

USE OF SHARI'A COURT TO FIGHT CORRUPTION IN NIGERIA*

Abstract

This paper assesses the possibility of prosecuting Muslim corrupt public officials before Shari'a Courts instead of conventional courts. This is because technicality, cumbersome procedure and undue delay have characterized the conventional courts, and such led to frustration and acquittal of many corrupt Politically Exposed Persons (PEPs), largely on technical grounds. This is despite series of legislations, rules, regulations and policies introduced by government to fight corruption. Corruption has been resilient and still remains the major bottleneck that hinders the country to achieve its fundamental objectives; which causes Nigeria to be consistently ranked among the most corrupt countries in the world. The aim of the paper is to identify whether Shari'a courts as they are now could effectively be used to fight corruption and other corrupt related offences, having the conventional methods of fight against corruption failed to effectively curb corruption in the country. The paper adopts doctrinal research methodology. The major finding of this paper is that prosecuting Muslim corrupt PEPs and other public officials before the existing Shari'a Court in Northern Nigeria would not make any difference; this is because all the bottlenecks that exist in the conventional courts do also exist in the Shari'a courts of Northern Nigeria. Hence, it is recommended that to tackle corruption, government should strengthen the Anti – Corruption Agencies, review the procedure of nomination and appointing judges and ensure adequate public enlightenment against corruption. Above all, to curb corruption in this country, every citizen needs to be patriotic and converts himself to anti-corruption crusader.

Keywords: Shari'a, Court, Fight against Corruption, Nigeria

1. Introduction

It is not in doubt that there are prevalence and persistence of corruption and other corrupt related offences in Nigeria, despite series of measures and mechanisms put in place by different regimes in order to curb corruption and other related offences to the barest minimum in the country.¹ Recently, The Executive Director of the Civil Society Legislative Advocacy Centre (CISLAC), Auwal Rafsanjani described Nigeria as the worst offender of illicit financial flows in Africa. According to Rafsanjani, international financial intelligence showed that every year, around \$18 billion is lost to either outright looting, tax evasion or money laundering.² Moreover, in a recent Corruption Perception Index (CPI) released on the 28th January, 2021, the Transparency International³ ranked Nigeria 145th corrupt country out of 180 countries having scored 25 points out of 100.⁴ In Nigeria, hardly a day passes without breaking news on serious corruption case by media; hence, it is no gainsaying that corruption has eaten deeply into Nigeria's fabrics.⁵ It is worthy of note that the Supreme Court of Nigeria has taken judicial notice of rampancy of corruption in Nigeria, when Per Uthman Mohammed J.S.C (as he then was) in the case of *AG of Ondo State v AGF*⁶ held that:

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¹ Y. O. Dauda, Religion and the Anti-Corruption War in Nigeria, in Corruption in Nigeria Issues, Challenges and Possibilities, in Victor Egwemi, (eds), *Corruption in Nigeria Issues, Challenges and Possibilities*, (Aboki Publishers 2012), p 146.

² Abdullateef Aliyu, *CISLAC Rates Nigeria as the Worst Illicit Financial Flow Offender*, <<https://dailytrust.com/cislac-rates-nigeria-as-the-worst-illicit-financial-flow-offender>> accessed on 14th April, 2021.

³ Transparency International, the leading civil society organisation working to end corruption worldwide, has released its 26th annual Corruption Perceptions Index on Thursday, 28 January 2021. The Corruption Perceptions Index (CPI) is the leading global indicator of public sector corruption, providing an annual snapshot of the relative degree of corruption in 180 countries and territories. The index for 2020 draws on 13 expert assessments and surveys of business people; see Transparency International, *Media advisory: Corruption Perceptions Index to be published on 28 January 2021*, <<https://www.transparency.org/en/press/media-advisory-corruption-perceptions-index-to-be-published-on-28-january-2021>> accessed on the 13th April, 2021.

⁴ Ibid.

