

ASSESSING THE DETERRENT EFFECT OF PUNISHMENT ON SYSTEMIC
CORRUPTION IN NIGERIA: A COMPARATIVE ANALYSIS

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ABSTRACT

This study examines the deterrent effect of punishment on systemic corruption in Nigeria using a doctrinal research approach. Through a critical analysis of existing laws, institutions and judicial decisions, this research investigates whether punishment serves as effective deterrent to corruption. The paper reviews the Corrupt Practices and Other Related Offences Act 2000 and the Economic and Financial Crimes Commission (Establishment) Act, 2004, among other relevant legislation. It also examines landmark cases and judicial pronouncements on corruption. The findings suggest that while this legal framework is a necessary component of anti-corruption efforts, its deterrent effect is weakened by inconsistent application, corruption within the justice system, and inadequate witness protection. The paper concludes that a more robust and consistently applied punishment regime, coupled with institutional reforms, is essential to effectively deter systemic corruption in Nigeria.

Keywords: Corruption, Plea bargain; Nigerian Constitution; Administration of Criminal Justice Act; Punishment

1.0 Introduction

Corruption is a universal phenomenon that is neither limited nor confined to a country. This is based on the premise that countries all over the world whether democratic or not experience one form of corruption or the other, however with varying degree.¹ This divergent level of corruption has over the years affected the overall economic development and integrity of many countries particularly Nigeria. Corruption has without doubt become systemic in Nigeria, since her independence in 1960, the socio-economic development of Nigeria has been

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¹Michael M. Ogbeidi, 'Political Leadership and Corruption in Nigeria Since 1960: A Socio-economic Analysis', (2012)*Journal of Nigeria Studies*, Volume 1, No 2. pg. 11.; Zhu, Jiangnan. 'Do Severe Penalties Deter Corruption? A Game-Theoretic Analysis of the Chinese Case.' (2012) *China Review* 12 (2). P 1 <<http://www.jstor.org/stable/23462215>> accessed 3 May 2024.; Ejovi A, Mgbonyebi V C & Akpokighe O R. 'Corruption in Nigeria: A Historical Perspective' (2013) *Research on Humanities and Social Sciences*, Vol.3, No.16, p 19.

stuck in the web of corruption, whilst its eradication continues to serve as the mainstay of successive administrations ²without success.

Efforts have been made over the years to fight political corruption through various laws and policies especially with the introduction of the whistleblowing policy under the Buhari Administration. However, much is yet to be seen in terms of their achievement. Aside the rationale of maintaining law and order in Nigeria, laws through the accompanying sanction serve a deterrence purpose to Nigerians generally. Not only is corruption prohibited in other countries including Nigeria, sanctions such as imprisonment and/or fine are imposed by the court on any violator. It is however unfortunate that despite prohibiting corruption and attaching sanctions to the crime; corruption rate has not only increased, but presently considered as one of the reasons why Nigeria is in recession.³A key question to be considered then is why is punishment / sanctions not an effective anti-corruption tool in Nigeria despite its availability?

It is worthy of note that countries considered to be free from corruption use laws similar to those operative in Nigeria, while the probability of being punished and an eventual punishment has so far effectively deterred their public officials and also reduced the rate of corruption to the lowest level if any. Where and how are we getting it wrong in Nigeria? if there is a law prohibiting corruption and a punishment like those in countries considered to be clean by the Transparency International index.

To this end this paper in the first part will clarify some concepts and discuss the nature of the crime of corruption in Nigeria. The second part will consider the regulatory framework of corruption in Nigeria and its effectiveness. Having identified that punishments (imprisonment and fine) are usually attached to every prohibited act, the third part will critically analyse punishment as an anti-corruption tool in Nigeria and explain the reason why punishment has not been an effective anti-corruption tool in Nigeria when compared with other countries with low corruption rate. The fourth part will consider Denmark as a jurisdiction with clean corruption record while drawing out lessons Nigeria can learn from this jurisdiction in the fight against corruption. The fifth part concludes and proffers some recommendations.

² Ademoyega, A.: *Why We Struck: The Story of the First Nigerian Coup*, Ibadan, Evans publishers, 1981, pg. 87-88, cited by Okogbule, N.S., 'The Regulation of Economic Crimes in Nigeria: Old Problem, New Challenges and Responses' (2006) 9 (1) UBLJ, p 25; Ogbodo, 'The Immunity Clause under the 1999 Constitution and The Anti-Corruption Crusade - A Case of Strange Bed-Fellows?' *Journal of Law and Development*, 130.

³ Yemi Oluwadare, 'Corruption main cause of Nigeria's Recession- Magu' *Today's Newspaper* (12 February 2017) <<https://www.today.ng/news/topstories/258376/corruption-main-nigerias-recession-magu>> accessed 22 May, 2024.

1.1. Conceptual Clarification

1.1.1. **Corruption:** The act of doing something with an intent to give some advantage inconsistent with official duty and the right of others, a fiduciary or official use of a station or office to procure some benefit either personally or for someone else, contrary to the right of others.⁴ This paper will restrict the term to public/political corruption, i.e. corruption which takes place either fully within the public sphere or at the interface between the public and private spheres.⁵

Section 2 of the Independent Corrupt Practices and Other Related Offences Commission Act also defines corruption to include “bribery, fraud and other related Offences”.

1.1.2. **Punishment:** The Black’s Law Dictionary defined punishment as sanction such as a fine, penalty, confinement, or loss of property, right, or privilege assessed against a person who has violated the law. For the purposes of this paper, punishment means imprisonment and fine.⁶

1.1.3. **Corruption in office:** it is an official misconduct which is a public official’s violation of assigned duties by malfeasance, misfeasance or nonfeasance. It is also termed political corruption, mal-conduct in office, misbehaviour in office etc.⁷

1.2. Nature Of The Crime Of Corruption

Nature of crime entails the form or method of a criminal activity which potentially result to material and financial losses to a victim.⁸A research conducted by Zakari and Button,⁹ identified the following as nature of the crime of corruption:

A. Embezzlement, Theft and Fraud

⁴Bryan A Garner, Black’s Law Dictionary (8th Ed., OUP 2004).

