human Rights Watch report correctly pointed out, after a few years of *Shari'ah*, many people in Northern Nigeria had simply become disillusioned with the way *Shari'ah* was being implemented in their states (HRW 2004). While there was little doubt as to the preparedness of the authorities to apply the most severe sanctions, such as caning, amputation, or even death sentences (ironically, sentences reserved for the most minor infractions, such as petty theft, consumption of alcohol, prostitution, and adultery – whose perpetrators are more often than not the poorest and weakest in the society),[17] the principles of equality, generosity, equity, and justice which *Shari'ah* preaches were routinely ignored. This fact was vividly underlined by one of the journalists in the state we interviewed:

> *Shari'ah* has scored partial success, in the area of social morality, alcoholism, prostitution or prostitutes (who were given financial incentives to leave). Crime such as stealing, robbery, etc. has been checked by the State (Zamfara Agency for Poverty Alleviation) … But for me, *Shari'ah* have scored only 30% because the governor have a policy to get his supporters into big post to enrich themselves; that is why you see big houses everywhere, even the governor himself encourage it … In the government circles, *Shari'ah* hardly applies.[18]

Only in one rare incident did the application of *Shari'ah* catch up with a highly placed official. This occurred in January 2002, when a *Shari'ah* court convicted a serving judge for drunkenness in Kaura Namoda, near the state capital Gasau. He received 80 lashes, administered in a market square by his father-in-law before a crowd of enthusiastic spectators. Otherwise, the determination to implement *Shari'ah* was never demonstrated concretely with respect to numerous delinquencies by political elites and top public officials, who account for other more serious forms of 'immorality', such as diversion of public assets, inflation of public contracts, financial fraud in the accounts' departments of public institu-

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[17] Our investigation in 2004 actually confirmed that there was a dramatic decline in these offences after the implementation of *Shari'ah*. According to the Public Relations Officer of the Nigerian Police, Zamfara, "the minimal level of crime in the state was attributable to its small size and the religious orientation of its inhabitants". The situation was reinforced by "the fear of *Shari'ah*". This information was provided during a personal interview with this police officer on 19 October 2004.

[18] This was based on a personal interview with one of the journalists working for *The Path* newspaper (Sokoto), at Gusau, on 22 October 2004.

tions, payments of bribes, and the extortion of tribute from peasants by traditional rulers (particularly in the rural areas), to mention but a few.

The poor attention paid to these issues was confirmed by the records of the ZACC, provided during a personal interview with the leaders of the commission. Notwithstanding their attempt to present the institution as an effective one, by citing some unsubstantiated success in the recovery of diverted funds and assets, large numbers of suspended highly placed officials, and the heightened awareness created about corruption in the state,[19] the ineffectiveness of the ZACC was clearly apparent. For example, this institution received around 432 petitions, treated 300, but had won zero convictions as at October 2004. When asked to explain the reasons for such a dismal performance despite the deluge of complaints, the managers of this institution said they considered the large number of petitions from the public as a sign of public confidence in the institution. Probed further on this, they argued that the rarity of convictions was due to the fact that "the accused often accept easily their culpability and commit through legal bargain to return the asset or funds diverted". According to them, the commission was also seeking to avoid a situation where "innocent people are punished".

Despite being sapped by a chronic shortage of manpower and administrative structures,[20] the ZACC occasionally made some brave efforts to call influential political figures to account. These efforts were undermined, however, by a lack of political will at the highest level of authority in the state. A very notable example, which became emblematic of the hypocrisy of the ruling elite and the most celebrated corruption scandal in the period 1999-2004, was the case of two commissioners (in charge of the ministries of Education and Scientific Education) and their permanent secretaries, who were officially accused of embezzling public funds. The scandal broke in 2003 following an investigation by the ZACC, which confirmed that these officials had indeed utilised their offices to divert N9 million (or 50% of the funds allocated for the feeding of students in the state's special secondary schools).

Under both the *Shari'ah* code and the anti-corruption Act of 2000 as amended in 2003, all the diverted funds had to be returned and those who were involved immediately suspended from their positions. In the case of conviction, the corrupt officials could receive up to 15 years' prison term each. But this never came to pass. The Zamfara anti-corruption commission was forced to abandon the case "so as not to create problems" in the state. While we could not confirm if and

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[19] In October 2004, we conducted several interviews with top officials of the Zamfara State Anti-Corruption Commission, including its chairman.

[20] At the time of our visit in October 2004, the chairman of the commission was the only lawyer working in the commission. For trials, the commission must rely on the Ministry of Justice. There was also only one specialist in finance and accounting. This official was on secondment from another agency and was invited to help strengthen the commission.

how much money had been returned by the accused officials, the sanctions recommended by the anti-corruption body were never strictly applied. Rather than 20 months on suspension, or even outright dismissal, the concerned officials received only a paltry 3 months' suspension,[21] at the end of which they were both redeployed to head new ministries (Ministry of Social Welfare and Ministry of Animal Health, respectively).

No official explanation was given for this decision. During an interview, however, one journalist provided some insights into the rationale for this soft treatment for corrupt high officials:

> The two commissioners were treated kindly because they are part and parcel of the government (Executive) which the anti-corruption commission submitted its report to. They are politically influential … One is even a childhood friend of the governor, who came from the same town (community) with him, attended the same schools, and grew up together.[22]

The decision provoked much criticism among the citizenry for months, as almost all the individuals we spoke to expressed some form of disgust and a feeling of betrayal by their governor, who was perceived to have turned to a selective application of sanctions. But surprisingly, a number of citizens in the state at the time of our visit in 2004 continued to express the view that their governor was "someone honest". This ambivalent feeling was captured by the response of another journalist we interviewed in October 2004:

> When *Shari'ah* was launched, an estimated 2 million people witnessed it … Most of those people hoped it will solve their socio-economic problems. Today, the political system has prevented the economic components of *Shari'ah* from being actualized. The ANPP, the ruling party here (Zamfara), is not an Islamic party. The political system is characterised by insincerity, main problem of Nigerian democracy, elites looking for their selfish interests. The governor is sincere, but his supporters, allies and others around him don't share his philosophy in terms of real *Shari'ah*.[23]

Soon, however, this image of personal honesty began to crumble in the face of mounting evidence of wrongdoing by the same governor and his close officials. In mid-2006, for instance, the EFCC announced that it had opened a corruption investigation against the Zamfara governor, Sani Ahmed, and some of his senior officials. The probe followed a petition submitted to the anti-graft body in February 2006 by the chairman of one of the local governments in the state (Gumi local council) alleging the illegal diversion of N700 million belonging to the 14 local government councils in the state. The then EFCC boss, Nuhu Rubadu, described the scandal as "a case of direct stealing" (*ThisDay*, 28 September 2006).

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[21] The information was provided by the chairman of the commission during my interview with him on 21 October 2004.

[22] The journalist in question was the Gasau correspondent of *The Sun* newspaper, a local daily with its head-office in Lagos. The interview took place on 23 October 2004.

[23] Our interview with this journalist, who works for *The Guardian* newspaper, took place in the state capital on 23 October 2004.

After investigations were concluded, seven of the officials involved were brought to court for diverting public funds. The governor himself was spared only because he enjoyed constitutional immunity against arrest and prosecution.

## Conclusion

Throughout his tenure in office, President Obasanjo did much to create the impression that his much-advertised fight against corruption was a national struggle against a very destructive national affliction. This was not the case, however, as we have seen in this chapter. Many Nigerian states considered his anti-corruption policy as an unnecessary intrusion into or infringement on the affairs on autonomous federal units, which is against the spirit and letter of the federal Constitution of Nigeria. The cases of Bayelsa and Zamfara states, as well as many others cited in this chapter, show clearly that the adoption of a pro-federal posture by Nigerian state governors had little to do with a genuine intention to fight corruption in their respective states or preserve Nigeria's federal system of government. This also demonstrates that while the presence of federalism may not necessarily condemn Nigeria to a life of endemic corruption (all federal states do not suffer similar levels of corruption), the country's decentralised system requires that more innovative ways be found to ensure a more effective implementation of its anti-corruption policy in its 36 states and 774 local governments. The question is then, what are these other innovative ways? A growing body of literature has emphasised the crucial role of civil society (Devas & Grant 2003). The extent to which Nigerian civil society promoted President Obasanjo's war against corruption is the focus of the chapter that follows.

# 7

# Civil society and the war against corruption

## Introduction

> From the perspective of Civil Society Organizations (CSOs), the war against graft in Nigeria is yet to start. It will begin the day CSOs plan their own programmes, source their own funds, and take the initiative in executing programmes. It will start when CSOs can muster enough strength to compel the President, Vice-President, governors of states and deputy governors of states, to shed their pretence or immunity and declare their assets publicly and subject themselves to the same kind of probe as anyone else. The war will start when civil society forces the same people, as well as all legislators, to make known to Nigerians the sources of their wealth. It will start when CSOs are able to achieve the recall of a single legislator or the resignation of a sole minister, commissioner, local government chairman, on the charge of corrupt practices … These are actions within the realm of possibility of CSOs. At present, we are caught in a merry-go-round of workshops, conferences, summits, interactive sessions, or 'hot lines' and monitoring of what government is doing. CSOs of the NGO type are in danger of merely becoming agents of the state or extensions of state programmes. To become true CSOs, we should develop a national action plan for the fight against corruption. Then we can seize the initiative from government. (Asobie 2005: 16)

With the exception of the press and spontaneous movements, previous struggles against corruption waged by successive governments in Nigeria had gone on without the active participation of non-state actors and institutions, otherwise known as civil society. On the other hand, the Obasanjo years (1999-2007) were marked by a heightened participation of civil society – local and international NGOs, labour unions, professional, cultural, and religious associations, and even groups emanating from the organized private sector, all of which now participated in the war against corruption in Nigeria (*ibid.*: 8). How can this rapid transformation be explained in a country where the war against corruption had traditionally been conducted and imposed from above? And what were the consequences of this increased role of civil society for the anti-corruption campaign pursued by the Obasanjo regime?

To begin with the first question, the transformation in the role of civil society was facilitated by at least three factors. The first factor was the logic of democratic transition. That is to say, the passage from an authoritarian regime to democracy offered more possibility for the population to organize and participate more actively in the making and implementation of public policies (Chowdhurry 2004; Lewis 2004: 118). The second factor concerned the impact of globalisation, in terms of the work of international actors and institutions that aggressively pushed for the formation, promotion, and consolidation of CSOs, henceforth regarded as indispensable partners in the promotion of good governance. The third and perhaps more important factor was the Obasanjo anti-corruption strategy itself. Contrary to what happened in the past, the anti-corruption strategy initiated by the Obasanjo administration had indirectly encouraged a more active role for civil society in the fight against corruption. A good example was the provisions in the EFCC and ICPC Acts which required the two main anti-corruption agencies to mobilise members of the civil society behind the war against corruption and receive petitions on alleged corrupt practices from them.

In terms of the contribution of civil society to the war against corruption, the activities of NGOs can offer significant insights. In recent attempts to promote good governance in developing countries, NGOs have tended to be more vocal than other sections of the civil society (Atlani-Duault 2005). During the Obasanjo era, the number of these organizations and their diversity grew very rapidly in Nigeria (Pérouse de Montclos 2005). While it is difficult or even impossible to know the exact number of these organizations at any given moment, there was substantial evidence suggesting that they were intervening in virtually every domain of public life, including the struggle against corruption. Indeed, a good number of them were created specifically to help advance the struggle against corruption. Our review of Nigeria's press, covering the period between 1999 and 2006, revealed that there were nearly 40 such NGOs. Transparency in Nigeria (TIN), which is the local branch of Transparency International; Exam Ethics Project (EEP), which specialises in combating fraud and corruption in the educational system; Zero Corruption Coalition (ZCC), a loose coalition of some 50 anti-corruption NGOs; African Network for Environmental and Economic Justice (ANEEJ); Independent Advocacy Group (IAG); and Convention on Business Integrity (CBI), which focuses on the struggle against corruption in the business and private sector – these were about the most dynamic and active among these NGOs.

But despite their high visibility, these NGOs shared their anti-corruption role with other actors of the civil society. The list includes the mass media, professional associations, labour unions, employers' associations, the organized private sector, and ethno-religious movements. Like NGOs, the intervention of these

various organs of civil society in public life preceded the Obasanjo administration; however, they developed a deep interest in corruption during the Obasanjo era. A more balanced assessment of the contributions of civil society, therefore, will also require a critical review of the activities of these other civil society actors. In this chapter, we will argue that, overall, CSOs have been of little help in Nigeria's campaign against corruption because their overall contribution, while showing some improvement from that which obtained in the past, was largely weak and inefficient compared with what was prescribed in the academic literature on development policy.

The influence and capacity for action of CSOs was undermined by a lack of independent sources of funding, which eroded their autonomy, and the absence of helpful legislation and practices, such as one granting free access to information in a state that has elevated official secrecy to more or less a religion (Asobie 2005). Their preoccupation with material issues (Momoh 1996) and inability to go beyond primary group (ethnic, religious, etc.) solidarity (Iredia 2005) further contributed to making them less effective than they could have been. In addition, there was the lack of capacity among the leaders of these organizations, the rivalry and poor networking between different associations, the hostile attitudes of government, and in many instances the rent-seeking behaviour of those at the helm of affairs in these organizations. All these made it possible for politicians to instrumentalise them for political gains. These challenges were not new. Attempts to create anti-corruption associations in the past had collapsed owing to the same reasons (Falola 1998). The challenges also did not apply only to NGOs or associations formed to promote the struggle against anti-corruption; almost all actors and organizations which formed part of the civil society were touched in one manner or the other by these weaknesses (Eteng 1997; Aiyede 2003: 9). Before looking at the role played by each of these actors during the Obasanjo era, we will briefly look at the concept of civil society from a normative point of view and its development into a force for good governance.