⁵ M. M. A. Akanbi, Transcript of the Keynote Address Delivered by Hon. Justice M. M. A. Akanbi at the Opening Ceremony of 46th Annual Conference of the Nigerian Association of Law Teachers, held at Auditorium Faculty of Law University of Ilorin from 22nd to 26th April, 2013, in Abdulqadir I. A. and Others, (eds), *Corruption and National Development*, p. xiv.

⁶ (2002) 9 NWLR (PT. 772) 22; (2002) 10 NSCQR p.1034.

It is quite plain that the issue of corruption in Nigerian society has gone beyond our borders; it is no more a local affair. It is a national malaise which must be tackled by the Government of the Federal Republic. The disastrous consequence of the evil practice of corruption has taken this nation into the list of the most corrupt nations on earth.⁷

The major conventional methods of fight against corruption in Nigeria are criminal prosecution before a court of law filed against persons reasonably suspected to have engaged in corruption and civil proceedings i.e. Non-Conviction Based (NBC) forfeiture proceedings aimed to seize and forfeit illegally acquired assets to government.⁸ Other methods include public enlightenment of consequences of corruption carried out by mostly Anti-Corruption Agencies (ACAs), Non-Governmental Organisations (NGOs) etc., introduction of Treasury Single Account (TSA)⁹ and Integrated Personnel and Payroll System (IPPS),¹⁰ as well as introduction and strengthening whistle-blowing policy.¹¹ But still, corruption remains the major problem of this country. Two decades ago, twelve Northern States¹² introduced the application of Shari'a which is still in force in their respective States and Shari'a has condemned all forms corruption. However, even the States that introduced the Sharia are bedevilled with this monster i.e. corruption, to the extent that some governors from such Sharia States were arraigned before different conventional courts facing corruption charges.¹³ The aim of the paper is to identify whether Shari'a Courts in Nigeria as they are now could effectively be used to fight corruption and other related offences, having the conventional methods of fighting corruption have failed to effectively curb corrupt practices in the country. The paper adopts doctrinal research methodology. It is divided into six parts, while part one deals with the general introduction, part two discusses meaning and nature of the Sharia, part three covers what Sharia said about corruption and other related offences, part four analyses conventional means of fighting against corruption, part five discusses whether the current Sharia courts in Northern Nigeria could be used to replace the conventional courts in fight against corruption. Finally, the paper closes with part six, which contains the observations and recommendations.

2. Nature and Definition of Shari'a

The word *Shari'a* is derived from '*shara'a*' which literally means to follow a good way or path, to come in, to enter or to commence.¹⁴ The word may also mean way to watering place or a watering place itself

⁷ Ibid, p.1122.

⁸ NBC is a process of initiating an action before a court of law to seized and forfeit illegally acquired assets where no criminal charge has been laid against a suspect. Conviction is not required under NBC forfeiture, because the action is not against an individual but against the property, the owner of the property is a third party having the right to defend the property and unlike criminal case NBC does not incapacitate offender rather lessen his power and influence by depriving him and his family to enjoy the ill-gotten gains, hence, it is called an action in *rem*; Theodore S. Greenberg and Others, *Stolen Asset Recovery A Good Practices Guide for Non-Conviction Based Asset Forfeiture*, (The International Bank for Reconstruction and Development Washington, D.C. 2009), p. 1.

⁹ It is a public accounting system under which all government revenue, receipts and incomes collected through one single account or set of linked accounts maintained by Central Bank of Nigeria in order to block leakages.

¹⁰ It is a computerised Human Resources Management Information System which consisting of federal government personnel data used for payment of salary, pension and gratuity meant to remove ghost workers from payroll.

¹¹ Leena Koni Hoffmann and Raj Navanit Patel, *Collective Action on Corruption in Nigeria: A Social Norms Approach to Connecting Society and Institutions*, (Chatham House, the Royal Institute of International Affairs, Africa Programme Report, 2017), p.2.

¹² These states are Katsina, Sokoto, Zamfara, Kano, Jigawa, Yobe, Borno, Kebbi, Niger, Kaduna, Bauchi, and Gombe. BBC News Online, *Analysis: Nigeria's Sharia split*, at: <<http://news.bbc.co.uk/1/hi/world/africa/2632939.stm>> accessed on the 14th April, 2021.