⁵ Heywood Paul, ‘Political Corruption: Problems and Perspectives’, (1997) *Political Studies Volume 45* No 3, 417.

⁶ Bryan A Garner, Black’s Law Dictionary (8th Ed, OUP 2004)

⁷Ibid. 236.

⁸Ayodele J, &Aderinto A A, ‘Nature of Crime and Crime Reporting of Victims in Lagos, Nigeria’ (2014) 7(1) *International Journal of Criminology and Sociological Theory*. 1-14 <https://www.researchgate.net/publication/309231977_Nature_of_Crime_and_Crime_Reporting_of_Victims_in_Lagos_Nigeria> accessed September 30, 2024

⁹Zakari B M & Button M, ‘Confronting the Monolith: Insider Accounts of the Nature and Techniques of Corruption in Nigeria’ (2022) 3(2) *Journal of White Collar and Corporate Crime* p. 104-106<<https://journals.sagepub.com/doi/pdf/10.1177/2631309X211004567>> accessed 30th September, 2024

Embezzlement is stealing of public funds or property by persons that occupies a position of trust or authority. Fraud has to do with instances where an individual utilizes deceit or false information to sway an owner of property to freely part with them.¹⁰ These situations are one of the methods of corruption in Nigeria, where despite huge funds from oil in the past years, it has not translated into fairly and effective distribution of resources.¹¹

B. Procurement Fraud

This entails situation of overpricing contracts and non-delivery of purchased product services.¹²This has been identified as one of the most common techniques of fraud.¹³

C. Favouritism, Nepotism and Wide Discretion

These have been seen as the abuse of wide discretion. This form of corruption is common in the Nigerian society. It is an infraction that entails according benefit that though might not be personal to an official, but advances the interest of those associated to the public official who are biologically, politically, ethnically or religiously related to the public official.¹⁴ Instances include employing or recruiting relatives in public post or considering such relationship in promotions or remuneration.¹⁵

D. Extortion and Bribery

Bribery is the offer, agreement or exchange of services, money or other valuables in a bid to sway or influence the conduct or judgement of an individual in entrusted position of power. It is vital to note that the advantage, does not have to benefit the public official directly, but be for his/her relations such as wife, children, parents, siblings, associates, or to his/her political party or affiliates.¹⁶ Extortion on the other hand, involves the use of compulsion to influence an individual's compromise. Such involves the use of violence or disclosure of sensitive

¹⁰Ibid

¹¹Watch, H. R. 'Nigeria events of 2011' (2012)Human Right Watch
<<https://www.hrw.org/world-report/2011/country-chapters/nigeria>> accessed January 18, 2024

¹²Oarhe, O, 'Tonic of Toxic? The state, neopatrimonialism and anti-corruption efforts in Nigeria' (2013) *Korean Journal of Policy Studies*

¹³ Zakari B M & Button M (n 9).

¹⁴Langseth, P 'Measuring Corruption' In C. S. Sampford (Ed), *Measuring Corruption*(pp. 7-44). Ashgate Publishing Company.

¹⁵Ibid

¹⁶ Zakari B M & Button M (n 11)

information.¹⁷ Similar to other methods of corruption, the victim, being the person forced into compliance with the official, can be the public interest, individuals adversely affected by a corrupt conduct or process or both.¹⁸ Extortion in Nigeria can be in the form of coercion, duress, inducement, threat, dishonesty, or promise made to an offender that such will avoid danger if he/she complies with what the extortionist requires such to do.¹⁹

2.0 Regulatory Framework Of Corruption In Nigeria And Its Effectiveness.

The earliest regulatory attempt at curbing corruption is through the two principal legislations on criminal law in Nigeria which is the Criminal Code Act²⁰ and Penal Code Act²¹ applicable in the Southern and Northern parts of the country respectively. Part 3 of the Criminal Code particularly section 98(a-c) punishes abuse of official duty and corruption by persons employed in the public service with seven-year imprisonment.

Under the Penal Code, sections 115-122 are relevant provisions on corruption. Under section 115, the offence of gratification by public servants is punishable by a term of imprisonment ranging from 7-14 years, while any person found guilty of offering gratification would be punished with imprisonment of up to three years or fine or both.

In furtherance to the fight against corruption under the military regime, the Public Officers (Investigation of Assets) decree No. 5 of 1966 which required the declaration of assets by public officers to be verified by persons appointed for such purposes was implemented. The decree also empowered a specially constituted tribunal to investigate cases of alleged corruption or improper enrichment by a public officer.

In the same vein the Corrupt Practices Decree of 1975 was introduced to prohibit and punish any person whether they are public officers or not who corruptly receive or gives any form of gratification to induce whether himself or any person to do or forbear from doing anything with regard to any matter whatever. The Recovery of Public Property (Special Military Tribunal) Decree of 1984 was also introduced after the second Republic to investigate the assets of any Access Bank, any person in breach of the code of conduct as contained in the 1979 Constitution.

¹⁷Ibid

¹⁸UNODC. (2005). *Draft United Nations Handbook on Practical anti-corruption Measures for Prosecutors and Investigators*

<https://www.unodc.org/pdf/corruption/publications_handbook_prosecutors.pdf>
accessed October 4, 2024.

¹⁹ Zakari B M & Button M (n 11)

²⁰CAP. C38 L.F.N. 2004.

²¹ CAP. P3 L.F.N. 2004.

The tribunal set up for this purpose however lost its credibility due to the composition of the tribunal such that, it drew criticism from the Nigerian Bar Association (NBA)²²

The determination of the Obasanjo's administration to curb corruption led to the enactment of the Corrupt Practices and Other Related Offences Act, 2000²³ and the Economic and Financial Crimes Commission (Establishment) Act 2002, (now 2004). These Acts especially the ICPC criminalised corruption as it attracts a term of imprisonment of Seven (7) years if convicted.