## The concept of civil society

The definition of the concept of civil society has remained a source of disagreement among scholars despite its visibility in the literature of the social science for decades (Harbeson *et al*. 1994; White 1994; Offerlé 2003). However, in recent times two opposing approaches have emerged in the general literature on civil society. The first approach, regarded as the conventional approach, defines civil society as those formal organizations or associations which seek to advance the general interest in particular domains. These organizations are sometimes known by the appellation 'civic advocacy groups'. According to this approach, these associations are those that must be "formally organized with specific and limited

purposes, participatory internal government, and the autonomy to act beyond the immediate interest of their members … They must also confront the state while upholding its authority. That is, force the state to reform" (Kasfir 1998: 6). Schmitter and Diamond are among the most well-known defenders of this essentially normative approach. For them, civil society includes only those organizations who "agree to act within preestablished rules of a civil nature, that is, conveying mutual respect" (Schmitter 1997: 240), and who "eschew violence and respect pluralisme as well as the law and other social and political actors" (Diamond 1994: 6; Diamond 1997: xxxi). According to this view, most associations present in Nigeria (including cultural, ethno-religious, extremist, and violent groups like youth militias, which have become increasingly visible across the country since 1999) – which, in the words of Hadenius & Uggla (1996: 1623), are "pronouncedly hierarchical", or in the words of Gyimah-Boadi, present sometimes some "not-so-civil demands" (Gyimah-Boadi 1996: 129) – should not be considered part of the civil society.

But can the concept of civil society be validly limited to civic advocacy groups, or only to 'associations of general interest', to borrow the concept of Roger Sue (Sue 2003: 107)? Several Africanists have argued that any approach which seeks to exclude actors such as ethno-religious associations is not rooted in empirical facts. They contend that groups or movements which have weak social roots cannot explain much, particularly in Africa (Fatton Jr. 1991: 720; Kasfir 1998; Howell 2001: 185). Nelson Kasfir offers two reasons why this approach is defective. Firstly, "seemingly modern organizations are usually permeated by tribal and ethnic divisions at early stages. Secondly, family, tribe, and clan-based associations may also be the locus of social and political change" (Kasfir 1998: 185). Kasfir and other authors, therefore, have offered a more inclusive approach. It is in this sense that Michael Walzer defines civil society as "the space of uncoerced human association and also the set of relational networks – formed for the sake of family, faith, interest, and ideology – that fill this space" (Walzer 1991: 293). In the same sense, Mutuwafhethu J. Mafunisa notes that civil society includes organizations which are separate from the legislative, administrative, and judicial authority of the state. They include, according to him, labour unions, religious groups, cultural and religious associations, sport clubs, student groups, political parties, and ethnic groups adhering to their own code of conduct and norms (Mafunisa 2004).

This second approach to civil society corresponds more to the Nigerian sociopolitical terrain. In Nigeria, as elsewhere in Africa, several other non-state actors who fall outside the notion of 'civic organizations' participate more or less in civic affairs, including the struggle against corruption (Guyer 1994). These actors include student movements, religious bodies, ethnic and cultural groups, tradi-

tional leaders, labour unions, NGOs (notably those working in areas such as human rights, struggle for democratisation, and social justice), professional associations, and the media. One can also observe roles being played by some committed citizens as individuals. In the latter category, for instance, we find the radical lawyer and human rights' activist, Gani Fawehimi, and the late 'Afrobeat King', Fela Anikulapo-Kuti (Idowu 1997; Idowu *et al*. 2002). These two individuals during their lifetimes were well-known for their individual struggles against authoritarianism and political corruption. The role of intellectuals, including notable writers such as Wole Soyinka and Chinua Achebe, also cannot be ignored (Achebe 1983; Soyinka 1996). The return to democracy gave these actors and associations, including those interested in the struggle against corruption, more visibility and impetus. The rate of formation of such associations and movements, and the growing scope of their activities (as reported by the local media) under the Fourth Republic, was a confirmation of the hypothesis of civil society as a 'watchdog' of society and its rulers.

*The challenge of good governance: What role for civil society?*

Since the 1980s, the central role of institutions in the advancement of good governance (democratisation, public accountability, and development of a market economy) in developing countries has received growing attention from researchers, international development institutions, Western governments, and donors. These actors were largely disappointed by the outcome of neo-liberal policies imposed on Third World countries in the 1980s and 1990s (Robinson 2004). The policies, also known as 'market-based approaches', rejected or called for a minimal role for state institutions, while glorifying the market, which they conceived as a solution to the problems of corruption and development. After the results of these policies became well known, researchers began to insist that the promotion of good governance must unavoidably be preceded by the (re)construction and strengthening of institutions or "national integrity systems" (World Bank 1989, 1992, 1997; Pope 2000), which comprise the executive, legislative and judiciary, the administrative apparatus, independent regulatory organs, the media, and civil society. In this neo-institutionalist approach, the role of civil society as an agent of development and good governance became particularly important (Adedeji & Otite 1997; Kisubi 1999; Howell & Pearce 2001; Transparency International 2002). The arguments were summarised by Rob Jenkins:

> Development requires sound policies and impartial implementation. These can only be delivered by governments that are held accountable for their actions. Accountability, in turn, depends upon the existence of 'autonomous centres of social and economic power' that can act as watchdogs over the activities of politicians and government officials. Civil society consists of both the associations that make up these 'centres' and the 'enabling environment' that permits them to operate freely. It is an arena of public space as well as a set of private

> actors. Therefore, aid to the 'democracy and governance sector' … must be earmarked to support both individual associations as well as the political milieu in which they carry out their functions. (Jenkins 2001: 252)

This "instrumentalisation of the civil society", to borrow the phrase of Jude Howell and Jenny Pearce (Howell & Pearce 2001: 117), was even more visible in academic literature and reform policies aimed at combating corruption in countries of the South. As Robin Theobald has suggested, whilst overall anti-corruption strategy in a given country is usually an admixture of a range of policies, these tend to coalesce around three central elements: The establishment of an anti-corruption agency, the general reform of the public sector, and the promotion of a strong civil society (Theobald 2000: 149). Indeed, it is now widely accepted that in the absence of a vigorous civil society, administrative measures aimed at combating corruption will achieve little (Watt *et. al*. 2000: 51). The combination of a weak civil society and weak state "allows small, predatory political machines to more easily dominate an unorganized electorate … and take control of the institutions of the state" (Szeftel 1998: 235), while the development of an effective civil society comprising a plurality of social groupings able to confront and contest the state has played and continues to play a central role in the maintenance of an accountable and publicly available state (Doig 2000: 16).

However, neo-institutionalists are not ignorant of the limitations of their prescriptions. Thus, Alan Doig has also underlined the contradictions which can emerge from this approach in a country torn by ethnic divisions, such as Nigeria. As he observes, in a country like Nigeria there is a thriving level of local civil society, albeit lacking in resources and often working outside formal structures, but promoting this as part of the democratisation process may force to the forefront sectional rather than national or public-interest perspectives (*ibid.*: 31). This argument has been reinforced by Robin Theobald (2000: 154):

> The fundamental structures of power within a given state will almost certainly be replicated within its civil society. Accordingly, in a state where structures of authority and power are articulated primarily through patriarchal and clientelistic-type ties, it is inevitable that such relationships will penetrate civil society associations. And, of course, the resulting tendency for such societies to be compartmentalised into vertical blocs will be seriously reinforced where the state is fragmented by ethnic, regional, religious and other similar formations.

Other limitations of this 'bottom-up approach' were highlighted in the work of Nunnenkamp (1995: 15), who notes:

> Bottom-up approach obviously relies on supportive measures by government authorities … Better access of marginalised groups to the formal economic and legal system requires a change in political and bureaucratic attitudes by definition. Hence, the bottom-up approach does not provide an alternative to top-down attempts at greater participation and better governance. Rather, both approaches may supplement each other in countries revealing at least a minimum of domestic reform-mindedness.

Similarly, after a review of the literature on civil society in the developing countries, Robin Theobald (2000: 153) concludes:

> The outlook for a vigorous civil society in less developed states is not encouraging. Poverty, low levels of literacy, geographical and social isolation, and, probably most important of all, the unrelieved burden of surviving from day to day, hardly conduce to participating in and organizing those associations that will constitute an effective check on the actions of government.

Despite these pessimistic assessments, the consensus in academic and public-policy literature remains more or less favourable to the view that civil society is an indispensable actor in the struggle to promote good governance (Langseth 2001; Eigen *et al*. 2004). This optimism has been reinforced, it seems, by the experiences of countries such as the Philippines, Thailand and Indonesia (Assefa & Mesfin 2001; Bujra & Adejumobi 2002; Bujra & Buthelezi 2002; Otayek 2002). For instance, the fall of President Wahid of Indonesia in 2001 was attributed partly to the activities of civil society in that country (Bolonggaita Jr. 2003: 17). Civil society groups played key roles not only in the overthrow of presidents Marcos and Estrada in 1986 and 2001, respectively, but also in the economic and political reforms which followed their removal (Clarke 2000). NGOs in Thailand were also said to have played similar roles, particularly with the adoption in 1997 of a "people's constitution", which contained strong anti-corruption components (Bolonggaita Jr. 2003: 17). The contribution of civil society to good governance therefore springs from two perspectives. The first is that civil society helps to plant values and civic behaviours among its members and thus helps to construct a vision that is supportive of good governance. Secondly, through its 'advocacy' and 'networking' roles, civil society seeks to influence or force political leaders to adopt positions that conform to their good governance agenda.

The question then is, to what extent did these ideas apply to Nigerian civil society groups under Obasanjo?

### *Evolution and growth of civil society in Nigeria*

Even though literature abounds on the origin of civil society in the West (Ehrenberg 1999; Kaviraj & Khilnani 2001), very few researchers have studied the origin of the same institutions in Africa. A few scholars who have done so have traced the origin and evolution of civil society in Africa to the colonial and post-colonial experience of the continent. Along this line, Jude Howell and Jenny Pearce have argued that the emergence of civil society in Africa can be traced to three historical periods. These are the period of colonisation, the post-colonial period, and the period involving the introduction of Structural Adjustment Programmes and democratic transitions (Howell & Pearce 2001). Their analysis has been confirmed partly by the work of Otite and Kawonise, who affirm that the

activism of civil society or 'popular participation' can be linked to two historical periods: The (pre)colonial period, with "indigenous or premordial organizations or associations which are ethnically bound", and the post-colonial period, with "modern non-indigenous or civic associations and organizations with nation-wide culture" (Otite & Kawonise 1997: 35). Otite & Kawonise, however, recognise the possibility of a fusion between the two spheres; that is to say, these organizations can at the same time be indigenous and non-indigenous. This could be seen in the formation of ethnic associations beginning in the colonial period, a phenomenon which had developed as a reaction to colonisation and intra- and inter-ethnic tensions in the new society (*ibid.*: 37).

During the period of colonial domination, these ethnic associations – and also labour, student, and especially nationalist movements – constituted the arrow-head of opposition in a struggle that eventually ended colonisation (Bangura 1999: 8). However, during the period that followed independence, right up to the 1980s, civil society in Africa (with the notable exception of the independent press, which relentlessly sought to hold politicians accountable, notably in the particular case of Nigeria) suffered a decline in the face of monopolisation of the political arena by successive authoritarian regimes. The economic crisis which ensued in the wake of increasing militarisation of the society in the 1980s facilitated the return of the traditional civil society or 'organized labour' (*ibid.*), which protested against the impoverishment of the population, a condition which worsened with the adoption of Structural Adjustment Programmes[1] put in place by African regimes under the direction of the IMF and World Bank (Otayek 2002: 194).

The period of economic crisis was characterised by an unprecedented spread of new CSOs. This involved essentially human rights' campaign groups, who demanded, with the financial support of the international community (particularly American foundations), an end to authoritarian regimes. In the particular case of Nigeria, the best-known associations in this regard were the following: The Civil Liberty Organization (CLO), founded in 1987; the Committee for the Defence of Human Rights (CDHR), founded in 1989; the Niger Delta Human and Environmental Rights Organization, which became active in 1995; and the Campaign for Democracy (CD) founded in 1992 (Pérouse de Montclos 2005: 194). These associations were largely confined to the city of Lagos, which until 1990 was the economic and political capital of Nigeria, before they began to spread to other cities (Amuwo 1995; Olukoshi 1997). Although these organizations were largely interested in the restoration of democracy and respect for hu-

[1] These programmes were first adopted in Nigeria in June 1986 by General Ibrahim Babangida's regime.

man rights, as their names suggest, their influence was felt elsewhere and went beyond the struggle for the restoration of democracy (*ibid.*: 17).

The collapse of the Structural Adjustment Programme and, more importantly, the transition-to-democracy project under the Presidency of General Ibrahim Babangida – following the annulment of the 12 June 1993 presidential elections and the political crisis which it provoked – led to the radicalisation of these associations and the emergence (especially during the more dictatorial Abacha regime, 1993-8) of a larger number of new civil society associations and organizations, including new independent media houses. These events were, of course, unfolding at a time of profound changes in the policies and behaviour of the international community, which increasingly favoured democratisation in countries of the South, and so a larger role for the civil society (Biekart 1999; Amuwo 2001). These conditions permitted these associations to profit easily from the financial and political support of the international community and, ultimately, to mobilise the population and force democratic reforms, culminating in the end of military rule in Nigeria on 29 May 1999 (Aiyede 2003: 9).