¹³ Former Shari'a States governors such as Ahmad Sani Yariman Bakura of Zamfara State, Attahiru Dalhatu Bafarawa of Sokoto State, Alhaji Saminu Turaki of Jigawa State, Ibrahim Shehu Shema of Katsina State etc. were arraigned before different courts on allegation of corruption and corrupt related offences.

¹⁴M. D. Mahmud and Others, *Administration of Islamic Law in Nigeria: Contemporary Challenges*, A Paper Presented at the National Conference Organised by Department of Islamic Law, Faculty of Law, University of Ilorin to Commemorate the Retirement of Professor Abdulqadir Zubair from the University Services, Held at the Main Auditorium, University of Ilorin, Ilorin, Kwara State, between 24th - 26th February, 2020, p. 2.

or a path that leads to where water is fetched.¹⁵ Technically, *Shari'a* means law made by Almighty Allah, sent down to his creatures to provide a guideline for attaining both earthly and hereafter justice.¹⁶ In other words, *Shari'a* consists of laws, norms and principles which Almighty Allah revealed and directed the entire Muslim *ummah* to adhere to it strictly.¹⁷ *Shari'a* is an institution that the Almighty Allah ordained in full to guide an individual in his relationship with God, his fellow Muslims and the rest of the universe.¹⁸ In a nutshell, apart from being divine, *Shari'a* regulates general conducts of Muslims and it emphasises on justice, equity, rightness and fairness in solving disputes among Muslims and non-Muslim societies.¹⁹ It is important to note that *Shari'a* is an integral part of Islam. *Shari'a* and Islam are two faces of a coin, therefore, are inseparable.²⁰ *Shari'a* serves as foundation upon which the Islamic legal system is built, hence, wherever Islam spreads, it goes along with its legal system i.e. *Shari'a*.²¹ The term *Shari'a* is also commonly used in reference to a complete system of law and jurisprudence connected with Islam, including the primary and subsidiary sources of the *Shari'a*, as well as the methodology used to deduce and apply the law.²² In other words, *Shari'a* is an all-encompassing divine system, consisting of religion; tenets, ethics, inter-personal values, standards of behaviour and law.²³ It is worthy of mention here that *Shari'a* is wider in scope than Islamic law, though sometimes both are used synonymously. In the case of *Alkamawa v Bello*²⁴ Per Wali JSC, while distinguishing Islamic law and customary law held that: 'Islamic Law is not the same as customary Law as it does not belong to any particular tribe. It is a complete system of universal Law, more certain and permanent and more universal than the English Common Law'.²⁵

Moreover, in the case of *Wapanda v Wapanda*,²⁶ the court while explaining the nature of *Shari'a*, it held that: 'It must be reinstated that Islamic Law is a reasonable and rational law. It is humane and comprehensive. It takes care of all and sundry. It outlaws highhandedness and oppression. It established justice and peace in the society'.

The primary source of *Shari'a* is the Qur'an which is defined as speech of Allah revealed to the Noble Prophet Muhammad SAW. Qur'an is considered constitution by Muslims and a source that outdoes all other sources and is regarded by Muslims as the highest authority in all facets of life, including legal, social, political, and economic matters.²⁷ The second source of *Shari'a* is the traditions of Prophet Muhammad SAW which consists of Prophet's actions, sayings, and his tacit approval. His traditions

¹⁵Akintola, I. *Shari'a in Nigeria: An Eschatological Desideratum* (Shebiotimo Publications, Nigeria, 2002) p.5; Doi, A.I., *Basis of Shari'a (Islamic Law)* (Gaskiya Corporation, Zaria, 3rd Ed. 1982) p.1.

¹⁶Jennifer Tyus, 'Going Too Far: Extending Shari'a Law in Nigeria from Personal to Public Law', *Washington University Global Resources Law Review*, (2004), 3, 1, p.201.