It is important to note that the EFCC Act, 2004 in an attempt to fight corruption, introduced plea bargaining.²⁴ However, several challenges occasioned as a result of the defects and lacuna under the EFCC Act on the application of plea bargaining was criticized and this further encouraged corrupt practices such that, plea bargaining was viewed as a medium that affords clemency for offenders in corruption charges.²⁵ For instance, the case of Former Governor Lucky Igbinedion who was accused of looting about N2.9 billion, entered plea bargain and at the end was fined the sum of 3.5 million and a forfeiture of three landed properties to the Federal Government.²⁶ Also, the widely criticised case of John Yusuf, a former assistant director of the federal civil service was sentenced in 2013 for 2 years in jail with an option of N750,000 for stealing 33 billion of police pension fund.²⁷ Eventually his sentence was reviewed to 6 years jail term

²²The NBA was of the view that since the Military officers constituted the quorum of the tribunal, equity, fairness and impartiality cannot be guaranteed and the possibility of appealing the decision of the tribunal may not be possible.

²³The act experienced opposition especially the Ondo State Government who challenged the power of the Federal Government to legislate on corruption. *Attorney General of Ondo State & Ors v. Attorney General of the Federation & Ors* (2002) 9 NWLR (Part 772) 222. The court upheld the constitutionality of the Act.

²⁴Section 14(2) of the EFCC Act, 2004 allows the Commission without prejudice to section 174 of the 1999 Constitution as amended 1999 Constitution of the Federal Republic of Nigeria (As Amended) CAP C38 LFN2004, which relates to the power of the AG to prosecute cases, to compound any offence punishable under the Act by accepting such sums of money as it thinks fit, not exceeding the amount of the maximum fine to which that person would have been liable if he had been convicted.

²⁵Olowu O, 'Plea Bargain Law and the Fight Against Corruption in Nigeria: Between Punishment and Protection' (2023) 7(1) *Wukari International Studies Journal*<<https://wissjournals.com.ng/index.php/wiss/article/download/126/113>> accessed 19 October, 2023.

²⁶Ahemba T, 'Convicted Nigeria ex-governor to pay \$25,750 fine' (Reuters 2008) <https://www.reuters.com/article/markets/oil/convicted-nigeria-ex-governor-to-pay-25750-fine-idUSLJ528594/> accessed October 6, 2024.

²⁷Nicholas Ibekwe, 'Director who was fined N750,000 for stealing N33 billion now to spend Six years in prison, pay N23 billion fine' (Premium Times March 22, 2018)<<https://www.premiumtimesng.com/news/headlines/262654-director-who-was->

and a fine of N23 billion by the Court of Appeal, and further affirmed by the Supreme Court.²⁸

It is against this background that the Administration of Criminal Justice Act, (ACJA), 2015 expressly codified plea bargaining and introduced some innovations on plea bargaining.

3.0 Punishment As A Deterrence In Nigeria

Laws exist in every society including Nigeria to regulate human conducts, maintain orderliness and punish cases of breach. The concept of punishment especially in Nigeria is restricted primarily to criminal offence and proceedings, with the intent of imposing sanctions upon the erring party. Sanctions imposed or applied for a criminal offence serves a deterrence purpose not only to the offender, but to others with similar criminal inclination. Punishment is not only applied for deterrence purposes alone, it is also used as a preventive, reformative and retributive means.

It is believed that the more severe a punishment is the more the likelihood of persons desisting from such prohibited acts. As such to prevent the commission of an act prohibited, the applicable law generally places much emphasis on the penalty (ies) to encourage citizens to obey the law. Having these in place would control and reduce recidivism of offenders who have been convicted, and curtail the participation in crime by future offenders.

Various anti-corruption laws have punishment such as imprisonment and/or fines attached to every act prohibited. These have over the years been used as a form of deterrence to offenders, similar to the type of punishment used by countries considered to be clean. It is also worthy of note that the punishment attached to corruption in those corruption free countries is less severe than those in Nigeria,²⁹ which is an indication that severity of the punishment is not a determinant to its effectiveness.

Various types of punishment are used across the world in criminal cases depending on the type of crime or how heinous the crime is. In Nigeria punishment used within the context of criminal law include, imprisonment and/or fines for a fixed number of years which may be with or without hard

fined-n750000-for-stealing-n33-billion-now-to-spend-six-years-in-prison-pay-n23-billion-fine.html?tztc=1> accessed October 6, 2024.

²⁸Premium Nigeria, 'N 32.8 billion Pension Fraud, Supreme Court Upholds Jail Term for Ex-Pension Director <https://www.pensionnigeria.com/pension-news/supreme-court-upholds-jail-term-for-ex-pension-director/> accessed October 10, 2024.

²⁹ Zhu, Jiangnan(n 1).

labour, life imprisonment of which the convict can receive presidential pardon³⁰, capital punishment (death sentence which can be by hanging, stoning or by shooting),³¹forfeiture (properties or monies acquired from proceeds of corruption would be forfeited to the government)³²Hadi lashing (used mainly in the Northern part of Nigeria where the Penal Code is applicable), plea bargain, probation, parole and community service.³³

Majorly imprisonment, fine and forfeiture are the punishment prescribed for the crime of corruption in Nigeria. It is unfortunate that the existence of these punishment especially imprisonment has neither deterred nor dissuaded the act of corruption in Nigeria when compared to other countries that have successfully curb corruption.

Punishment has continuously been used to ferry the course of corrupt practices worldwide in countries like Denmark, Sweden Japan, Singapore, United States etc. effectively with less severe sanctions like those provided for in Nigeria, where then is Nigeria missing it?