The installation of the Fourth Republic in 1999 opened another stage in the development of civil society in Nigeria. This development had two major consequences. Firstly, and as we have already noted, the years 1999-2007 were marked by the widespread creation of new civil society associations and organizations, notably including new anti-corruption NGOs (see Table 7.1). There was also a noticeable transformation in the orientation and mode of operation of hitherto existing associations, which saw such NGOs changing their focus to other areas or domains. A good example is the case of associations which had been formed

*Table 7.1* List of anti-corruption NGOs in the Fourth Republic

| Name of association | City/State | Leader(s) |
|---|---|---|
| 1. Kaduna Discussion Group (KDG) | Kaduna | Yusuf Mamman & Lawan Gwadabe |
| 2. Association of Nigerians Against Corruption | Abuja | NA |
| 3. Youth United for a Better Nigeria (YUBEN) | Abuja | NA |
| 4. Clear View Foundation | Abuja | NA |
| 5. Exam Ethics Project | Lagos/Abuja | Ike Oyechere |
| 6. Nationwide Action Against corruption | NA | NA |
| 7. Winners and Associate | NA | NA |
| 8. Independent Campaign Against Corruption | NA | NA |
| 9. Transparency and Integrity Foundation | NA | NA |
| 10. Against Vision Incorporated | NA | NA |
| 11. The Movement For New Nigeria (MNN) | NA | NA |
| 12. The Ethics, Due Diligence and Good Governance Empowerment Project | Lagos/Abuja | Ike Oyechere |

| | | | |
|---|---|---|---|
| | (Project Edge) | | |
| 13. | Legal defence and Assistance Project (LEDAP)* | NA | NA |
| 14. | Zero Corruption Coalition | Lagos/Abuja | Lilian Ekeayanwu |
| 15. | African Network for Environmental and Economic Justice (ANEEJ)* | Benin | Rev. David Ugolor |
| 16. | Anti-Corruption Youth Movement of Nigeria (ACYMN) | Abuja | Ume Bassey |
| 17. | Centre for Public Accountability (CPA) | NA | NA |
| 18. | Coalition for Public Accountability and Development (COPAD) | NA | Bowo Olateru-Olagbegi |
| 19. | Taraba Transparency Network (TTN)** | Jalingo, Taraba | Ahmd Yusuf |
| 20. | Youths' Information Network | NA | NA |
| 21. | Transparency In Nigeria | Lagos.Abuja | Dr. Assisi Asobie |
| 22. | Crystal Vision Incorporated | NA | NA |
| 23. | Independent Advocacy Group | Lagos | Prof. John Ayoade |
| 24. | Convention on Business Integrity | Lagos | Dr. Christopher Kolade |
| 25. | Bayelsa Transparency Initiative | Yenagoa, Bayelsa | Festus Gbasa |
| 26. | Vanguard for Transparent Leadership and Democracy (VATLD) | Abuja | Femi Aduwo |
| 27. | Probity and Ethics Society | NA | NA |
| 28. | Zamfara Patriotic Alliance | Gusau, Zamfara | NA |
| 29. | Global Network for Islamic Justice* | Gusau, Zamfara | NA |
| 30. | Democrats for Good Governance | NA | Uchendu Agulu & Eugene Ezeoke |
| 31. | African Centre for Democratic Governance* | Abuja | Kunle Animasaun |
| 32. | Centre for Constitutional Governance* | Lagos | Beko Ronsome-Kuti |
| 33. | Socio-Economic Rights and Accountability Project (SERAP)* | Lagos | Prince Adetokunbo Mumuni |
| 34. | Transition Monitoring Group (TMG)** | Abuja/Lagos | Richard Akinola |
| 35. | Labour Election Monitoring Team (LEMT)** | Abuja/Lagos | Angela Odah |
| 36. | Electoral Reform Network (ERN)** | Abuja/Lagos | John A. Kolawole |
| 37. | Justice Development and Peace Commission (JDPC)* | NA | Olawale Fapohunda |
| 38. | Muslim League for Accountability (MULAC)** | Lagos/Abuja | Rekiya Momoh |
| 39. | The CLEEN Foundation | NA | NA |
| 40. | Transparency and Anti-corruption Walsh Campaign (TRAC) | NA | Oluwafemi Victor |

* These were associations that were also involved in other spheres of activities outside the campaign against corruption.

** These were coalitions of several other local associations or NGOs, the largest being TMG (170 associations) and ERN (73 associations). The number of constituent associations for TTN, LEMT and MULAC were unknown at the time of this source.

Source: "Nigerian Civil Society Statement on the General Elections of April 12th and 19th 2003", in *Africa Policy E-Journal*, 13 May 2003.

before 1999 to fight against military rule and promote the restoration of democracy.Having achieved those aims, these associations or organizations quickly changed their focus so as not to become isolated in the new political dispensation. In a global context where the war against corruption is an absolute priority, many Nigerian NGOs joined the bandwagon to combat corruption and install a policy of good governance. In consequence, the struggle against corruption in Nigeria was now no longer the exclusive preserve of the media or even anti-corruption NGOs. To put it differently, the importance given to fighting corruption in Nigeria under the Obasanjo administration ensured that everybody had to be interested in the campaign.

## Nigerian civil society in an era of good governance

As noted earlier, the number and capacities of the different civil society institutions in Nigeria witnessed an upswing during the years 1999-2007. Who were the most important actors, and what strategies or approaches did they adopt to challenge endemic corruption in Nigeria? Two different strategies or approaches have been observed. On the one hand, there were organizations and actors who favoured a collaboratory approach by developing a good rapport with the authorities (regular consultation, execution of common projects, and forging of consensus around certain ideas).[2] On the other hand, there were also those who preferred an antagonistic approach (negative criticism, regular publications of data on acts of corruption by state functionaries, initiation of law suits, and even protest marches against the authorities). The approach of these latter associations is usually explained by their mistrust of the authorities. However, both types of organizations were also involved in some form of education and mobilisation of the public. In the final analysis, they were also all engaged in the struggle to eliminate all types of corruption, including electoral fraud.[3] How successful were they in this struggle? In order to better answer this question, we will consider only a few among the most active of these actors. We first describe their structure (goals and strategies), and then we analyse their specific contributions to the war against corruption.

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[2] The ICPC, for example, maintained official and cordial working relations with several anti-corruption NGOs, notably Youths United For A Better Nigeria (YUBEN), Association of Nigerians Against Corruption (ANAC), Clear View Foundation, Youths' Information Network, Exam Ethics Project, Nationwide Action Against Corruption, Transparency In Nigeria, Transparency And Integrity Foundation, and Crystal Vision Incorporated, to mention just a few.

[3] All post-1999 elections in Nigeria have been marked by a strong civil society participation, especially at the level of election observation. For instance, during the 2003 general elections, NGOs such as Transition Monitoring Group (TMG), Labour Election Monitoring Team (LEMT), Electoral Reform Network (ERN), Justice Development and Peace Commission (JDPC), Muslim League for Accountability (MULAC), and the Federation of Muslim Women's Association of Nigeria (FOMWAN) played key roles in observing the elections.

*Anti-corruption NGOs*

As indicated earlier, the term anti-corruption NGO applies to organizations formed uniquely or principally to help combat corruption and raise integrity in public institutions. By definition, these associations should be the most active in the fight against corruption, assuming they are effective. As Richard Holloway (head of Pact Zambia, an NGO fighting corruption in Zambia) has suggested, to be effective, an anti-corruption NGO must have a strong support base, be well run, possess some skills in the field of advocacy, focus on 'winnable issues', and be sustainable (Holloway 1999). The question is, how many of these anti-corruption NGOs in Nigeria met these criteria?

In some sense, anti-corruption associations are not new phenomena in Nigeria. According to one study, conducted by Toyin Falola, anti-corruption associations or movements had been in existence in Nigeria as far back as the 1950s. Among the oldest was the League of Bribe Scorners, founded in June 1950 by some students in one of Nigeria's most renowned secondary schools, Kings College, located in Lagos. In the mid-1950s, the Anti-Bribery and Corruption Society of Nigeria was also very active (Falola 1998: 154). These associations were not, however, NGOs in the true sense of the term, as they lacked permanent organizational structures. Anti-corruption NGOs became noticeable beginning only from mid-1999, with the return of civil democratic rule and the launching of Obasanjo's anti-corruption project. Since then, their number and organizational capacity have been growing. A review of the Nigerian press between 1999 and 2006 reveals that there were close to 40 such associations, most of them based in Lagos and Abuja (see Table 7.1). Some of the most active ones and their contributions are described below.

- Transparency in Nigeria (TIN)

Transparency in Nigeria, the local arm of Transparency International, figured among the most visible and active anti-corruption NGOs in Nigeria. Initially based in Lagos before moving to Abuja, TIN carried out its anti-corruption activities through a network of regional units or administrative representatives based in six cities: Lagos, Jos, Kano, Maiduguri, Nsukka, and Uyo. Its major line of activities included consultancy and research on different aspects of corruption. TIN also organized workshops, seminars, and conferences for public institutions, their employees, the general public, and other members of civil society to discuss corruption and anti-corruption strategies. It was also very active in the domain of advocacy and lobbying of the authorities with a view to getting them to adopt

anti-corruption legislation or positions,[4] such as initiating criminal pursuits against corrupt officials (*ThisDay*, 7 March 2003).

During the period under review, TIN committed significant resources in the area of public education, networking, and collaboration with like-minded NGOs. One of the issues that attracted its attention was the provision of Section 308 of the 1999 Constitution, which granted immunity against arrest and prosecution to certain categories of public officials (the President, Vice-President, and all the 36 state governors and their deputies). For many years, TIN campaigned for the removal of this provision, an idea which also enjoyed the support of a large section of Nigerian society. Nevertheless, this campaign failed to succeed, even after it was included in the list of amendments proposed by the National Assembly, which attempted unsuccessfully to carry out a general revision of the 1999 Constitution in 2005-6.[5]

In other words, to the end of Obasanjo's rule in 2007, TIN remained essentially a mere 'advocacy group'. This was despite the fact that it had privileged access to policy makers at the time. The popularity of its parent institution, TI, and the fact that some members of the Obasanjo government – including President Obasanjo himself and Mrs Oby Ezekwesili, who served as the head of the Budget Monitoring and Price Intelligence Unit (BMPIU), popularly known as the Due Process Office (an institution charged with installing a new fiscal and budgetary discipline in public procurement) – were founding members of TI were simply not enough to guarantee the adoption of its prescriptions.

- Zero Corruption Coalition (ZCC)

Zero Corruption Coalition, run by a former coordinator of TIN, Lilian Ekeayanwu, was one of the most popular anti-corruption NGOs in Nigeria during Obasanjo's time. ZCC was actually a coalition of some 50 smaller anti-corruption movements (*ThisDay*, 4 March 2003). Just like TIN, its approach involved forging a close collaboration with public institutions, including the various anti-corruption agencies and other CSOs, with the aim of educating the population on how to eradicate corruption. Although largely civil in its approach, the ZCC sometimes adopted confrontational positions when it thought this was necessary. For example, during the conflict between the National Assembly and the ICPC in 2003, it openly criticised the legislators for their actions, which it said were designed to undermine the powers of the ICPC. There were other instances when

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[4] TIN's advocacy role became particularly visible during the crisis that followed the move by the federal parliament to amend the ICPC Act in order to stave off the ICPC's quest to investigate the leadership of the lawmaking body for alleged corrupt practices.

[5] The legislatures later voted to suspend the constitutional review exercise in its entirety, following suspicions that the Obasanjo Administration was intent on using the exercise to achieve a prolongation of its term in office.

the ZCC also took radical initiatives to advance the struggle against corruption when the authorities were not forthcoming. In 2001, the Nigerian government decided, with the financial support of some international financial institutions, to commission a scientific study (involving households, enterprises, and public officials) on the level and causes of corruption in Nigeria. The report of this study, which was supposed to dictate the future direction of anti-corruption policies, was submitted to the government in June 2003. Although the report simply confirmed what everyone already knew – that corruption was systemic and high in Nigeria – yet, after six months, its contents remained unknown to the public. Confronted with this foot-dragging by government, the ZCC took the initiative to publish the report in workshops it organized for this purpose across the country (Williams 2003).

The government subsequently published the report, but refused to implement its findings (Federal Government of Nigeria 2003), thus highlighting the limits of the activism of the ZCC. Like TIN, the ZCC also engaged in several failed political battles, including the battle to get the National Assembly to pass the Freedom of Information Bill, which did not materialise until after Obasanjo left office in 2007. Similarly, its push for the adoption of what it called a 'Coordinated National Anti-Corruption Plan' was unsuccessful (*ThisDay*, 7 December 2004).

- Exam Ethics Project (EEP)

The Exam Ethics Project, led by Ike Onyechere, was one of the best-known NGOs in Nigeria. Founded in 1996, the focus of EEP was on fraud and corruption in the educational system, with a particular interest in examination malpractices (falsification or sale of marks and certificates by teachers, students, parents, educational institutions, and their agents). During Obasanjo's time, the Nigerian educational system was regularly rocked by allegations of serious, sometimes high-level, corrupt practices, such as the one which occurred in May 2005, when the Academic Staff Union of Universities revealed that "some university Vice-Chancellors had complained of demands of money from them by Ministry of Finance Officials in order to release allocated funds … Some Vice-Chancellors cooperated and paid" (*The Punch*, 20 May 2005). A few weeks after this allegation, the Minister of Education and a vice-chancellor of a federal university lost their jobs, following allegations that they had paid N55 million in bribes, described as 'welfare package', to some members of the Senate, including the Senate President, in order to inflate their budget (*ThisDay*, 23 March 2005). These practices were not new occurrences in Nigeria. During the Obasanjo years, however, EEP succeeded in persuading the public to acknowledge that these acts were assuming a frightening dimension, thereby attracting the attention of public authorities.

Before the intervention of EEP, most of the steps taken by the Obasanjo government to curb these malpractices proved to be ineffective. One of them was the adoption of the Examination Malpractice Law No. 33 of 1999. Although widely hailed as a necessary step in the fight against examination malpractices, this law was rendered ineffective by lack of implementation. Up until the time Obasanjo left office in May 2007, nobody had been convicted under the law. On 29 March 2004, the Federal Ministry of Education issued a strong warning to all institutions involved in these practices, stating that they would no longer be recognised as examination centres. Any institution caught involving itself in these acts, according to the directive, would be suspended for six years by the government. The ministry also directed the various examination bodies in the country to begin the publication of the names of schools, teachers, and principals of schools involved in examination fraud (*ThisDay*, 30 March 2004). All this was not enough to arrest the practice. Some states, notably Ondo State, later joined in the struggle against examination fraud, by adopting similar positions or measures, including their own anti-examination fraud legislation (*The Punch*, 29 November 2005). According to a law adopted on 28 November 2005 by Ondo State, any principal, teacher, or individual charged with conducting examinations who engages in examination fraud or encourages such practices would be liable to imprisonment for up to four years. Students who were implicated in such crimes could earn a three-year prison term, with the option of a fine amounting to N50,000. To facilitate the implementation of this law, an institution was established: Ondo State Examination Ethics and Disciplinary Committee. This institution, and all the other measures taken, ultimately proved ineffective.

The situation, however, took a more positive turn with the arrival of the EEP, which in the end did more than any other institution (including the government) to tackle the problem of examination malpractices. Through the EEP, the nation learnt that examination fraud in Nigeria was big business, sometimes perpetrated by organized syndicates. According to one of its reports, examination malpractice was a business exceeding N100 billion annually (*The Punch*, 20 May 2005). But how did the EEP, a local NGO, manage to have so much impact where the government had failed so dismally?