¹⁷Ibid, p.206.

¹⁸Abdurrahman Doi, *The Cardinal Principles of Islam* (Islamic Publications Bureau, Lagos, 1981) p.190.

¹⁹M. D. Mahmud and Others, (n. 14), p. 3.

²⁰Ibid.

²¹Ibid. p. 2

²²Arafa Mohamed A. 'Corruption and Bribery in Islamic Law: Are Islamic Ideals Being Met in Practice?', *Annual Survey of International & Comparative Law* (2012), 18, 1, 9. p. 175.

²³Ibid; *Shari'a* is one of the oldest legal systems still practiced today. There are over 1.4 billion Muslims today worldwide which over 20% of the world's population. There are thirty-five nations with population over 50% Muslim, and there are another twenty-one nations that have significant Muslim populations. There are approximately nineteenth nations that have incorporated *Shari'a* in their respective constitutions.

²⁴(1998) 6 SCNJ 127.

²⁵Ibid.

²⁶(2014) 2 SQLR (Pt III) 425.

²⁷Arafa, Mohamed A., (n. 22), p.167.

were compiled and called ‘*Sunnah*’.²⁸ Other sources of Shari’a include *Ijm’a*,²⁹ *Qiyas*, (Analogical Deduction),³⁰ *Ijtihad*, *Istihsan*, *Al-Maslahah Al-Mursalah* etc.³¹

3. Prohibition of Corruption and Other Related Offences by Shari’a.

In Sharia, corruption includes bribery, gifts or donations in return of merited or unmerited favour, extortion, nepotism, buying influence, favouritism, fraud, embezzlement and the likes. They are all condemned and forbidden on the basis that they seek to distort the course of justice.³² The terms used for corruption in Shari’a consist of *fasad*, *batil* and *rashwa*, which are strongly harmful and attract severe punishment against anybody that commits anyone of them.³³ Corruption was mentioned severally in the Qur’an. For example Almighty Allah says in the Qur’an: “Corruption has appeared on land and sea for what men’s hands have earned, that (Allah) may make them taste of some of their deeds, in order that they may turn back (from evil).”³⁴ Also, Allah states in the Qur’an that “Do not eat up one another’s property unjustly nor bribe with it the judges in order that you may knowingly and wrongfully deprive others of their possessions.”³⁵ There are many prophetic traditions that deal with corruption, for example, Prophet (SAW) was reported to have said Allah cursed briber, receiver and mediator.³⁶ Also, in another tradition, the Messenger of Allah (SAW) appointed a man from the Azd tribe called Ibn Al-Utbiyya, in charge of Sadaqat to be received from Banu Sulaim. When he came back, the Messenger of Allah (PBUH) asked him to render his account. He said: “This wealth is for you (i.e. for the public treasury) and this is a gift presented to me”. The Messenger of Allah (SAW) said: “You should have remained in the house of your father and your mother, until your gift came to you if you spoke the truth”; then he addressed us. He praised God and extolled Him, and afterwards said: “I appoint a man from you to a responsible post sharing with the authority that God has entrusted to me, and he comes to me saying: This wealth is for you (i.e. for the public treasury) and this is a gift presented to me. Why did he not remain in the house of his father and his mother and his gift came to him, if he was truthful? By God, any one of you will not take anything from the public funds without any justification, but will meet his Lord carrying it on himself on the Day of Judgment. I will recognise any one of you meeting Allah and carrying a growling camel, or a cow bellowing or a goat bleating”. Then he raised his hands so high that whiteness of his armpits could be seen. Then he said: “O my Lord, I have conveyed Thy Commandments”.³⁷

Another interesting incident on this is the history of two sons of the Caliph Umar, namely: Abdullahi and Ubaidullah, who accompanied an army contingent to Iraq. Governor Abu Musa Al-Ashari, said: “Here’s money as advance to buy goods from Iraq and then sell them in Madinah. Give the capital to the caliph and keep the profit for yourselves.” This was agreed and the Caliph’s sons made a profit. But when handing over the capital to the Caliph, the latter asked: “Does he give similar advances to everyone in the army?” The answer to this was “No”, and the Caliph asked them to pay both the capital and the profit.³⁸ Also during Caliph Umar ibn Abdul-Aziz, who was one of the Caliphs of Ummayyad

²⁸ Six major Books compiled and recognized by jurists are: Sahih Al-Bukhari, Sahih Muslim, Sunan Abu Dawud, Jami’ Al-Tirmidhi, Al-Nasa’i and Sunan Majah, though some jurists added Muwada’ Malik.