3.1 Why Has Punishment Not Deterred Corruption In Nigeria?

Various reasons/factors have been adduced why punishment has not served as an effective anti-corruption tool despite its effectiveness in other countries. The first thing to be considered is the foundation of the Fourth Republic in 1999, when the fight against corruption gained momentum. In 1999, Nigeria joined the list of 'democratic country' operating a federal system of governance under the 1999 Constitution. A critical look at the origin of this Constitution, reveals that the constitution was a military decree tuned law and was 'forced' on the new government by the military government under the guise of 'we the people'. As such, the whole provision is still reeking of military era where corruption gained its footing during the military regime and has continued to grow in limps and bounds despite the transition into democracy in 1999.³⁴

The absence of military intervention notwithstanding, an element of the military regime (the 1999 Constitution) left behind gave corruption more latitude.

³⁰ Late Diepreye Alamiyeseigha. former Bank head from North, Shettima Bulama, and Abacha's chief of staff major Gen. Oladipo Diya were all granted presidential pardon by former President Goodluck Jonathan.

³¹This type of punishment was used during the military regime for cases of robbery, treason. Cornell University, 'Death Penalty database' <<https://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Nigeria>> accessed 22, May 2024.

³²This was done in the case of Tafa Balodun and LateDiepreye Alamiyeseigha.

³³This non-custodian punishment is provided for in the 2015 Administration of Justice Act as a means to decongest the over-crowded prison, especially if the offender is a first timer or where the offence is minute.

³⁴ Gboyega, A, *Corruption and Democratization in Nigeria*. (Agba Areo Publishers 1996) 5.

Presently, the Constitution as the grundnorm does not reflect true democracy neither does it give effect to the intention of 'we the people of the Federal Republic of Nigeria' as stated in the preamble.³⁵ The Constitution still reflects the state of the nation as it was during the military regime where excessive power is given to the Executive to dictate as it pleases. Policies are introduced at will with the assumption that it will solve an exigent need the while in actual fact it negates the needs of the people. Having started governance on a wrong foundation, other laws deriving their powers directly or indirectly from the 1999 Constitution would certainly be faulty. ³⁶This in itself is double jeopardy since the entire nation is being governed by arrays of laws with questionable foundation.³⁷

Furthermore, the presumption is that Nigeria operates a federal system of governance that supports separation of power similar to those of United States, it is however surprising that in practice since 1999, governance in practice has neither being truly federal nor democratic. There is too much power concentrated at the central, with much reliance by the states on federal allocation whilst neglecting to develop their own states, all this can be attributed to the constitutional arrangement of exclusive and concurrent list.³⁸

³⁵Tony Nyiam, 'The Root Cause of the Institutionalization of Corruption in Nigeria' *PM News* (Nigeria, July 15, 2016) <<https://www.pmnewsnigeria.com/2016/07/15/the-root-cause-of-the-institutionalization-of-corruption-in-nigeria/>> accessed May 3, 2024.

³⁶Section 1(3), Section 15(5) Amended 1999 Constitution.

³⁷ In a situation where the Constitution is declared illegal, laws deriving their legality from it would be illegal. Even though the Independent Corrupt Practices & Other Related Offences Act 2000, EFCC establishment Act 2004 was not expressly mentioned in the Constitution, its objective can still be situated within section 17 (2) (c, d, e), 3(a-g) & 18. The law on Federal character can be seen in section 14(3) of the 1999 amended Constitution. Advance Fee Fraud and Other Related Offences Act 2006, Money Laundering (Prohibition) (Amendment) Act 2012, Miscellaneous Offences Act, Code of Conduct Act, Nigerian Extractive Industries Transparency Initiative Act, Freedom of Information Act 2011, Fiscal Responsibilities Act 2010, Penal Code Laws of Federation of Nigeria 2004, Criminal Code Law of Federation of Nigeria 2004, Banks and Other Financial Institutions (Amendment) Act 1991, Failed Banks (Recovery of Debts) and Financial Malpractices in Banks (Amendment) Act 1994

³⁸Too much power concentrate at the central led to disadvantaged position the Delta, Rivers, Cross River are today. Despite being endowed with natural resources, these states have not reaped the dividend nor benefited from the revenues derived from these resources, instead the communities are left in a deplorable state with little or no assistance from the central, the federal government continues to claim ownership of whatever natural resources is found. This unchecked power gave room for looting by successive government. This power concentrate is similar to the period when Nigeria was a protectorate, with ultimate power being exercised by the Colonial Office. Tony Nyiam, 'The Seed of Nigeria's Systemic Corruption', *This Day Newspaper* (Lagos July 23, 2016) <<https://www.pressreader.com/nigeria/thisday/20160723/281625304659711>> accessed May 3, 2023 and 'The Root Cause of the Institutionalization of Corruption in Nigeria', *PM News* (Nigeria, July 15, 2016)

From the military era, the President as head of the executive have controlled the other arms of government, this practice of executive dominance is still the norm till date, little wonder the Constitution still lacks adequate provision for the judiciary, whilst inaction on the part of the executive with respect to corruption has continued to pave more way for corrupt practices, yet an 'independent agency' created specifically to curb corruption neither act nor perform their work effectively till they receive a 'green light' from the executive.³⁹ As such, as long as the anti-graft agencies are still tied to the apron string of the federal government, the limit of their effectiveness is already set *ab initio*. The fact that many criminal prosecutions of corrupt practices by the anti-graft agency are either dropped or exempted mostly gives others leeway to engage in the same prohibited act.

Furthermore, the perceived weakness and the seeming complacency of the judiciary with respect to cases brought before it has over the years mired the deterrence effect of punishment in Nigeria. A case in point is the case of *Bode George & Ors v. FRN*⁴⁰ where the initial conviction of Bode George by the trial court was received with mixed feeling, one which shows an appreciation of the court's competence and the fact that nobody is above the law, on the other hand the fact that despite the gravity of the offence, he was only sentenced to 30 Months imprisonment was more or less a slap in the face.⁴¹ On appeal to the Supreme Court from the Court of Appeal, the apex court set aside the concurrent findings of the lower court to set aside the conviction of the appellants. The dismissal of the conviction was a major setback for the anti-corruption crusade and an indication firstly to the members of the political class that they are above the law as such they can do and undo and secondly to the public that the judiciary is not reliable.