To tackle the problem of widespread examination malpractice, the EEP first began by launching workshops, seminars, and conferences for students, parents, teachers, and those running the educational institutions. It also organized what it called ‘Exam Ethics Week’, celebrated every year with the participation of the principal actors in the education sector (*ThisDay*, 30 May 2004). But more importantly, it published a report on examination fraud and a National Exam Malpractice Index (EMI, a ranking of Nigeria’s 36 states and the 6 geo-political regions, according to the level to which their students were implicated in examina-

tion malpractices) each year. The aim of this exercise was to attract the attention of the public to these crimes. The EMI was based on the conduct of students during the Senior Secondary Certificate Examination (SSCE), organized by the West Africa Examination Council (WAEC) and the National Examination Council (NECO). The report for the year 2004, published on 5 October 2005, confirmed that examination fraud had increased by 276% between 1999 and 2003 According to figures released by the EEP, the rate of increase between 2003 and 2004 was only 40%, confirming the effectiveness of its intervention. The conclusions of the report also drew a correlation between corruption among political actors and examination fraud, when it noted that "there is direct relationship between examination malpractices in educational institutions and corruption in the wider society" (*Vanguard*, 18 October 2005).

To further its struggle, the EEP wrote petitions to the authorities (including the Police, EFCC, and ICPC) in which the names of certain individuals and educational institutions involved in examination fraud were noted. One of the petitions submitted to the EFCC and written on 29 April 2005 demanded investigations into reports published in local media, which indicated that certain university vice-chancellors had paid bribes to officials of the Ministry of Finance in order to access their budgetary allocations. A second petition, dated 16 May 2005, was addressed to the ICPC. It contained the names of individuals and educational institutions allegedly involved in examination fraud in the university entrance examination, the Joint Admissions and Matriculation Board Examination. A third petition, also written on 16 May 2005, was to the Inspector General of the Nigerian Police. This petition demanded an intensification of investigation of examination malpractices, the publication of the reports of such investigations, and the prosecution of those individuals and institutions indicted (*ibid.*).

Thus, even though the efforts of the EEP did not succeed in wiping out fraud and corruption in Nigerian educational institutions, they nevertheless succeeded in forcing the problem to the top of the national policy agenda, and in some instances forced the authorities to invoke preventive or punitive measures (arrest, criminal pursuit, and administrative sanction, including dismissal from office) against individuals implicated in these practices. This was a rare success for an NGO in Nigeria.

- Convention on Business Integrity (CBI)

The Convention on Business Integrity, led by some well-known Nigerian intellectuals, including Dr. Christopher Kolade, Professor Alex Gboyega, and Professor Ladipo Ademolekun, was another NGO dedicated to combating corrupt practices in Nigeria during the Obasanjo era. The CBI was actually the first anti-corruption NGO created under the Fourth Republic. It was created in 1999 spe-

cifically to fight corrupt practices among private companies, especially those that do business with the state. This was thought to be necessary at a time when the government's anti-corruption drive was largely focused on the public sector.[6] This vision or mission allowed it to create and maintain relations with several other anti-corruption NGOs and private companies, all in a bid to advance the struggle against corruption in the private sector.

But even though it was mainly concerned with corruption in the private sector, the CBI was not oblivious of the fact that widespread corruption in the public sector can hamper business. The CBI was also engaged, therefore, in the lobbying of government officials with a view to persuading them to adopt and implement governance reforms. In furtherance of this objective, it financed several research studies and published reports justifying the adoption of specific governance-enhancing policies.

At the end of Obasanjo's rule, however, the CBI's only significant achievement was the development and adoption of a Code of Business Integrity, also known as the Business Integrity Pact, which obliges all the firms and institutions who are signatories to the pact to abstain from all types of corrupt practices, particularly the payment of bribes in order to win contracts. Thus, although its activities received much support from international organizations, including SAPAG and DFID, which bankrolled some of its key projects, the CBI could not make much impact on the anti-corruption agenda.

- African Network for Environmental and Economic Justice (ANEES)

The African Network for Environmental and Economic Justice, led by Reverend David Ugolor, is one of the few NGOs based outside Abuja and Lagos, Nigeria's political and economic capitals respectively. It has its capital in Benin City, the capital of Edo State, in the South-South Region. The ANEES, partly because of its unique geographic location (Edo State is one of the oil-producing states in the Niger Delta), largely focused its attention on the sale and management of oil revenue, and in particular on the financial activities of the oil-bearing states of the Niger Delta region, namely Akwa Ibom, Cross River, Rivers, Bayelsa, Delta, and Edo (*ThisDay*, 31 January 2004). Within this limited context, the NGO was able to push aggressively for reforms.

In December 2004 it organised, with the support of the Heinrich Böll Foundation, a meeting which united 53 individuals representing NGOs, community-based organizations, universities, the media, and other groups. At the end of their

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[6] Until 2003, there was no effective mechanism for dealing with fraud and corrupt and unethical practices among managers and employees of private companies. The ICPC, established in 2000, was not empowered to investigate fraud or corruption within the private sector. This lapse was corrected only with the establishment of the EFCC in 2003.

meeting, the participants demanded the repeal of the immunity-granting Section 308 of the Constitution. The meeting also announced their determination to put in place a common institution, the NigerDelta Budget Monitoring and Transparency Network, which will monitor federal allocations to and management of funds by the six states in the South-South region. The meeting further resolved that

> [T]he governors of the region should publish details of revenue accruing to their states since 1999 in local and national media for public scrutiny … Government at all levels (should) provide quarterly independent audit reports of their annual budget for public consumption … (and there should be a) quick passage of the Freedom of Information Bill by the Senate to make information available on the operations of government to Nigerians. (*The Punch*, 23 December 2004).

The ANEES was also very much involved in pushing for policies seeking to promote transparency in the mining and petroleum sectors. At this level, its actions were mainly directed towards the Nigerian Extractive Industry Transparency Initiative, NEITI, (ANEES 2007). Thanks to the ANEES and other allied NGOs, a comprehensive study or audit of the Nigerian petroleum sector from 1999 to 2004 was carried out in 2005. The analysis of the report of this study, which found that many oil companies and public institutions were engaging in fraud, including tax evasion,[7] was published in February 2006 (*ThisDay*, 19 February 2006). Unfortunately, after this event, the NGO could not record any other major breakthrough in its fight against graft in the Niger Delta.

*Political NGOs and movements*

Paradoxically, the most radical measures against corruption or persons perceived to be corrupt were engaged in by groups and movements founded by politicians and other politically motivated individuals. One example, as we already saw, was in 2001, when a former ally of ex-governor Alamieyeseigha of Bayelsa State instituted a court action before an Abuja High Court, in which he accused the governor of mismanaging the oil revenues accruing to the state. In his suit, he also requested the court to order the establishment of a special account to manage all the resources for the development of the state (*Newswatch*, 14 October 2005). However, this plea was rejected by the court, which maintained that the petitioner lacked the *locus standi* to institute the case in the first place. This sad outcome did not prevent other groups from pursuing the same course of action. Thus, in 2005 another suit was instituted by a group of citizens, this time seeking

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[7] Some of the companies named included Chevron, Amni International Petroleum, Texaco Overseas, Agip Energy, Nigerian Petroleum Development Company, Pan Ocean Oil, Moni Pulo Ltd., Dubri Oil, Addax Petroleum, Continental Nigeria Ltd., and Cavendish Petroleum Ltd. The loss in state revenue arising from the fraud perpetrated by these entities was estimated at $509.7 million (N71 billion) in 2006. The public institutions which were responsible for this fraud were the Central Bank of Nigeria (CNB), Nigerian National Petroleum Corporation (NNPC), and the Federal Inland Revenue Service (FIRS).

to halt illegal payments to members of the Bayelsa State House of Assembly, payments being made under the pretext that they were going to initiate some development projects in the members' respective communities (*The Guardian*, 10 August 2005). Again, this suit also did not produce the anticipated result before Mr. Alamieyeseigha was finally impeached in December 2005 for corruption.

Similar initiatives were also seen in other states of the federation. One example was the case of an Akwa Ibom-based lawyer, Assam E. Assam, who wrote several petitions to the EFCC beginning in 2006. In one of his petitions, he alleged that the governor of his state (Akwa Ibom), Victor Attah, and his associates looted billions of naira from the state treasury through white-elephant projects and contract scams. Most of the contracts were not only inflated but were awarded to the governor's private companies and cronies without following the necessary procedures. One of the dubious contracts executed, according to Mr Assam, was the purchase of 1,000 luxurious BMW cars (*Newswatch*, 3 April 2006). The authorities later confirmed that a purchase was made, but that only 140 cars were bought. However, the petition did not produce its intended result – the prosecution of Governor Attah and his allies – up to the time the governor left office in May 2007.

In the northern state of Bauchi, widespread fraud, waste, and diversion of public funds by constituted authorities also forced some citizens to form local anti-corruption associations. Through the activities of these movements, some of the serious fraud committed by public officials in this state was brought to public knowledge. One of the most significant revelations concerned the purchase of over N4 billion worth of luxury vehicles, in a state ravaged by high incidence of poverty and illiteracy. According to these civil society actors, these vehicles were overpriced, a good example being the purchase on 26 January 2001 of four Toyota (4x4) vehicles, at a staggering cost of N360 million or N90 million ($750,000) each. Several state officials, according to these groups, grew rich from this fraud, including the state governor, Ahmadu Adamu Mu'azu, who was able to construct personal buildings around the country, including 18 houses in Abuja alone. Between October 2005 and January 2006, these groups sent at least three petitions to the EFCC and ICPC, accompanied by documents and other proofs (*ibid.*).

The activities of these groups, notably those of the Committee of Patriotic Citizens of Bauchi State (CPCBS) and the Patriotic People of Bauchi State, did not end with sending petitions alone. On 24 January 2006, the CPCBS launched a suit before an Abuja High Court, requesting the court to order the EFCC to begin investigations into the activities of Governor Mu'azu and other officials implicated in financial fraud. Unknown to it, both the EFCC and the ICPC had already commenced investigations on the basis of the petitions. That the efforts of these

movements could provoke investigations by these bodies shows how relevant they are to the anti-corruption fight.

In Kwara State, also in the northern part of the country, a group known as Kwara Ekiti Indigenes (KEI) also made similar moves, when it sent a petition to the highest regulatory organ for the judiciary in Nigeria, the National Judicial Council (NJC), protesting the appointment in January 2006 of a Chief Judge for the state. According to KEI, Justice Saka Yusuf had falsified his age in order to qualify for the post of Chief Judge of Kwara State and therefore had to be removed from his position. The law required that any judge who attains the age of 65 or had spent 35 years in service must proceed to compulsory retirement. But according to data supplied by the judge himself (and posted on the state's personnel list), he was born on 25 December 1940 and joined the public service on 7 July 1975. On 23 January 2006, KEI announced that it had found a document in the custody of the Registrar of the Federal High Court at Ilorin (capital of the state), which showed that the judge in question was actually born on 26 June 1936 and had joined the judicial service on 15 February 1972 (*The Guardian*, 10 April 2006). If we accept the first document, the judge was 66 years, while according to the second, he was 69 years old at the time of his appointment as Chief Judge of Kwara. In the end, their petitions forced the NCJ to write to the judge demanding an immediate explanation for the "serious discrepancies" observed in his records, although no disciplinary action was subsequently taken.

Similar initiatives were also used by other civil society actors against officials of the national government, a good example being the suit by Gani Fawehimi, a well-known social critic and good-governance advocate, against President Obasanjo over some corrupt practices. Specifically, Obasanjo was accused by Mr. Fawehimi of organizing a launching event, using some intermediaries, during which he received cash gifts totalling N7 billion under the pretext that the money would be used to construct a Presidential Library in his home town at the end of his tenure in 2007. In his suit, instituted on 23 July 2005, Mr Fawehimi called for a thorough investigation by the ICPC and EFCC of all contracts awarded by the government of Obasanjo since 1999, the sources of the funds given for the construction of the Presidential Library, and its confiscation by the court. More importantly, he requested the court to declare that

> Obasanjo's (action), in launching the library and receiving monetary gifts from government contractors and beneficiaries while still exercising powers as President and Minister of Petroleum Resources, amounts to corrupt practices and abuse of power contrary to Section 15 (5) of 1999 Constitution; and also a flagrant disregard of the Code of Conduct for public officers contained in Item 1 Fifth Schedule, Part 1 of same Constitution. (*ThisDay*, 24 May 2005).

Fawehimi's suit had not succeeded up to the time Obasanjo left office in May 2007.

In June 2003, a little-known NGO called Legal Defence and Assistance Project (LEDAP) commenced its own legal proceedings before a Lagos High Court against the wives of the President, Mrs Stella Obasanjo (now deceased),[8] Vice-President, Mrs. Titi Abubakar, and 22 other persons, all wives of state governors. The suit was intended to force these individuals to account for the large sums of money they had allegedly received in the name of foundations[9] created by them (*Vanguard*, 28 January 2004). It was in the same vein that the Socio-Economic Rights and Accountability Project (SERAP) launched a suit in June 2005 before a Lagos High Court against the Code of Conduct Bureau, one of the national institutions put in place to fight corruption. SERAP was irked by the Bureau's "negligence in carrying out proper investigation and making public names of public officers keeping and running foreign accounts while still in government".[10] During the proceedings, SERAP demanded

> an order of mandamus compelling the bureau to immediately investigate all serving public officers running, keeping and maintaining foreign accounts … an order compelling the Bureau to publish the names and identities of such serving public officers that have been investigated by it and to publish the outcome of its investigation (and) to compel the Bureau to embark on the prosecution of such serving public officers who are keeping, running and maintaining foreign accounts, before the Code of Conduct Tribunal as envisaged by the Tribunal Act, Cap. 56 Laws of the Federation 1990. (*Vanguard*, 3 June 2005)

It is important to note that SERAP was also responsible for a petition in April 2006 to the UN Special Rapporteur on the Right to Education. This petition called the attention of the Special Rapporteur, Vernor Munoz, to the massive diversion of funds meant for Universal Basic Education, a programme of the federal government launched in 1999 to give at least nine years of free education to Nigerian children. According to the NGO, massive fraud and corruption orchestrated at all levels of government by state officials, who refused to halt the practices, especially in the educational sector, had led not only to the non-education of five million children, but also "failure of the government of Nigeria to train the required number of teachers, gross under-funding of the nation's educational institutions, lack of motivation of teachers, non-available class rooms seats and pupils sitting on bare floor, non-availability of books and other teaching materials" (*Vanguard*, 21 April 2006). In its view, therefore, an investigation of the is-

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[8] Mrs Stella Obasanjo died in November 2005 in a Spanish hospital.