²⁹‘Ijma’ is an agreement of Muslim jurists among themselves in a particular age on a particular question of law. In other words, ‘Ijma’ refers to unanimous opinion of recognized religious authorities at any given time on a particular subject matter.

³⁰ Qiyas means is an extension of a legal ruling in one case to a new similar case due to the resemblance of both cases’ effective cause.

³¹ Usman Muhammad Shu’aib, *Critical Appraisal of the Practice of Codification of Islamic Criminal Law In The Muslim World: A Case Study Of Northern Nigeria*, Being A Dissertation Submitted to the School of Postgraduate Studies Ahmadu Bello University, Zaria in Partial Fulfillment Of The Requirement for the Award of Doctor of Philosophy Degree In Law Ph.D, Department Of Islamic Law, Faculty of Law, Ahmadu Bello University, Zaria, (2014), p. 50.

³²Mohammad Hashim Kamal, ‘*Fighting Corruption: An Islamic Perspective*’, <<https://www.nst.com.my/amp/opinion/columnists/2019/07/507029/fighting-corruption-islamic-perspective>> accessed 13th April, 2021.

³³ Ibid.

³⁴ Qur’an 30:41.

³⁵ Ibid, 2:188; other Qur’anic verses about corruption are Q. 4: 58; 8:72; 2:205; 26:151; 30:41.

³⁶Muhammad Ibn Isma’l Al-Bukhari, Sahih Al-bukhari, Hadith, No. 763, Vol. 8, bk. 81, Translated by Center for Muslim-Jewish Engagement, available at: <<http://cmje.org/hadith/al-bukhari/>>. Accessed 15th April, 2021.

³⁷Ibid, Hadith, No. 543, Vol. 8, bk. 81.

³⁸Mohammad Hashim Kamal, (n. 32).

dynasty, it is reported that Umar would extinguish a candle bought by using public funds if people came to see him for a private purpose. When he was writing to his family, or for a need he had concerning himself, he would request a candle from his own property.³⁹ This is how all Muslim leaders are expected to perform their duties anywhere anytime, anything short of that amounts to corruption.⁴⁰

Corruption is a serious crime, which Shari'a considers to be simultaneously religiously sinful and criminal offence punishable by Shari'a due to the serious harm it causes to the community.⁴¹ Corruption of any kind is punishable under ta'azir.⁴² Punishments available upon conviction for ta'azir offences are within the discretion of judge, which may extend to death sentence or imprisonment, caning, fines and payment of compensation.⁴³

With the introduction of Shari'a in Northern Nigeria, three category of offences including ta'azir were codified in compliance with the Nigerian Constitution in what is called Shari'a Penal Code.⁴⁴ The Code in verbatim adopts the wordings of the Penal Code of Northern Nigeria in offences that relate to corruption and other related matters save punishments. For instance, the provisions of Penal Code (PC) of Northern Nigeria dealing with gratification, soliciting, giving and collecting bribes⁴⁵ are exactly similar with the provisions of Shari'a Penal Code (SPC) of Sokoto State⁴⁶ save punishments as stated earlier. For example, a public officer convicted for gratification under Penal Code he shall be punished with imprisonment for a term which may extend to seven years or with fine or with both; but if such public officer is in the service of the government acting in a judicial capacity or as a police officer shall be punished with imprisonment for a term which may extend to fourteen years or with fine or with both.⁴⁷ But on the other hand, Sharia Penal Code provides that such public officer shall be punished:

- (i) with imprisonment for a term which may extend to five years and shall be liable to caning which may extend to thirty lashes; (ii) if such public officer is a public officer in the service of the Government of the Federation acting in a judicial capacity or carrying out the duties of a police officer, with imprisonment for a term which may extend to ten years and shall be liable to caning which may extend to fifty lashes.⁴⁸

Another example is the punishment provided by PC about a person convicted for offering or giving or agreeing to give gratification, shall be punished with imprisonment which may extend to three years or with fine or with both.⁴⁹ But its similar provision in the SPC provides that punishment upon conviction shall be imprisonment for a term which may extend to two years and shall be liable to caning which may extend to thirty lashes.⁵⁰ In almost all the sections the imprisonment terms under PC are lengthier than under the SPC. Moreover, the offence of Criminal Breach of Trust by Public Officers who looted public funds entrusted with them; Penal Code provides that:

Whoever, being in any manner entrusted with property or with a dominion over property in his capacity as a public officer or in the way of his business as a banker, factor, broker, legal practitioner or agent, commits criminal breach of trust in respect

³⁹ Mevliyar Er, 'Corruption from the Islamic perspective: Some recommendations for the MENA region', *International Journal of Islamic and Middle Eastern Finance and Management*, (2008), 1, 1, p.33.

⁴⁰ Ibid.

⁴¹ Arafa, Mohamed A. (n. 22).

⁴² Shari'a divides offences into three categories, namely: Hudud offences (offences that have divine fixed punishments like theft), secondly, Qisas offences which punishable by retaliation or payment of compensation (diyyah) for example where one kills another or cut his finger, qisas shall be applied and thirdly Ta'azir offences which are all other offences that are neither hudud nor qisas such as corruption.

⁴³ Usman Muhammad Shu'aib, (n. 31), p. 32.

⁴⁴ Ibid.

⁴⁵ See sections 115 to 123 of the Penal Code of Northern Nigeria 1960.

⁴⁶ See sections 291 to 299 of the Sharia Penal Code of Sokoto State of 2001.

⁴⁷ Section 115 of the Penal Code; Boldness is for emphasis.

⁴⁸ Section 291 of the Sharia Penal Code of Sokoto State of 2001; Boldness is for emphasis.

⁴⁹ Section 118 of Penal Code.

⁵⁰ Section 294 Sharia Penal Code of Sokoto State of 2001.

of that property, shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine.⁵¹

Many cases filed by EFCC on criminal breach of trust by public officers in the north, consist of violation of section 315 of the PC. For example, cases of former governors of Katsina State Ibrahim Shehu Shema,⁵² Rev. Jolly Tevoru Nyame of Taraba State⁵³ and Chief Joshua Chibi Dariye of Plateau State, section 315 was included in their count charges. However, similar offence under the SPC attracts only imprisonment term which may extend to seven years along with restitution.⁵⁴

From the above, it is crystal clear that SPC is more lenient to corrupt persons upon conviction. However, it is important to point out that under classical Sharia, punishment of offences of corruption ought not to be codified, rather, and the punishments upon conviction shall be left for the judge to decide. As stated earlier, a judge can pass up to life imprisonment or even death sentence on corrupt public officers if the circumstances of the case demand that. However, due to the necessity of constitutional provisions; the Sharia Courts judges' discretion in passing sentence was curtailed. Hence, provisions of classical Shari'a would not be applied fully.⁵⁵