Statistics shows that out of the over 400 convictions which the EFCC has secured in the 10 years of its existence only few high-profile persons have been successfully prosecuted and only through plea bargain deals⁴² of reduction in

<<https://www.pmnewsnigeria.com/2016/07/15/the-root-cause-of-the-institutionalization-of-corruption-in-nigeria/>> accessed May 3, 2024.

³⁹ The foregoing questions the legality of the 1999 constitution having been imposed on Nigerians without consent. Countries like Argentina and Chile are precedents that right from the inception of the new democratic government, a new constitution that followed due procedure should have been introduced to replace those imposed, yet nothing was done. See Tony Nyiam, 'The Root Cause of the Institutionalization of Corruption in Nigeria' *PM News* (Nigeria, July 15, 2016) <<https://www.pmnewsnigeria.com/2016/07/15/the-root-cause-of-the-institutionalization-of-corruption-in-nigeria/>> accessed May 3, 2024.

⁴⁰ (2013) 12 SC (Pt. 1) 1.

⁴¹ He was charged with five others for monies missing while he was chairman of the Nigerian Port Authority by the EFCC and was convicted by the trial court for 30 months, two years on each charge to be served concurrently, on appeal the Court of Appeal upheld his conviction, while on a further appeal to the Supreme Court, his conviction was overturned based on a charge that was determined by the trial court.

⁴² See Late Diepreye Alamieyeseigha's case

sentence or no sentence in exchange for returning stolen monies,⁴³ short term of imprisonment which on appeal may be upturned⁴⁴ or a presidential pardon obtained for such persons. Even when such high-class persons are successfully sentenced to prison, the treatment given to them in the prison differs greatly when compared with other inmates.⁴⁵ Injustice continues to thrive in legal hypocrisy which sentences petty criminals to long term imprisonment with hard labour while high class thieves either walk away scot free, released after payment of fine or given short sentences with celebrity treatment in jail.⁴⁶

Many corruption cases filed against members of the ruling class by the anti-graft agencies have been dismissed over the years on technical grounds, lack of evidence, unpreparedness of the prosecution and other flimsy grounds⁴⁷ while cases bordering on petty crimes have gone on smoothly with long terms sentences, this is not to say that the Judiciary are guilty of complicity or compromise.⁴⁸

Punishment is the end result of every crime, corruption inclusive. As such, no matter how grand the law may look on the surface, if the probability of a sanction

⁴³ Femi Falana, 'How Supreme Court wrongly freed Bode George, others', *Premium Times Newspaper* (Lagos, Dec 30, 2013) <<http://www.premiumtimesng.com/opinion/152325-supreme-court-wrongly-freed-bode-george-others-femi-falana.html>> accessed, Abdul Jimoh, 'Alleged N190m Fraud: Court Discharges Oronsaye', *NTA News* (Lagos, 9 May 2017)

⁴⁴ Bode George's case

⁴⁵ The few days spent by Bode George at the Kirikiri Prison before their conviction was set aside by the Supreme Court was spent at the VIP section of the prison where they not only receive special treatment because of their position and fear that if such is not done the possibility of job loss is high. Visitors troop in daily and they are also not feed the prison food like other inmates. This sort of VIP treatment is common to those that have held one political position or the other in the country. Several other cases of corruption showed similar treatment, which is an indication that punishment has in no way deterred corrupt practices in Nigeria, since the punitive rationale behind imprisonment has been taken away due to the VIP treatment given to high class inmates whilst other prisoners suffer. For the case of Bode George he was sentenced to a mere 30 months imprisonment for corruption (stealing) while ordinary Nigerian convicted of stealing bag more years in prison, this shows a disparity in the dispensation of justice between the 'have' and the 'have not' in Nigeria, as well as the fact that corruption is a celebrated menace. See Emma Nnadozie, 'Why Bode George, others refused prison uniforms', *Vanguard Newspaper* (Lagos, October 31, 2009) <<http://www.vanguardngr.com/2009/10/why-bode-george-others-refused-prison-uniforms/>> accessed May 4, 2024.

⁴⁶ Ibid

⁴⁷ Femi Falana, 'Why The Nigerian Government Is Losing Corruption Cases' <<https://www.pmnewsnigeria.com/2017/04/16/nigerian-government-losing-corruption-cases/>> *PM News* (Lagos, 16th April 2017), accessed 9th May, 2024.

⁴⁸ The case involving the missing hundreds of millions of naira from the Universal Basic Education Fund was struck out by the Federal High Court. See DTN, 'Ex-HOS Oronsaye discharged and acquitted of corruption charges' *Daily Times* (Nigeria, 9 May, 2017) <<https://dailytimes.ng/news/breaking-ex-hos-discharged-acquitted-corruption/>> accessed 15 May, 2024.

is not 100 per cent certain, such crime exists in futility and every resource dissipated towards the prosecution of any crime by either the ICPC or the EFCC would be a waste of resources and an exercise in futility.

4.0 Effect Of Applying Punishment To Curb Corruption In Denmark

This aspect considers Denmark's approach in applying punishment to curb corruption. The rationale for choosing this country is premised on its clean corruption record, in that it has consistently maintained a clean corruption free record over the years. In fact, in 2023, Transparency International ranked Denmark 1 out of 180 countries.⁴⁹ Denmark is a country in Northern Europe. Its political system is a constitutional monarchy, with a prime minister that runs a parliamentary system of administration.⁵⁰ The prime minister is the head of government, the head of state, and a monarch.