[9] The foundations in question included Women Trafficking and Child Labour Eradication Foundation (established by the wife of the Vice-President, Titi Abubakar); New Era Foundation (run by Lagos State First Lady, Oluremi Tinubu); Idia Renaissance (a pet project of Mrs Eki Igbinidion, wife of the governor of Edo State); and Delta Manna Foundation (which was owned by the wife of the governor of Delta State). Indeed, virtually all the 'first ladies' in Nigeria were involved in one NGO or another.

[10] The Code of Conduct Bureau was charged with the responsibility of ensuring that all public officers declare their assets at regular intervals and refrain from keeping foreign bank accounts. It also monitors their asset declaration forms, which cannot be released to members of the public, to ensure strict compliance.

sue by the UN was urgently needed to exert pressure on the Nigerian authorities in order to get the latter to respect their obligations relative to cultural, social, and economic rights (*ibid.*).

Clearly, NGOs and social groups have played an important role in the fight against corruption, initiated by the Obasanjo administration. Even though they played marginal roles during the formulation of some of its anti-corruption programme, these NGOs sought to contribute to its implementation. This has been repeatedly confirmed by several events. Their inclusion and active role in the comprehensive audit of the Nigerian petroleum sector (1999-2004), a project that was completed in 2005 as part of the Nigerian Extractive Industry Transparency Initiative (NEITI) (Akosile 2006) and published in February 2006 (*ThisDay*, 19 February 2006), is one example. The formulation of new policy on recruitment, promotion, and discipline of police officers announced on 14 March 2006[11] is another one (*The Punch*, 15 March 2006). Indeed, it would seem that these NGOs have succeeded in forcing the government to consider them as important partners in the actualisation of the anti-corruption project.

But despite making substantial inroads into the policy implementation process, these institutions proved incapable of influencing in a sustainable way government policies and the behaviour of government officials. This was clearly demonstrated by their collective failure to force the adoption of the Freedom of Information Bill.[12] In other words, the effectiveness of these organizations has been very limited. The limited access to information about government activities was the main obstacle faced by these non-state actors, but other factors were also crucial.

Firstly, these associations lacked sufficient resources and the competence necessary to make them credible watchdogs over government. The overwhelming majority of them survived thanks to funds from foreign actors (Western governments, donors and NGOs, or international financial institutions). The consequences of this were not very positive. These NGOs were frequently denounced by citizens and government as "agents of imperialism because they receive funds from outside and are often managed by Nigerians who studied in the West" (Pérouse de Montclos 2005: 129). Many others, who were not funded by foreign organizations, were firmly under the control of politicians. In other words, only a few could pass as professional associations genuinely engaged in the promotion

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[11] This policy was prepared by the Police Service Commission (PSC) in collaboration with two local NGOs, CLEEN Foundation and Open Society Justice Initiative. According to the policy, 85% of police recruitments will now be based on merit, while 10% are to be reserved for women.

[12] The Freedom of Information Bill was submitted to the National Assembly for consideration in July 1999, but was passed into law only in 2011. Thus, despite pressures from NGOs, notably Transparency in Nigerian, Media Rights Agenda, and many others, the bill remained in the National Assembly for twelve years.

of good governance. Most were largely 'local political movements',[13] formed, financed and manipulated by politicians to advance vested interests, including exposing and discrediting their political rivals (Amakiri 2004). Many NGOs themselves also fell prey to corruption scandals, because of the rent-seeking behaviours of their leaders[14] (*Newswatch*, 27 October 2003).

If anti-corruption NGOs and associations produced mixed results in their battle against corruption in government, other institutions or organs of civil society, notably labour unions, professional associations, and religious organizations, were a complete failure.

*The labour unions*

Although labour unions are well known for their popular struggle for the improvement of the well-being of the downtrodden, their participation in the struggle against corruption in Nigeria has hardly been contemplated. This is notwithstanding the strong repercussions of corrupt practices on the well-being of workers, and the unions' large membership, which stood at 4 million spread across 42 affiliate unions in 1995 (Otobo 1995: 35). Better known as Organized Labour or the Nigerian Labour Congress (NLC), these unions did not change their attitude to corruption following the arrival of Obasanjo. Their attention continued to centre on issues that touch 'directly' on the well-being of workers (salaries and indemnities, conditions of service, retirement, redundancy, etc.). A common explanation for this was the association of corruption with politics. The position of labour, which was generally expected to stay out of party politics,[15] was to leave the issue to the government of the day.

Much later into the regime of President Obasanjo, however, labour unions began to take more than a passing interest in the anti-corruption fight championed by the Obasanjo administration. The unions seemed to have finally discovered, after waiting in vain for the promised democratic dividends to materialise, that

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[13] Some good examples were the Bayelsa Transparency Initiative (BTI) in Bayelsa State and the Zamfara Patriotic Alliance (ZPA) and the Global Network for Islamic Justice (GNIJ) in Zamfara State. The first two NGOs were created and financed by politicians who were opposed to the administration of the governors of Bayelsa and Zamfara states, respectively, while the last NGO was created to help enforce the *Shari'ah* code instituted by the governor of Zamfara State. The BTI was originally responsible for the petitions against the Bayelsa governor, before later transforming into an ally of the governor. However, when it wrote to the ICPC to withdraw its petition, its request was denied.

[14] Several associations were affected by this problem, including the Committee for Defence of Human Rights (CDHR), a well-known NGO that in October 2003 was divided into two warring camps. According to one local weekly magazine, *Newswatch*, "the real bone of contention was the struggle to take charge of the N30 million grant given by the Ford Foundation". One observer quoted by the magazine described the warring parties as "wolfs in sheep clothing who claimed to be defending the interests of the masses but are actually fighting for their pockets".

[15] Some labour leaders have tried to reorganize the movement into a 'labour party'. All of these efforts have so far ended in failure.

the well-being of their members and that of other members of the public were inseparable from the conduct and activities of political leaders. Slowly the unions began to take, with some reluctance, several initiatives aimed at supporting the war against corruption. One of the steps taken by the unions was their criticism of some of the measures engaged in by the Obasanjo administration in its bid to fight corruption as inadequate, or even hypocritical. In one particular comment in 2004, the President of the NLC, after reviewing Obasanjo's effort to combat corruption, observed:

> Five years into democracy, Nigeria is rated second most corrupt nation. This means things have not changed since five years ago … Even in government circles, there is complete confusion about how to proceed. People steal, not because they needed it, but out of habit and as a way of life. And when they steal, they do that invariably out of government treasures … When I see the President lament about corruption, I also think of other tools available. There has to be a system of reward or sanction that must be awarded subtly. This government has rewarded corrupt people. Look at the yearly honours lists, people who are known with one character or the other have been listed. (*ThisDay*, 8 November 2004)

After that speech, the NLC took a few more concrete steps against specific government policies and institutions considered as going against the anti-corruption policy. One example was the letter addressed to the Governor of the Central Bank of Nigeria in April 2005. In the letter, the NLC expressed its strong disappointment with and disapproval of the bank's decision to write off N82 billion in debts owed it by eight distressed private banks. In its opinion, the debt write-offs were another form of "subsidising mismanagement of resources and criminal abuse committed by bank directors", who in its opinion should be investigated. In the same petition, the NLC also protested against the bank's donation of N50 million to certain committees of the National Assembly, reasoning that this was an attempt to bribe legislators who were opposed to the reforms announced by the bank. A copy of the letter was sent to the President, requesting his intervention in the matter (*ThisDay*, 4 April 2005).

Similar measures were directed at some public officials suspected of involvement in corruption. One of them was the petition sent to the anti-corruption agencies (the ICPC and EFCC), the Police, and the President and Commander-in-Chief, in May 2004 alleging corrupt diversion of public funds by the Senate President and some of his colleagues in the Senate. These public officials, according to the NLC, had awarded several phoney contracts. They had also shared N1.1 billion and incurred huge expenses through many official trips and medical treatments overseas. In the petition, the NLC noted:

> The immediate challenge for your agencies is to live up to their mandate of enforcing the law by investigating these allegations … If we fail to handle this matter in accordance with the law, the corruption perception crisis that the country faces worldwide would worsen. In addition, the government will have no moral authority any longer to call on the workers and peo-

> ple of Nigeria to make sacrifices in the national interest, nor even to pay taxes since there is no certainty that their taxes will not end up in private pockets. (*ThisDay*, 17 May 2004)

The unions also indicated that if these institutions refused to act on its petition, "(c)ongress shall have no alternative but to mobilize its membership and taxpayers against these agencies of the executive branch … in the quest of the right to know and the rule of law" (*ibid.*).

This threat was never carried out by the NLC, nor was any action taken against the accused officials. The Senate simply opted for a 'political solution', meaning that the Senate President and his colleagues were pardoned after offering their apologies.[16] The inability of the NLC to take a strong stand against corruption and thus influence the anti-corruption war can be explained by several factors. Notable among them were the precarious economic situation of the average Nigerian worker, ignorance among a great number of workers, the dubious links with politicians maintained by some labour leaders, and the ethno-regional differences that define politics in the country (Otobo 1995). A fifth – and perhaps the most important – factor responsible for the incapacity of the labour unions was the problem of credibility, deriving from the involvement of labour leaders in the same practices.

The question of the credibility of civil society groups can be better appreciated when one considers the role of professional associations.

### *Professional associations*

Before the commencement of the Fourth Republic, the very idea of professional associations (lawyers, university teachers, bankers, accountants, auditors, doctors, journalists, etc.) participating in the fight against corruption was almost unthinkable.[17] Nevertheless, these associations are very influential institutions, capable of playing significant roles in the running of any society. The Nigerian government understood this fact quite well, even though these associations themselves seemed unaware of the extent of their power. Right from the launch of the anti-corruption campaign, the role of these associations in promoting public policy in general, and anti-corruption policies in particular, was frequently stressed. This role can be examined from two perspectives.

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[16] The Senate President lost his position in March 2005 after investigation by the EFCC indicted him for demanding and receiving N55 million in bribes from officials of the Ministry of Education, allegedly to inflate the ministry's budget.

[17] Some of the best-known professional associations in Nigeria include the Nigerian Bar Association (NBA), the Institute of Chartered Accountants of Nigeria (ICAN), the Institute of Chartered Management Auditors, the Nigerian Institute of Public Relations (NIPR), the Nigerian Union of Journalists (NUJ), the Nigerian Medical Association (NMA), the Nigerian Union of Teachers (NUT), and the Academic Staff Union of Universities (ASUU).

Firstly, a considerable number of' individuals who are involved in corrupt practices are themselves members of professional associations. During the 33rd Annual Accountants' Conference, organized by the Institute of Chartered Accountants of Nigeria (ICAN), in Abuja on 21 October 2003, President Obasanjo made this point clear, especially as it affects the local level of government. According to Obasanjo,

> [A]t their inception, local government areas were perceived as veritable mechanisms for the development of rural areas. What we observed since May 1999 is complete aberration. There is nothing to show for the disbursement of huge funds to the 774 local governments in the country … Without doubt, the waste was possible partly because of the absence of honest and dedicated chartered accountants in most of these local government areas. In some cases, accountants or otherwise have collaborated with fraudulent public officials to defraud government. (*ThisDay*, 22 October 2003)

Therefore, it could be reasoned that if these associations could design measures to sanction their members who are found to be corrupt, the government's anti-corruption campaign would be greatly boosted. Indeed, the growing involvement of these professionals in corruption – notably lawyers (who pay bribes to judges in the course of court trials), bankers (who orchestrate frauds which have been responsible for the collapse of several banks), and accountants and auditors (who initiate, aid, and abet fraud in the numerous audit and account departments of public and private institutions) – led to repeated calls from President Obasanjo on the leadership of these associations to act.

Pressures from Obasanjo actually produced some reactions from some of these associations. For instance, in 2006 the Nigerian Bar Association (NBA) announced its intention to begin to investigate and possibly sanction any of its members implicated in corruption (*ThisDay*, 14 March 2006). This threat, however, was not followed through, even when one of its prominent members, the former Inspector General of Police, Tafa Balogun, was indicted and subsequently convicted for massive diversion of public funds amounting to N17 billion (*ThisDay*, 22 November 2005). The first real sanction came from the Institute of Chartered Accountants of Nigeria (ICAN), which expelled one of its members in March 2006. Ironically, this individual committed the offence while working as a manager in the finance department of ICAN located in Lagos. He was said to have diverted some N93,000 from the accounts of ICAN. The sanction precluded him from working as a chartered accountant in the country. This case was one of several cases brought before the Accountants Disciplinary Tribunal, set up by ICAN to deal with fraud orchestrated by members of the association (*The Guardian*, 9 March 2006). Similar action was taken by the Chartered Institute of Stockbrokers (CIS), which suspended one of its members for three months for "indiscriminate sale of some shares" belonging to his clients, an act which violated the

ethics of the profession. Several other corruption cases were also said to be before CIS's disciplinary panels (*The Guardian*, 20 April 2006).

Secondly, the role of professional associations does not stop with the application of sanctions on members accused of unethical conduct and corruption. The knowledge and advice of these associations can also be indispensable for the government in the design and application of anti-corruption policies. The only problem is that the government did not take any meaningful measure to tap the knowledge and advice of these actors. Government's lack of confidence in professional associations was underlined by the crisis which erupted between the ICPC and the National Assembly in 2003, when the former attempted to investigate the financial activities of the latter. To ward off the ICPC challenge, the legislators decided to amend the ICPC Act to reduce its powers and get rid of its chairman. During the amendment procedure, the NBA was invited to provide some input. When the association gave an opinion contrary to the expectation of the legislatures, its opinion was ignored and the amendments which they criticised were adopted (*The Guardian*, 24 February 2003). The level of involvement of professional associations in Obasanjo's anti-corruption fight was correctly summarised by the President of the Nigerian Institute of Public Relations (NIPR), Senebo Sofiri Brown, in the following way: "civil society has not been fully mobilized and given access in the country to become direct stakeholders participating in shaping policy and helping in the governance process. That is why Obasanjo (was) the only evangelist in the forest on the issue of corruption" (*ThisDay*, 14 December 2003).

*Business associations and employers of labour*

Business associations, better known as the organized private sector, are made up of the heads of private, and to lesser degree, public commercial firms, and the organizations themselves are grouped in various associations according to their line of business. Good examples of the latter include the Nigerian Association of Chambers of Commerce, Mines and Agriculture (NACCIMA), which unites all the different chambers of commerce; the Bankers' Committee (bringing together all the managing directors of banks and the Governor of the Central Bank of Nigeria, who chairs the body); the Institute of Directors (IoD), made up of managing directors of leading private companies; the Manufacturers Association of Nigeria (MAN); and the Nigeria Employers Consultative Association (NECA). For obvious reasons, these associations have shown more interest in the anti-corruption programme initiated by Obasanjo than labour unions or professional associations.

Firstly, the consequences of widespread corruption – including weak economic growth, insecurity of private investments, lack of necessary public infra-

structure, and poor or uncertain business climate – impact more directly on the operations of businesses than on, for example, professional associations. Private companies are generally considered the main victims of corrupt practices, particularly extortion perpetrated by public institutions or officials – although in reality, private businessmen also promote corruption in public institutions through bribery and collusion with public officials. A second reason why businesses appeared to be more interested in the war against corruption was because fraud and other corrupt practices perpetrated by agents of private enterprises against their principals were also on the rise in the country. Ernest Shonekan, former Head of State of Nigeria (August-November 1993) and chairman of several private companies, summed this up as follows: "although the focus when we talk about corruption in Nigeria is typically the public sector, it is fair to say for all practical purposes that the private sector organizations also serve as agents of corruption. It is also true that private sector organizations could end up being victims of corruption" (Shonekan 2003, cited in *ThisDay*, 1 December 2003).

To assist the government to wipe out corruption, the organized private sector adopted two approaches, which were pursued simultaneously. The first approach involved putting pressure on the government to adopt reforms, through lobbying of key political actors (the President, ministers, members of the National Assembly, etc.). One way this was done was by releasing memoranda, especially during the preparation of national budgets. This was a good means for the employers to express their concerns and defend their interests on public policies, such as the anti-corruption campaign of the government. One such memorandum, published in October 2003 and signed by the MAN, NECA, and NACCIMA noted:

> Except corruption is minimised, our quest for foreign investments would not be realised … Government should not relent in its efforts to wipe out the cankerworm, no matter the pressure from various quarters. The *modus operandi* of the anti-corruption law should be expeditiously reviewed, and immediate prosecution of offenders, particularly those that are highly placed, should be carried out … This will send a signal of the seriousness of government on this matter … Public-Private sector partnership in the monitoring of projects should be ensured. All stakeholders in the economy (government, private sector businesses, religious bodies, cooperative associations and the civil society) should be encouraged to form coalition to monitor public sector projects and report regularly on the state of implementation to the public. This will minimise corrupt practices and ensure timely completion of projects … Government should emphasise the need to implement reforms, such as tender procedure, procurement system and asset declaration system, etc. to ensure greater transparency in the system … There should be much leadership by example in the anti-corruption crusade. The Executive, Legislative and Judicial arms have joint responsibility in this matter while all operators in the private sector of the nation's economy must also fall in line. The bad eggs still in public and private sectors should be exposed and made to face prosecution by the Anti-Corruption Commission. The Anti-Corruption Commission should be refocused and well equipped, in terms of manpower and funding, and be given the power to bite. (*The Guardian*, 20 October 2003).

The second approach involved introducing some reforms and anti-corruption mechanisms in their own institutions, as required by the 'Code of Best Practices for Corporate Governance in Nigeria' (*ThisDay*, 17 November 2003), established by the Obasanjo government. A good example of such mechanisms was the Business Ethics and Arbitration Committee, established by the NACCIMA. This institution was responsible "for stamping out corruption and other business malpractices as much as possible and ensuring the implementation of the NACCIMA code of ethics for transacting business (which prohibited the payment of bribes to public officials) by members of the chamber having signed the code of 'islands of integrity' pact to combat corrupt acts" (*ThisDay*, 1 December 2003). The committee also worked out ways to support the federal government in drastically minimising the incidence of corrupt practices, with a view to restoring the confidence of investors once again in the Nigerian economy (*ibid.*). There was also, this time from the Banker's Committee, the Sub-Committee on Ethics and Professionalism, established in December 2001 to "identify practices considered unethical in the industry, develop an acceptable code of ethics and professionalism as well as put in place effective machinery for enforcing compliance with the code" (*ThisDay*, 23 December 2003).

According to figures published by the Sub-Committee on Ethics and Professionalism, petitions against bank workers reached 240 in December 2003 (*ibid.*). Even though the report of this body could lead to the suspension or even dismissal of any banker indicted for unethical conduct, there is no evidence to prove that this body has been effective. Indeed, the increasing number of cases of fraud reported by the regulatory authorities, notably in the banking sector (Federal Republic of Nigeria 1999-2007a, 1999-2007b), is an eloquent testimony of the weak commitment or failure of the leaders of these organizations to stamp out corruption in their midst.

*Ethno-religious organizations*

The campaign against corruption launched by Obasanjo brought to the fore the question of the role of religious and cultural movements in any effort to promote good governance in Africa. In the literature on African politics, religious and cultural movements are usually portrayed as primitive organizations which are obstacles to political stability and good governance and therefore undeserving to be included as members of civil society. These analyses hide or underestimate the historical role these groups have played in Africa, and Nigeria in particular, as agents of change, development, and modernisation. Furthermore, non-state actors do not have to play 'positive' roles all the time to be considered as members of civil society. In any case, whether religious and cultural movements play positive or negative roles in the political process of a nation depends on other system-

specific factors. For instance, their role in the attempt to combat corruption in Nigeria has been largely negative because these organizations have for too long been politicised in Nigeria, becoming part of the struggle for control of political power and economic resources. These movements also failed to play constructive roles in the struggle against corruption because they themselves had been infiltrated by the same scourge of corruption.

During Obasanjo's eight-year campaign against corruption, religious and cultural movements regularly denounced corruption and abuse of office by public officials, which they saw as threats to national development. They also repeatedly called on government to tackle these vices vigorously. Yet these organizations did not hesitate to protect and defend their members when they were accused of the same corrupt practices they were denouncing. More importantly, these groups, especially religious bodies, were themselves not immune from corruption. Indeed, many religious leaders and institutions were accused of different types of corrupt practices,[18] ranging from financial exploitation of their adherents to diversion of funds belonging to their organizations (Magbadelo 2004; *Vanguard*, 27 April 2005; *Daily Independent*, 11 July 2006). Religious institutions, especially the churches and mosques, also attracted strong criticism for their tendency to tolerate, if not promote, their members who are known to have acquired their wealth through questionable means. Indeed, in one of his speeches, President Obasanjo, a self-proclaimed 'born-again Christian', denounced this collusive behaviour:

> From one end of the country to the other, from one church to another, we are unanimous in our condemnation of corruption. Nevertheless, corruption continues unabated in our country … I appeal to you to reject offerings from those whose earnings have come under justifiable suspicion. It is condemnable that today some of our churches give places of rank to those who thrive on corruption … The Church will never be able to exonerate itself if our country remains corrupt. (*The Guardian*, 16 November 2004)

Nevertheless, experience in Nigeria since the days of the struggle to install democratic rule in the 1990s, and in many other countries, shows that socio-cultural associations – especially religious and ethnic associations, which com-

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[18] In March 2006, a priest in an Anglican Church located in Abeokuta, Ogun State, was suspended by his congregation and ordered to submit himself for investigation by a committee set up by the church. He was accused of demanding and receiving bribes of N300,000 from a private company which won a contract of N1.4 million for the installation of a standard public address system. Mindful of the possibility of a cover-up, some members of the church even threatened to lodge complaints with the EFCC (*Vanguard*, 27 April 2005). In a similar incident, a pastor in one of the branches of the Celestial Church of Christ (one of the largest churches in Nigeria), Paul Maforikan, was dismissed in July 2006 for diverting N50 million belonging to the church. A statement was released by the church confirming his complicity: "We have for sometimes now condoned Pastor Maforikan and can no longer bear his attitude. The Church is bankrupt. It is a pity that a Church leader would take all the money belonging to the Church, he has fraudulently liquidated the account of the Church to the tune of N50 million. We hereby remove him as our head and appoint another person to take over from him" (*Daily Independent*, 11 July 2006).

mand much legitimacy and influence in Africa – can participate in the struggle for good governance (Otayek 2002: 194). This fact was acknowledged by President Obasanjo, who several times called on these institutions to join in the fight against corruption. In one of his speeches, the President stated that "(t)he challenge before the church today is to make Christians give up corruption" (*The Guardian*, 16 November 2004). In another statement underlining the role of religious institutions in promoting good moral behaviour in society, the President, after being confronted by evidence of rising cases of extortion and bribery among police officers at all levels, ordered that churches and mosques be constructed in all police barracks to bring police officers closer to God.

President Obasanjo's call received the support of a few religious leaders. Some of these leaders accepted the crucial role and responsibility of the civil society, and religious bodies in particular, in the struggle. Thus, for Kana Mani, the Archbishop of the Church of Nigeria (Anglican Communion) in Maiduguri, Borno State:

> Corruption should be fought at all levels of the nation's life … Nigerians should support the Independent Corrupt Practices Commission (ICPC) in its war against corruption in the country. This is a noble exercise and there should be no sacred cow spared whether the sacred cow is red, blue, tall, fat, short or green. All establishments, including religious bodies must gallantly fight bribery and corruption. (*ThisDay*, 19 November 2003)

The Archbishop of the Church of Nigeria's call was repeated by a handful of other leading religious leaders across the county. But most religious leaders, however, remained indifferent, if not uncommitted. At least two reasons accounted for this position.

The first was a perception, widely shared in Nigeria, that the struggle against corruption was the business of the government. For instance, when Obasanjo suggested that churches and mosques be constructed in all police barracks to bring police officers closer to God, the idea was immediately rejected by several religious leaders, including the Archbishop of the African Episcopal Church, Reverend Emmanuel Odufale, who stressed that "the action was incapable of stamping corruption from the Force except the leaders themselves show good examples and did the right thing" (*The Punch*, 12 August 2005). For a large number of religious leaders, therefore, the fight against corruption was definitely the responsibility of the government of the day. Therefore, when things go wrong, it is because the government has failed to do its job. This is even more the case when the principal offenders are agents of the government.

Secondly, if religious authorities were not active in the struggle against corruption, it was also partly because they viewed the government as insincere or not serious with its anti-corruption policy. Many religious leaders, in a marked departure from the past, made this point by openly criticising the government and

Obasanjo himself for his incapacity or unwillingness to address the problem. One church leader[19] noted:

> So many robbers exist in our tiers of government today. They rip open the treasuries at will, freely roam our streets enjoying encomium from the people whose commonwealth they stole … The people who break into houses with guns are not as bad as the ones we harbour in the various tiers of governments … Obasanjo knows them. It is they he gives employment and appointments to. Most of our politicians are not only corrupt but are thieves. The Independent Corrupt Practices Commission (ICPC) has had so many reports and complaints yet the thieves freely go about the streets flaunting the people's wealth against them. (*ThisDay*, 14 April 2003)

This view was corroborated by another religious leader, who argued:[20]

> Though Government has laws that prescribed penalties for corruption and had gone further to establish commissions like the ICPC, EFCC, among others, it has no tangible result to show for the efforts … It is disheartening that in this country, some public office holders found guilty of corruption are removed from office only to be reappointed into higher positions. This is nothing but a mockery of the fight against corruption … The Federal Government and other stakeholders (should) empower the ICPC and EFCC to enable them carry out their duties effectively. (*ThisDay*, 27 December 2003)

Even more conservative religious groups, such as the Catholic Bishops Conference of Nigeria (CBCN), an association that unites all the Catholic bishops in Nigeria, spoke out against Obasanjo's anti-corruption project, noting that:

> ... morality, integrity and uprightness are daily being called to question. Fraud and deceit have become adopted as a way to success. A great number of people are being poisoned by materialism and dominated by the spirit of consumerism. Corruption has been elevated to a national culture, despite the much touted anti-corruption measures. (The Guardian, 9 March 2004)

These statements show clearly that while Nigerian religious leaders were very much aware of the negative impact of corruption on the daily life of their adherents, they were unwilling to acknowledge the crucial role of religious institutions in promoting public morality.

An ambivalent attitude towards the anti-corruption struggle was even more common among cultural movements or ethnic associations, whose position on the policy tended to fluctuate from support to criticisms, sometimes depending on the perception of political interests at stake. Typically, these actors will usually criticise the governments for not doing enough to fight corruption, denounce people accused of corruption and push for sanctions against them, especially when none of their members is involved. But in other cases, they will denounce

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[19] Senior Apostle J.O. Daniel, president of the Christian Association of Nigeria (CAN) in Kwara State and member of the Cherubim and Seraphim Church spoke at the '63rd Pre-National Conference/Convention Press Conference' of the Cherubim and Seraphim Church Movement, on 13 April 2003.

[20] Reverend Dauda Marafa was a former president of the Christian Association of Nigeria (CAN) in Bauchi State and president of the Good News ECWA Church at Bauchi.

government's anti-corruption initiatives, notably when a member of the group is the accused, in an effort to defend and protect him or her, or instrumentalise the initiatives in pursuit of their selfish goals. We will give just a few examples to show how this contradiction works.

The first case involved the harsh reactions of two ethnic associations known as the Eastern Mandate Union (EMU) and Igbo Youth Movement (IYM) to the decision of the Obasanjo administration to remove the Auditor-General of the Federation. The auditor-general, himself an Igbo from the south-eastern region of the country, had published a report in February 2003 which showed that virtually all public institutions at the federal level were engaging in massive fraud and diversion of public funds. Contrary to public expectation, the action of the auditor-general was dismissed as unacceptable by the government, which also accused him of "gross insubordination and incompetence" and declared his report a "calculated attempt to embarrass the government" (*ThisDay*, 25 February 2003). This action by a government that had made a fight against corruption a policy priority drew widespread criticism from a cross-section of the public, but more so from the EMU and IYM. Both quickly issued public statements on the government's reaction, which they described as "too petty and a contradiction of the anti-corruption posture of the government (which) confirms the fears of Nigerians about the insincerity of this regime as regards the anti-corruption crusade" (*The Guardian*, 21 February 2003).