Right from the establishment of absolute monarchy in Denmark in 1660, fighting corruption has been an integral aspect of state building.⁵¹ From time immemorial, elements such as the rule of law as well as focusing on getting civil servants loyal to the king and state were paramount in the development of anti-corruption mechanism in Denmark.⁵² As such, to occupy the office of a royal servant, such must solemnly swear an oath of fidelity and loyalty to the king in person and carry out his/her duties in accordance to the king's guidelines and laws. Specifically, the civil servant must be honest, hardworking, diligent and willing to act in the interest of the king at all times.⁵³

As early as the 17th century, Danish law regulated duties of civil servants and imposed harsh punishments for example life imprisonment and loss of office for crimes of corruption. For instance, the first unequivocal ban on bribery and the acceptance of gifts by royal servants was introduced in 1679 and was renewed in 1700.⁵⁴ The Danish law of 1683, and subsequent legislations specified standards for official duties, described and clearly banned forgery by civil servants. Issues of embezzlement was strictly prohibited and to be judged as theft from the crown. Penalty for fraud and embezzlement in office was sentenced to hard

⁴⁹Transparency International, 'Our Work in Denmark' (2023)

<<https://www.transparency.org/en/countries/denmark>> accessed 10th October, 2024

⁵⁰EU, 'Denmark' <https://european-union.europa.eu/principles-countries-history/eu-countries/denmark_en> accessed 10th October, 2024

⁵¹Jensen M, 'The Question of how Denmark got to be Denmark-Establishing Rule of Law and Fighting Corruption in the State of Denmark 1660-1900' <https://pure.au.dk/ws/files/82049568/How_Denmark_got_to_be_Denmark_QoG_Workingpaper.pdf> accessed October 10, 2024

⁵²Ibid

⁵³Ibid. 17

⁵⁴The law: Forordningen om Forbud paa Skienkog Gave at give ogtage. March 20th 1676 and October 23th 1700. The 1967 law forbade giving and receiving bribes. A reward was given to persons who report the crime.

labour for life, unless the money was repaid to the king's treasury.⁵⁵ Other measures were put in place for public officers engaging in criminal act. For example, the Danish Law specified demands for judges in the court system. It requires that they must not have been convicted or guilty of dishonourable acts.⁵⁶ Also, they are required to have adequate private wealth to cater for their financial obligations. This is to prevent them from been susceptible to collecting bribe.⁵⁷

Other measures were introduced to other civil service officers, such as obligation to deposit an economic guarantee before they are sworn into office. Where they do not have money themselves, they are required to find a guarantor, who customarily is a well to do and a prominent citizen, who will serve as surety and can be called upon in situation where the servant defrauds the crown.⁵⁸ To further serve as a check for fighting corruption, a system was put in place, known as *supplikker* that enabled the crown receive information about maladministration by royal servants. This increased the possibility of discovering and preventing corruption at the time.

As it relates to the legal framework, the Danish Criminal Code⁵⁹ in section 144 criminalizes bribery. It provides that a person that gives active bribes to persons in public service or office is liable to a fine or imprisonment for up to three years. Section 144 of the Danish Criminal Code punishes public officials who receive a bribe with a fine or imprisonment for up to six years.⁶⁰ Bribery in Private sector is also criminalized pursuant to section 299 (2) of the Danish Criminal Code. Also, a criminal property (i.e. the proceed of crime) may be confiscated, and a company convicted of bribery may face debarment from public procurement contracts under the EU Public Procurement Directive.⁶¹

Other than this legal framework, there are International anti-corruption conventions which Denmark has ratified. These include the UN Convention against Corruption (UNCAC), the Council of Europe Criminal Law Convention on Corruption and the Organization for Economic Cooperation and Development Anti-Bribery Convention.

⁵⁵ The law :Forordningen Om TyvesogUtroeTieneresStraf, March 4th 1690

⁵⁶ Christian 5. Danske Lov 1683, 1-5-1.

⁵⁷ Jensen M(N51).

⁵⁸ Larsen, Christian & Thomsen, Asbjorn Romvig 'Centraladministrationen generelt' (2017) *gunsttilforn. Kildertildanskforvaltningshistorie 1500-1750*, Copenhagen. p 46-47; Nielsen, Thøger (1951) "Studier over ældredanskformueretspraksis. Et Bidrag til dansk privatretshistorie itidene efter Chr. D. V's Danske Lov", Aarhus. 310-333.

⁵⁹ consolidated by Act no. 1650 of 17 November 2020

⁶⁰ The Criminal Code, 2005

⁶¹ <https://europam.eu/data/mechanisms/PF/PF%20Laws/Denmark/Denmark_Criminal_Code_2005.pdf> accessed October 24, 2024.

⁶¹ Ibid

Another legal framework is the Anti-Money Laundering Act,⁶² which provides a legal framework to prevent money laundering and terrorist financing within Denmark. It among others obligates institutions to perform due diligence on customers, including identification, risk assessment and verification of identity.⁶³ It further requires institutions to assess risks of money laundering and develop risk-based policies, controls and procedures.⁶⁴ This framework provides penalties and sanctions which includes: fines, imprisonment and revocation of licence.

Also, the Public Administration Act⁶⁵ which regulates the responsibilities and behaviour of public authorities in their dealings with citizens.

Lastly on the Legal framework is the Public Procurement Act.⁶⁶ It governs the way public authorities e.g. government agencies, and municipalities, procure goods, services and works.

Bribery under the Denmark jurisdiction can be active or passive. Where an individual offers, promises or grants a bribe, it is considered active bribery, whereas where an individual receives, demands or accept a bribe, such is considered as passive bribery.⁶⁷ It may also involve tangible and intangible gifts.⁶⁸ In Denmark, a special unit known as the State Prosecutor for Serious Economic and International Crime handles incidences of serious economic crime which includes investigation of alleged bribery.

Some cases have demonstrated the extent by which punishment have curbed corruption in Denmark. For instance, the case of Britta Nielsen, who was accused of diverting 117 million Danish Kroner (15.7 million euros) between 1993 and 2018 from the social services into her personal account by creating fictitious projects, is worth mentioning. The Copenhagen Court found her guilty of fraud of

⁶²Consolidation Act on Measures to Prevent Money Laundering and Terrorism Financing (the Anti-Money Laundering Act)
<https://www.dfsa.dk/Media/638544657257320096/HvidvasklovenENG_300424.pdf>
accessed ovember 4, 2024.

⁶³ Ibid

⁶⁴ Ibid

⁶⁵Danish Public Administration Act
<https://danishbusinessauthority.dk/sites/default/files/2023-10/The-danish-Public-administration-act-19121987_U.pdf> accessed November4,2024

⁶⁶The Public Procurement Act, <https://udbudslov.dk/wp-content/uploads/2023/04/the-public-procurement-act.pdf?utm_source=GTDT&utm_medium=pdf&utm_campaign=Cartel+Regulation+2024>
accessed November 4, 2024.

⁶⁷DLA Piper, 'Global Bribery Offences: A Multijurisdictional Offences' (2022)
<<https://inform-new.dlapiper.com/43/531/uploads/global-bribery-offenses-guide---2022.pdf?intlaContactId=k%2fBT9ymIhSPnSpYkT9RrtQ%3d%3d&intExternalSystemId=1?>>
> accessed October 31, 2024.p 69

⁶⁸Such as cash, vouchers for goods, airline tickets, holidays , job offers etc.

a grave nature and sentenced her to six years and six months prison sentence. Her three children who were beneficiaries of her crime were charged for handling stolen goods, and convicted. The court also confiscated over 113 million kroner of her assets.⁶⁹

Another case is the ATEA Corruption Scandal (IT Procurement Bribery). In 2015, Atea A/S, a Danish subsidiary of the Norwegian IT Supplier Atea ASA, was investigated for bribing several public officials employed in IT department of various Danish public authorities which includes the national police and the regional authority, Region Zealand.⁷⁰ Investigations led to the charge against Atea and four-high-ranking Atea employees for bribery and embezzlement. Also, a number of public servants who benefited from these corrupt activities through lavish travel and hospitality extended to them were charged as well. Atea was found guilty and fined a sum of \$2m, and several high-ranking officials in both Atea and Region Zealand were convicted.⁷¹ Atea's conviction for bribery also required its exclusion from participating in public tenders for four years, except the company showed that it was reliable to contact authorities by carrying out a self-cleaning process prescribed by EU and national laws on public tenders.⁷²

More so, the corruption tale of Peter Brixofte, a mayor of Farum who was known for his luxurious life reflected in his exorbitant, exotic drinks and several vacations, is also worth mentioning. ⁷³He engaged in several inappropriate acts as a mayor for example, he delayed a municipal payment to one of his friends to enable the municipality pay his friend 325,000 DKK as late payment.⁷⁴ Also, in another instance, he made the municipality pay wages of the employees at Farum Boldklub (a professional sport club). He had also in other instances concealed expenditures, took loans and exceeded grants from the city council and paid his business companion 9 million DKK that he was not authorised to pay.⁷⁵ Basically, he used public money to support his interest and friends. In a charge brought against him, the Supreme Court sentenced him to two years imprisonment for breach of trust, for a part of his acts during his service as mayor. Subsequently, the Eastern High Court sentenced him to another two years of imprisonment for

⁶⁹AFP, 'Former Danish Social Worker Convicted of Massive Fraud' (The Local dk , 19th February, 2020) <<https://www.thelocal.dk/20200219/former-danish-social-worker-convicted-of-massive-fraud>> accessed November 12, 2024

⁷⁰Tormod T, 'Corruption, procurement and self-cleaning in Denmark' <<https://www.inhouselawyer.co.uk/legal-briefing/corruption-procurement-and-self-cleaning-in-denmark/>> accessed November 13, 2024

⁷¹Ibid

⁷²Ibid

⁷³Langsted L B, 'The King of Farum-A Danish Corruption Tale' (2012) Journal of Scandinavian Studies in Criminology and Crime Prevention <https://www.researchgate.net/publication/263453667_The_King_of_Farum-A_Danish_Corruption_Tale> accessed November 14, 2024. Page 4

⁷⁴Ibid

⁷⁵Ibid

abuse of public office.⁷⁶ The city manager who abetted and aided his act of corruption was charged and convicted for aiding and abetting.

4.1 Lessons For Nigeria

It is important to note that using Denmark as a yardstick does not mean that corruption does not exist in Denmark, but greatly unacceptable by the populace and public officials.⁷⁷ Customarily, bribery is impliedly unacceptable as attempting to bribe a public official in Denmark is risky with probability of facing an outright rejection and being reported to the police.⁷⁸ When you compare the gravity of punishment for corruption in Nigeria i.e. 7 years imprisonment and fine, with Denmark which is 3 years or 6 years or fine, you find out that Nigeria has more grievous sanctions for corruption yet corruption increases daily such that in 2023, transparency international ranked Nigeria as 145th out of 180 countries.⁷⁹ Having noted this, Nigeria can learn the following lessons from Denmark

- a. Build a culture of zero tolerance for corruption, both among the populace, public and private sector- In Denmark, there is an implied custom among the citizens, and public officials that abhors corruption. Nigerians as a whole and particularly the public and private sectors need to imbibe this culture.
- b. Encourage whistle blowing of corrupt officials who live above their means- following Denmark, there is need for Nigeria to encourage and strengthen whistle blowing policy. Till date, Nigeria is yet to have a law that protect whistle blowers and this impact negatively on the fight against corruption.⁸⁰
- c. Appointing officials with clean records in position as public officers- Nigeria should also learn this from Denmark, where a judge for instance must not have been convicted or guilty of any dishonourable act. Integrity and clean records of public officials should be major criteria

⁷⁶Ibid

⁷⁷Langsted, LB, 'Bribery, Bribery across Borders and the Like from a Danish Perspective' (2009) *Scandinavian Studies in Law*, 54: 248-268.