The second incident concerned The Niger Delta Youth Congress (NDYC), another regional association which was no less scandalised by the decision of President Obasanjo and his party, the PDP, to offer strategic political appointments to the wife and the son of their party's chairman (Issa-Onilu 2006), and what was more disappointing, to the former deputy-governor of Akwa Ibom State, who was removed from office by his state's legislators for corrupt practices.[21] In a well-publicised statement, the NDYC condemned these actions of the government as "insensitive, condemnable and unpatriotic", actions which according to them could "send wrong signals everywhere and may be construed by discerning minds that Mr. President may also be on the same boat". In their view, if the federal government under Obasanjo's watch "wants to be taken seriously in its war against corruption, if it wants the world not to regard its present war against corruption as mere sloganeering and grandstanding, it should act as a

[21] The accusations against Mr Chris Ekpenyong, as we saw earlier, included that he diverted public funds in order to purchase a family house in Texas, United States. He was also said to have failed to declare his asset to the Code of Conduct before assuming office, while equally influencing the award of public contracts to his own companies and some others fronting for him (*The Guardian*, 2 September 2005).

willing partner in this battle" at all levels of government (*ThisDay*, 1 September 2005; *The Guardian*, 2 September 2005).

Ethnic associations also reacted strongly when corrupt practices were committed against their interests or home communities, even if the said acts were orchestrated by persons from the same ethnic background or community as members of these associations. The petition submitted to the EFCC in September 2004 by a cultural association, Ideato North Youth Forum, was one example. In the petition prepared by their lawyer, the association, which is open to every youth from the area (Ideato North local government area, Imo State), accused a former chairperson of the local government of diverting funds amounting to N12 million. Part of the funds represented payments made to some ghost workers, while others were siphoned off through contracts for the construction of roads, an abattoir, an orphanage, public buildings, etc., all of which were executed in complete disregard of existing financial regulations. In the end, the association demanded appropriate sanctions against this official (*ThisDay*, 3 September 2004).

The actions of these three ethno-regional groups clearly show the capacity of ethnic associations to advance the struggle against corruption if they choose to.

But these movements could also act as a distraction in the war against corruption. We will provide a few examples. In 2005, some Ijaw and Ikwerre communities (in Rivers State) filed a law suit before a Rivers State High Court in May 2005 against the Chief Justice of Nigeria (CJN) for alleged "corrupt practices and perversion of justice". According to these communities, the CJN had custody of 15 official cars, including two chauffeur-driven cars for each of his wives, paid for by the Supreme Court. What was more disturbing to them, the CJN had placed public funds meant for the salaries and allowances of judges into an interest-yielding account, with the intention of sharing the proceeds with other top officials of the Court (*ThisDay*, 31 May 2005). In their petitions, delivered by their lawyer, Reginald Mc-Pepple, these communities requested that the CJN be removed from office and brought to trial, while the Inspector General of Police should be ordered to launch investigations into his activities. Unknown to many, the real decision to file a suit against the CJN was motivated by other unrelated issues. These communities were actually involved in litigation at the Appeal Court against some oil companies, which they had accused of polluting their environment. Having concluded that their case would soon end up at the Supreme Court, headed by a "corrupt" CJN whom they thought could not be relied upon, they decided to take pre-emptive action, using these allegations to disparage and discredit the CJN. Other accusations, which they said justified their worries, included some alleged wrongdoing by the CJN elsewhere – influence-peddling during cases brought by other groups or individuals, in exchange for favours – but were equally unfounded. Clearly, we can see how civil society groups can

participate in the instrumentalisation of the war against corruption while pretending to be supporting it.

Ethnic and cultural associations could and also did take actions to undermine anti-corruption programmes in order to protect one of their own. This is especially true when they perceive any form of unequal treatment or "selective justice" on the part of the authorities. The following cases are some examples. The first one involved a cultural association known as Imo State Youth Assembly (IYA), which published a statement concerning a former Minister of Education and an ex-Senate President who was removed in March 2005 following allegations of corruption made by the EFCC (*ThisDay*, 29 March 2005). The Minister, who is an Igbo from Imo State, had allegedly paid N55 million in bribes to some federal legislators, including the Senate President, in order to get his Ministry's budget padded. In its statement, the IYA not only condemned the manner in which the government had rushed to dismiss the Minister without waiting for the outcome of investigations or his conviction by a court of law (the ICPC began prosecuting him weeks later in an Abuja High Court); it also condemned the government for what it saw as its ethnic or sectional bias against their Igbo brothers. For the IYA:

> This is a proven case of marginalisation against the Igbo, it is a calculated attempt to rubbish us and it is unacceptable … A thorough investigation should have been carried out before condemning Osuji, Wabara and others like that … Why should Osuji, being a frank and honest administrator be fired on radio and television, when Tafa Balogun was caught with billions of naira and nothing happened? (*ibid.*)

The IYA was by no means the only cultural association to voice support for these two officials accused of corruption. Another association, Ohaneze d'Igbo, the pre-eminent ethnic association of the Igbos of the southeast, had also gone public through its general secretary to denounce what it saw as a deliberate attempt to "discredit the Igbos in order to prevent them from taking part in the 2007 presidential elections" (*The Punch*, 7 April 2005). This declaration was made in spite of the action by the organization's president, who had earlier expressed support for the action taken by the government against the two officials.

The same logic was repeated in several other cases involving highly placed public officials accused of corruption. An example was the case of Governor Joshua Dariye of the North Central state of Plateau, who continued to enjoy the solid support of members and elites of his state despite serious allegations of massive corruption made against him and his humiliating arrest by British police in London for alleged money-laundering offences in September 2004 (*ibid*.). Similar communal solidarity was also extended to Tafa Balogun, former Inspector General of Police, who was similarly accused for massive graft. For several months, leaders from his community pressed and negotiated unsuccessfully for his release. Their efforts collapsed when Tafa Balogun was arraigned and subse-

quently convicted for corruption. In a not-too-different circumstance, when ex-Governor Diepreye Alamieyeseigha of Bayelsa State was arrested in London and subsequently arraigned before a Lagos High Court for corruption, leaders of the highly influential Ijaw National Congress, an ethnic association which represents his Ijaw ethnic nationality, rose in his defence (*ThisDay*, 15 October 2005).

The examples are endless. In 2003, two ministers in the Obasanjo government declared that they had been put under pressure by two senators who were demanding that they pay bribes of N51 million in order to facilitate their confirmation as ministers. Their accusation was supported by the highly influential northern cultural association, Arewa Consultative Forum (ACF). The action of the ACF was quite understandable. The ACF is an organization formed to protect and advance the interest of the people of northern Nigeria, and the entire *dramatis personae* in this case were of northern origin. Of course, given the provenance of the ACF, which is widely known for its pro-northern positions, it would have been highly improbable for the organization to take such a principled stand if the accusers were non-northerners. Yet, its position on the issue was criticised by some other cultural associations in the north, notably Northern Youths Democratic Congress (NYDC), which was infuriated by the ACF's failure to protect the interests of the north. According to it,

> [O]ur concern here is that both the accuser and the accused are from the northern part of this country, common sense dictates that nobody should make a rush to judgement. Unfortunately for the self-styled Arewa Consultative Forum (ACF), an organization largely populated by those who failed the common people in the north, they shamelessly came out to take sides … without incontrovertible evidence … In every sense of the word, the forum (ACF) is too primitive and narrow to practically represent the interest of the north. (*ThisDay*, October 13, 2003)

This patronising attitude of ethnic and cultural associations did not succeed in procuring freedom for accused persons in all cases, as demonstrated by the conviction of Tafa Balogun and the former governor of Bayelsa State, Alamieyeseigha, despite the protestation and lobbying from their ethnic communities. However, what was clear was that the obstructive behaviours of these groups undermined their capacity to promote socio-political change, thereby adding to existing doubts about the relevance of these associations in the campaign against corruption (Shirbon 2005).

## Conclusion

Clearly, one of the greatest changes arising from the war against corruption initiated by the Obasanjo administration is that henceforth the fight against corruption is no longer a strictly top-down struggle. Curbing corruption is now also the business of civil society organisations and actors. Even though these actors played very marginal roles in the development of the anti-corruption policy,

many of them suddenly became key players in its execution by showing themselves to be important partners in the anti-corruption project. At the same time, however, one should never overestimate the effectiveness of the contributions of the non-state actors. As we have just seen, even though their commitment is generally beyond doubt, their overall capacity and effectiveness remain very limited. This, as we have just seen, is explained by several factors. One of them is the lack of independent sources of funding, a factor which eroded their autonomy. There was also the noticeable absence of friendly legislation and practices, such as the one granting free access to information in a state that has elevated official secrecy to more or less a religion. Thirdly, these actors were negatively affected by their preoccupation with material issues and inability to go beyond primary group (ethnic, religious, etc.) solidarity. Fourthly, it was obvious that there has been limited capacity on the part of leaders of CSOs, who constantly see themselves as rivals instead of partners. When combined with the hostile attitude of government and the rent-seeking behaviour of those at the helm of affairs in these organisations, these non-state actors easily become appendages of politicians, who do not shy away from instrumentalising them for political gains.

# 8

# Conclusions

In recent years, anti-corruption campaigns have been embraced as a major challenge in a considerable number of countries, notably in the developing world. In Nigeria, this was one of the major policy priorities during the Olusegun Obasanjo administration, which came to office on 29 May 1999, after a successful transition that ended 16 years of corrupt military dictatorship. Under pressure from home and abroad, President Obasanjo embarked on a comprehensive anti-corruption agenda aimed at redressing Nigeria's economic decline and badly tarnished international image. The measures implemented included the following policies: Reform of the public services; accelerated privatisation; reform of the management of public revenue and expenditures; design and implementation of new criteria for employment and remuneration for public service; reform of the judiciary; establishment of anti-corruption agencies (the Independent Corrupt Practices and Other Related Offences Commission (ICPC) and the Economic and Financial Crimes Commission (EFCC)); and a global campaign aimed at checking the diversion of public funds abroad and the recovery of assets already siphoned out of the country. Even though these measures are not new in global anti-corruption policy circles, they still raised unprecedented interest and attention abroad for at least two reasons.

The first reason was because this was the first time a civilian regime took concrete action to fight corruption in Nigeria. All previous anti-corruption measures were initiated by military rulers, who had dominated politics in Nigeria for a long time. Most of these military-inspired anti-corruption campaigns were largely adopted to legitimise power or purge political rivals. They were also ad hoc in nature and limited in their scope and impact, aiming essentially to identify and punish a few corrupt officials, to be followed in some cases with the setting up of anti-corruption laws and institutions to calm public anger, only to be abandoned as soon as the regime was firmly entrenched. A second and perhaps more perti-

nent reason why the Obasanjo-led campaign against corruption attracted much global interest was because the fight was forged in an international context marked by the emergence of a 'global coalition' against corruption in all its ramifications and in all nations, a context which has produced a major re-orientation in the understanding of corruption and anti-corruption measures, with increasing emphasis on economic and institutional reforms.

The aggressive application of these policies by the Obasanjo administration and the support it received both at home and abroad raised the prospects of a possible end to the endemic corruption which had for so long undermined the conduct of public affairs and development in Africa's most populous nation. But by the end of Obasanjo's tenure in 2007, this hope had all but evaporated. Despite the huge resources committed, the administration had obtained only modest results, notably in creating unprecedented awareness around the issue. According to public opinion surveys, media reports, and personal interviews conducted in the course of several field trips, corruption had subsisted in an endemic manner at all levels of government – federal, state, and local. Indeed, there was substantial evidence that corruption had increased at lower levels of government despite the elaborate measures put in place since 1999. Furthermore, very few individuals have been convicted despite the massive revelations and corruption scandals that have enveloped public life in the Fourth Republic.

While it is true that a considerable number of the reforms introduced by the administration – privatisation of public enterprises and reform of the civil service and judiciary – are still ongoing and are reforms with long-term benefits (Whitehead 2000: 110), the application of several other measures with short-term gestation periods – for instance, adoption of anti-corruption laws and institutions and recovery of public funds held in foreign accounts – has not brought significant progress. On the contrary, implementation of these measures has proved extremely difficult for a number of reasons, three of which are particularly worthy of note.

## Weak capacity and inadequate political support for anti-corruption institutions

The establishment of specialised bodies to combat corruption is now generally considered as an essential step in all anti-corruption programmes. But at the same time, these institutions are expected to possess, particularly in countries where corruption is endemic, sufficient capacity (powers, resources, and expertise) and independence (Doig *et al*. 2005). During Obasanjo's reign the wide powers given to anti-corruption agencies were undercut by capacity problems such as chronic underfunding and shortage of qualified manpower, as well as systemic problems

such as an ineffective criminal justice system and, more importantly, a hostile political class.

Inadequate funding was the first crucial challenge confronted by Nigeria's anti-corruption institutions upon their establishment. The ICPC, which was the key anti-corruption agency until 2003 when the EFCC was established, has been the most affected by this problem. Between 2000 and 2005, it received an average of N500 million ($3.8 million) as yearly allocation from the government. In comparative terms this represented roughly 50% of the annual allocation to the EFCC between 2003 and 2005. Its financial situation was not helped by the fact that it was not a major beneficiary of international aid, as was the EFCC, whose creation was made possible thanks to pressures from the international community. As should be expected, the ICPC's weak financial base had a direct impact on its human resource profile, as it struggled to pay for competent prosecutors or lawyers. Thus, in July 2005, it had only 32 investigators and 17 prosecutors, out of a total of 271 personnel.

In contrast, the EFCC retained over 70 lawyers out of a total of 855 personnel in August 2006. This level of staffing ensured that it could, in addition to its headquarters in Abuja, run two regional offices, in Lagos and Port Harcourt. The much older ICPC operated until 2005 exclusively from its Abuja head office. Comparing both institutions with similar institutions elsewhere will help us better appreciate the extent of the problem. The ICAC in Hong Kong, often considered as a reference model, employed some 1,200 people, 70% of whom were investigators. It should be noted that Hong Kong has only six million inhabitants. In Tanzania, with some 35 million people, the Prevention of Corruption Bureau (PCB) managed 714 personnel, spread out over its headquarters in Dar es Salaam, the country's capital, and 21 regional and 110 district offices. Even if all other factors are ignored, discrepancies in funding and staffing on this scale are sufficient to explain why Nigeria's anti-graft bodies, particularly the ICPC, have failed to deliver expected results.