⁷⁸Ibid. 248.

⁷⁹ Transparency International, 'Corruption Perceptions Index' <<https://www.transparency.org/en/countries/nigeria>> accessed November 14, 2024.

⁸⁰Note that there are several attempts to have a formal law that protects whistleblower through the Whistle-blower Protection Bills of 2008, 2011, 2015, 2019, however, none of these bills have been passed into law. Mondaq, 'Whistle-Blower Protection in Nigeria: Understanding the Law and your Rights' (2024) <<https://www.mondaq.com/nigeria/whistleblowing/1544276/whistle-blower-protection-in-nigeria-understanding-the-law-and-your-rights>> accessed November 15, 2024.

for appointment and thorough investigation should be conducted to ascertain their integrity and record. As such, persons with record of any pending case of corruption⁸¹ or conviction for corruption and other financial crimes should be precluded from contesting or holding any political position in Nigeria till such cases are either dismissed or the accused acquitted. Presently persons with pending case of corruption are either given a political appointment or voted into a public office and in some cases charges are brought against them while in position of authority⁸² all these are pointers to the nonchalant attitude in Nigeria to the gravity of corruption.⁸³

- d. Also, following Denmark, persons to be appointed in public offices should have adequate private wealth to cater for their financial obligations. This is to prevent them from conceding to the temptation of collecting bribe.
- e. Lastly, following Denmark, in prosecuting persons engaged in one form of corrupt practices or the other, beneficiaries from the corrupt practices should also be prosecuted and convicted as is the case of Britta Nielsen who even her children who were beneficiaries of the crime were charged for handling stolen goods and were convicted.

4.2 Summary of Findings

In summary, this paper finds that sanctions have been unable to deter corruption in Nigeria because of fundamental and institutional factors that propels corruption in Nigeria. After comparing anti-corruption legislation and measures in Denmark, the paper finds that Nigeria has more severe sanction for corruption than Denmark, but Denmark has maintained a low record of corruption because of certain factors which includes zero tolerance for corruption, both among the populace, public and private sector.

5.0. Conclusion And Recommendations

Corruption is a crime of passion albeit negative which reaps Nigerians of their entitlement and it is time for all hands to be on deck to fight for the restoration of

⁸¹Until when such cases are decided and a judgment of acquittal with no appeal is gotten, in case of appeal, till the Supreme Court affirms his/her acquittal.

⁸²Saraki's case before the Code of Conduct Tribunal. For similar cases like that of Saraki, such person should step down from the position held till the case against them have been fully determined.

⁸³Former President Goodluck Jonathan in his statement stated that corruption which is a sugarcoated term for stealing is not stealing, this statement in itself shows that corruption is an acceptable practice in Nigeria which needs to be severely dealt with through the combined effort of the judiciary, the anti-graft agencies with a severe and merciless punishment.

these entitlements and also fight for the soul of Nigeria which is presently in a state of limbo. This paper has amongst other outlined the regulatory framework for corruption and sanctions. The paper explained why these sanctions have been unable to deter corruption especially when compared to other climes. The paper discussed Denmark as a jurisdiction with a clean record of corruption and discussed legal frame works; some cases as well as factors that have enabled this jurisdiction maintain this record. It also highlighted some lessons for Nigeria. In addition to these lessons, this paper recommends the following:

- a. The need to revisit the Constitution of the Federal Republic of Nigeria in order to remove existing anomalies⁸⁴ that have continued to serve as an enabler for corruption. It is also necessary to decouple the EFCC from the office of the Attorney General of the Federation. It must be totally independent to the extent that its chairman should no longer be a presidential appointee.⁸⁵ The chairman of such an important organ must in addition, enjoy security of tenure, not to be hired and fired at will.
- b. Considering the role of the judiciary, there is a wakeup call for the judiciary to play active and intentional role in the fight against corruption in Nigeria. Where the judiciary is made-up of corrupt judges who aid these corrupt officials in escaping punishment, there cannot be a head way in the fight against corruption in Nigeria.⁸⁶
- c. The need to establish separate courts with judges assigned on a rotational basis for cases bordering on financial crimes to foster expedited proceedings and sentencing as well as avoid backdating sentences which may enable the accused person walk away free without being punished.⁸⁷ One of the issues affecting the ability of the anti-graft agency to effectively prosecute is case overload which lead to abandonment of cases.
- d. Need to prosecute governments or persons who turned blind eye to financial misappropriation under their watch even though they were

⁸⁴Too much power concentrate on the executive, dependence of the EFCC on the executive, sharing ratio of revenues from natural resources etc.

⁸⁵Abdullahi Y. Shehu, 'EFCC, Other Law Enforcement Agencies Need Total Independence' in 'Recovering the Proceeds of Crime: key legal and practical issues and challenges' *EFCC Academy* (Abuja, 9 October 2013) <<https://efccnigeria.org/efcc/news/606-efcc-other-law-enforcement-agencies-need-total-independence-giaba-boss>> accessed 15 may, 2024.

⁸⁶Yahaya Abdulkarim, 'Socio-Economic Effects of Judicial Corruption in Nigeria' *International Journal of Humanities and Social Science Invention* (2012) Volume 1 Issue 1, 31.

⁸⁷See Late Diepreye Alamieyeseigha's case before he was pardoned by former President Goodluck Jonathan.

not part of the perpetrators but were careless in aiding corrupt practices while in office.

- e. The 2015 ACJA provides for non-custodial sentencing such as: probation, parole, community service, etc. The court should apply these measures robustly especially in cases of corruption that doesn't involve huge sums of money. When these sentences are well supervised and broadcast, it will 'name and shame' such corrupt official especially in instances of high-profile persons who have regard for their family name and integrity.