Of all the challenges that confronted Nigeria's anti-corruption agencies, the inefficiencies of the criminal justice system were among the most serious. Anti-corruption agencies were frequently undermined by several loopholes in the Nigerian legal system, such as the anachronistic Evidence Act, the constitutional immunity against arrest and prosecution granted to the President, Vice-President, and the 36 state governors and their deputies, and the snail-speed of court trials. In its eight years in office, the Obasanjo government failed to take any concrete steps to reform the justice sector. The little progress observed in this area, which came through the efforts of the international community (UNODC) and the leadership of the judiciary, proved insufficient to strengthen the capacity, integrity, and more importantly the speed of the legal system. As a result, an overwhelming

majority of corruption cases brought to court by the anti-corruption agencies were buried in endless delays. The consequence was that many accused persons roamed the streets freely after having been granted bail or even set free simply on technical grounds. The incapacity of these agencies to successfully prosecute a considerable number of the nation's top officials, despite overwhelming evidence of corrupt practices on the part of these officials, contributed greatly to the poor image of these institutions.

In the course of this book, we have shown how the problem of weak capacity of the anti-corruption agencies was linked in large part to the non-cooperative attitude of the political leadership in the country, which was responsible for the establishment of these agencies in the first place. The lack of political support from the leaders was demonstrated by the constant attacks launched against the ICPC by the National Assembly, all in a bid to intimidate the agency and sabotage investigations initiated against some key members of the federal legislature who had been implicated in serious corruption scandals. Indeed, when the bill for the establishment of the ICPC was submitted to the National Assembly in June 1999, it took the lawmakers over a year to consider it. The bill was passed only in July 2000, following intense lobbying and pressure from the President and critical sections of the public. In 2003, conflict between the federal legislature and the ICPC culminated in an unsuccessful attempt to pass a new ICPC law, which would have drastically reduced the powers of the ICPC and removed its then chairman, Justice Mustafa Akanbi. The National Assembly also ignored a bill seeking to strengthen the institutional capacity of the ICPC. The bill was prepared by the ICPC with the support of the executive arm of government and several civil society groups.

As for the EFCC, Nigeria's top political officials did not hide their surprise and dismay at the manner in which this institution 'transformed' itself into an anti-corruption body, contrary to their expectation that it would concern itself strictly with the arrest and prosecution of fraudulent bankers and individuals involved in the well-known 419 scam. As the EFCC's profile rose, the politicians resorted to the stigmatisation and politicisation of this institution in a desperate attempt to weaken and discredit it. As in the case of the ICPC, the possibility of an amendment to the EFCC Act was frequently floated in the National Assembly. Similarly, frequent appeals for more budgetary allocations for the work of the organization received little or no attention, despite the relative success of the EFCC. Indeed, the N1.3 billion proposed by the Executive as the EFCC budget for 2005 was reduced to N1.1 billion by the National Assembly, making the EFCC the only institution whose budget was revised downwards.

Thus, while the important role of top political actors in the successful application of anti-corruption policies and programmes is usually regarded as a critical

condition for success, national anti-corruption institutions in Nigeria have been weakened and their powers undermined by national leaders who have refused to support them with the necessary financial resources and legal amendments that would have strengthened their capacities. Even then, their trajectories have been further complicated by Nigeria's federal structure of government, which has encouraged the states and their local authorities to object to Obasanjo's anti-corruption policy and programmes.

The point here is simply that political will is essential. It is a critical starting point for sustainable and effective anti-corruption strategies and programmes. No legislative or administrative changes can ever be effective unless there is commitment at all levels of government. It is one thing for the Obasanjo administration to establish anti-corruption agencies; it is quite another for the administration to provide the requisite political support (manifest and latent) for the agencies to succeed. Political will on the part of the international community is also crucial here. As we have seen, participation by the international community in Nigeria's anti-corruption campaign has not been as forceful as should be expected. The pressure of the international community on the government of the Obasanjo administration in 1999 contributed greatly to the launching of an anti-corruption campaign by the administration. However, the same international community refused to offer concrete assistance to the administration in its quest for the repatriation of Abacha's looted funds.

## States' and local governments' resistance to the anti-corruption project

Even though many of the reform measures embraced in pursuit of Obasanjo's anti-corruption policy in Nigeria were often presented as 'national policies', applicable across the length and breadth of this vast nation, the reality in many of the 36 states and their 774 local governments pointed to the contrary. The little progress made in the struggle against corruption under Obasanjo was largely confined to the federal level of government. Some states tried to copy one or more aspects of the national anti-corruption policy or reforms which suited them. Others even went ahead to design their own unique strategies against corruption, a good example being Zamfara and other northern states which adopted *Shari'ah* law. Many of these measures, however, did not yield any tangible results. Even then, a great majority of the states, particularly the oil-rich Niger Delta states, were indifferent, if not hostile, to any idea of anti-corruption reform, especially the one proposed by the federal government. Their relationships with the federal anti-corruption bodies (the ICPC and EFCC) were very antagonistic and obstructive.

The attitude of state governments to Obasanjo's anti-corruption programme was first perceived in their reaction to the passage of the bill on the ICPC in July 2000 and the subsequent establishment of the ICPC in September 2000. As soon as the law was passed, 32 of the 36 state governments mounted a challenge before the Supreme Court seeking to invalidate the law on the grounds that it was unconstitutional, having encroached on their constitutional powers and the theory and practice of federalism in Nigeria. Even when their case was rejected by the Supreme Court, the states continued to obstruct the ICPC and the other national anti-corruption agencies. Nigerian states also took similar measures to challenge other laws passed by the federal government in its quest to fight corruption. A notable example was the Monitoring of Revenue Allocation to Local Governments Act of 2005, which was invalidated by the Supreme Court on 7 July 2006 following a legal challenge mounted by three states of the federation. These cases showed clearly that the commitment of a central government is insufficient to guarantee the success of a public policy in a federal state. The support and commitment of sub-national authorities (states and local governments) are also crucial.

## Weak civil society engagement in the war against corruption

With the return of democracy in 1999, civil society in Nigeria witnessed considerable growth and dynamism. The sharp increase in the number of NGOs formed specifically to help combat corruption and the increased intervention in the domain of anti-corruption by other existing associations and movements illustrate this evolution. Nevertheless, it would be misleading to exaggerate the impact of the intervention of these non-state actors in the anti-corruption campaign. With the exception of Nigeria's independent and indomitable media, many sections of the civil society have not gone beyond regular criticism and open call on the government to take its anti-corruption campaign more seriously. Some of these actors, such as anti-corruption NGOs that took a few concrete steps in the direction of promoting the ongoing anti-corruption campaign, found their efforts undermined by several internal and institutional challenges. Some of these hindrances included government's unwillingness to adopt policies that could help strengthen CSOs (such as adoption of the Freedom of Information Bill), widespread corruption and rent-seeking behaviour within the CSOs themselves, and the incapacity of these organizations to go beyond sectional cleavages and ethno-religious solidarity. We also found that these problems have been compounded by unhealthy rivalry among civil society groups, which made networking impossible, and by the hardship of everyday life that has ensured that citizens are too concerned with everyday survival and too willing to serve as instruments for corrupt politicians, as we saw in the particular cases of Zamfara and Bayelsa States.

## Direction for future reforms

Corruption, especially the misappropriation of public funds, is no doubt an omnipresent phenomenon in many developing countries. However, in Africa the phenomenon is clearly part of the definition of the game of politics. In Nigeria, the legitimacy and fortune of regimes have often been shaped by the rise of corruption and the handling of corruption allegations. Many regimes fell amidst allegations of corruption within their regimes. Yet corruption remains, for Nigeria's political class, a crucial factor in the construction of political power. The utility of corruption for the political class derives from its ability to serve both as the principal, if not the only, platform for the accumulation of wealth based on private appropriation of public resources and as a source of legitimisation of power through selective distribution of patronage. These practices are characteristics of a neo-patrimonial system, as we emphasised in the opening sections of this book. It is precisely because of this that Obasanjo's anti-corruption campaign clashed with political interests, as seen in the collective opposition of the country's political class to the anti-corruption policy initiated by the President following the inauguration of the Fourth Republic.

Does this mean that building a less corrupt society is an illusory task in Nigeria? How can corruption be curbed in Nigeria's political system? Most policy prescriptions and theoretical perspectives on anti-corruption programmes found in contemporary academic literature have tended to emphasise the importance and effectiveness of neo-liberal economic reforms (privatisation and deregulation) and public sector reforms (including adoption of anti-corruption regulations and institutions, reform of the civil service and judiciary, and strengthening of the civil society). The nature of politics and the roles of key political actors in recipient countries, that is to say, the potential local resistance to reforms, have most often been ignored or underestimated. Well-conceived economic and institutional reforms are necessary (Leiken 1996: 55; Kaufmann 1999: 89; Pope 1999: 98), but they can only be successful when and where their implementation is favourably received by the key stakeholders. Indeed, as Vendi Nadiz has pointed out with Indonesia in mind, in neo-patrimonial states "vested political interests have a stake in keeping monitoring institutions weak and in safeguarding conditions which make possible the plundering of state coffers" (Nadiz 2004: 21). Any successful anti-corruption programme means that this problem must first be resolved by those charged with implementing the anti-corruption project.

One may, therefore, consider the anti-corruption campaign as a political struggle between 'reformists', or those who initiate and support an anti-corruption policy, and 'vested political interests', meaning those who organize and profit from the status quo (Whitehead 2000: 127). Nadiz has suggested that real progress in the struggle against corruption will depend "ultimately … on the ability

of (the reformists) to organize coherently in order to capture the mainstream of political life" (Nadiz 2004: 21). The idea of a political victory of reformists over corrupt anti-reformist networks raises the question of relations of power.

In our view, any successful campaign against corruption in Nigeria will require the prior existence or construction of a grand political coalition to support that campaign (Haarhuis 2005: 239). To put it differently, all the public bodies with responsibility for fighting corruption – prevention, investigation, research, education, and enforcement bodies – must work in concert, harmonise their efforts, and complement each other to develop one strategy. The difficulties the Obasanjo administration's anti-corruption team encountered in their attempt to promote honesty and transparency in public institutions confirm to a large extent the hypothesis that where corruption is endemic, the struggle against corruption cannot be left to a small group of reformists. Rather, such a struggle will require the existence or construction of a grand coalition in favour of reforms. Unfortunately, up until the end of Obasanjo's presidency, there was no sign suggesting that such a coalition was emerging. Nigeria certainly has a long way to go in its struggle against corruption in public life. The emergence of a government with strong political will, change in the attitude of the political class, and a more active and engaged civil society are required to move the war against corruption forward.

# Annex I
# List of commissions of inquiry on corruption (1999-2005)

| Name of Commission | Date established | Head | Status** |
|---|---|---|---|
| 1. Panel on Contracts, Licences and Appointments | 21 June 1999 | Christopher Kolade | Report submitted/ application underway |
| 2. Panel on Non-Performing or Failed Contracts | 21 July 1999 | T. I. Sali | Report submitted/ application underway |
| 3. Panel for the Investigation of Federal Government Landed Property | 28 July 1999 | Olu Rotimi | Report submitted/ application underway |
| 4. Judicial Commission on NITEL and M-TEL | 24 August 1999 | M. S. Audu | Report submitted |
| 5. Judicial Panel on National Fertilizer Company of Nigeria (NAFCON) | 29 August 1999 | M. M. Akambi | Report submitted |
| 6. National Committee on Nigerian Railway Corporation | 18 August 1999 | C. S. O. Akande | Report submitted |
| 7. Judicial Commission on Cocoa Export Levy and Cocoa Butter Stock Funds | January 2000 | Michael Edem | Report submitted/ application underway |
| 8. Commission of Inquiry on Abuja Investment and Property Development Company Ltd. | 4 January 2000 | Sani Ahmed Daura | Report submitted |
| 9. Judicial Commission on Nigeria Airways Limited | 8 February 2000 | Obiora Nwazota | Report submitted |
| 10. Judicial Commission on Federal Superphosphate Fertilizer Company Ltd., Kaduna | 2001 | A. A. U. Ekundayo | Report submitted |
| 11. Judicial Commission on Niger Dock Nigeria Ltd., Lagos | 2002 | Amina Adamu-Angies | Report submitted/ application underway |
| 12. National Youth Service Corps Investigation Committee | 18 September 2000 | Muhammed Maijir | Report submitted |
| 13. Tribunal of Inquiry into the Management of African Petroleum PLC, from its Inception Until Privatisation | August 2002 | Edet Robert Nkop | Report submitted |

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|---|---|---|---|
| 14. Committee on the Investigation of Illegal Siphoning of Foreign Exchange Outside Nigeria | 20 August 2002 | Waziri Mohammed | Report submitted |
| 15. Panel of Inquiry for the Investigation of All Cases of Temporary Import Permit Issued between 1984 and 2000 | ND | F. A. Williams | ND |
| 16. Inter-Ministerial Committee on Recovery of Debts Owed to the Federal Urban Mass Transit Agency | 10 July 2002 | R. O. Ogunbambi | Report submitted |
| 17. Management Audit of the Onne Oil and Gas Free Zone Authority | 2002 | G. F. Ogunsina | Report submitted |
| 18. Administrative Panel of Inquiry on the Investigation of Illegal Trade/Smuggling of Endangered Species into and out of Nigeria | 27 February 2003 | John U. Bassey | Report submitted |
| 19. Administrative Panel of Inquiry into the February/March 2003 Fuel Shortage in Nigeria | 4 March 2003 | Nnaemeka U. Achebe | Report submitted |
| 20. Presidential Committee on Cyber Crime in Nigeria | 26 November 2003 | Aliyu Mohammed | Report submitted |
| 21. The Administrative Panel of Inquiry on the Allegations of Breach of Due Process in the Award of Contracts at the Federal Character Commission | 2003 | S. O. Adekunle | Report submitted |
| 22. Presidential Committee on the Cases of Stolen Radioactive Sources from Nigeria | 10 February 2004 | Akinlolu Olujinmi | Report submitted |
| 23.Presidential Committee on Trade Malpractices in Nigeria | 13 February 2004 | Waziri K. Mohammed | Report submitted |
| 24. Panel of Inquiry on the Allegations of Abuse of Office and Embezzlement of Public Funds in the Police Service Commission | 7 July 2004 | Aboki Zhawa | Report submitted |
| 25. Administrative Panel of Inquiry on EFCC Report on Alleged con conspiracy, fraudulent conversion of funds, corrupt practices and money laundering by some public officers and other persons* | August 2006 | Bayo Ojo | Report submitted/ application underway |

* Source: *ThisDay*, 8 September 2006.

** As per December 2006.

Source: *Office of the Secretary to the Government of the Federation*, "Detailed List of Panels, Commissions and Committees from May, 1999 to May, 2005", Abuja, August 2005.

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