4. Nature and Prevalence of Corruption in Nigeria

Nigeria is called the giant of Africa being the most populous black nation in the world; to the extent that every one in six Africans is a Nigerian. Nigeria has an estimated population of about 200 million people, which makes it the seventh most populous country in the world.⁵⁶ Nigeria's economy is mainly dependent on oil which makes up about 90 percent exports and 70 percent government revenue.⁵⁷ Nigeria is the fifteenth largest oil producer in the world;⁵⁸ it has world's eleventh largest oil reserves and ninth largest natural gas reserves.⁵⁹ But despite the country's vast wealth, over 60 percent of its population are living in abject poverty.⁶⁰ Recently, the Executive Secretary of the Nigeria Extractive Industry Transparency Initiative (NEITI) Ogbonna Orji during a courtesy visit to Director General of Federal Radio Corporation (FRCN) stated that as head of government institution saddled with the responsibility to keep and compile data of quantity of crude oil being produced by Nigeria he is not aware of the quantity of the crude oil being produced by the country.⁶¹ Corruption has been the clog in the wheel of progress of Nigeria and has incessantly frustrated the realization of noble national goals, fundamental objectives and directive principles of country's policy, despite the enormous aforementioned natural and human resources in the country.⁶² Corruption is responsible for all kind of woes that shackle the progress of the country, such as abject poverty, illiteracy, abandoned projects, poor quality of education and projects implementation, ramshackle infrastructure in the country, election rigging, failed promises, high level of youths unemployment, even among the literate ones, disconnection of masses from leaders with attendant insecurity such as sectional, religious and tribal

⁵¹ Section 315 of the PC; Boldness is for emphasis.

⁵² Shema v F.R.N (2018) 9 NWLR (Pt 1624) 337.

⁵³ He Was Charged before the High Court of The Federal Capital Territory Abuja before His Lordship Hon. Justice A.A.I. Banjoko In Charge No: FCT/HC/CR/82/07.

⁵⁴ Section 170 of the Sharia Penal Code of Sokoto State 2001.

⁵⁵ Mevliyar Er, (n. 39), p.41.

⁵⁶ Ngozi Okonjo Oweala, *Fighting Corruption is Dangerous: The Story behind the Headlines*, (MIT Press Cambridge 2018) p.15; Aderibigbe Victor, *Nigeria: Is Nigeria Still the Giant of Africa?*

<<https://allafrica.com/stories/201709110005.html>>, accessed on the 17th April, 2021.

⁵⁷ Ibid.

⁵⁸ Among the Organisation of Petroleum Exporting Countries (OPEC) Nigeria was ranked sixth largest oil producer, OPEC: Annual Statistical Bulletin, Vienna, Austria, 2018,

<http://www.opec.org/opec_web/static_files_project/media/download/publications/ASB2018_23072018.pdf>, accessed on the 14th April, 2021, p.6.

⁵⁹ Ngozi Okonjo Oweala, (n.56), p.17.

⁶⁰ A. F. Usman, 'Corruption in Nigeria Public Service: History, Analysis, Deterrent and Prospects,' in Morufu A, Bello (eds), *A Compelling Compendium, Effects of Corruption on the Nigerian Society*, (Alamori Eda Publication Ltd, 2017), p. 171.

⁶¹ Unini Chioma, We Don't Know Quantity of Crude Oil Nigeria Produces – NEITI Boss, <<https://www.thenigerialawyer.com/we-don't-know-quantity-of-crude-oil-nigeria-produces-neiti-boss/>> accessed 16 April, 2021.

⁶² Ogbewere Bankole Ijewereme, *Anatomy of Corruption in the Nigerian Public Sector: Theoretical Perspectives and Some Empirical Explanations* <<http://www.uk.sagepub.com/aboutus/openaccess.htm>> accessed 16th April, 2021.

agitations, armed-robbery, kidnapping for ransom which is most prevalent disturbing crime presently, nepotism and impediment of flow of foreign direct investment.⁶³ Nigeria has consistently been ranked among the high corrupt countries in the world by Transparency International and other notable organisations that monitor corrupt practices around the world.⁶⁴ High corruption rankings affect almost all Nigerians who migrate or travel to foreign countries, as foreigners have the perception that since Nigeria is corrupt, so too are all Nigerians, so they are wary in relating with Nigerians.⁶⁵ Former Economic and Financial Crime Commission (EFCC) Chairman, Nuhu Ribadu, alleged that over \$400,000,000,000:00k (Four Hundred Billion US Dollars) was looted from Nigeria by its leaders from 1960 and 1999; the amount is “six times the total value of resources committed to rebuilding Western Europe after the Second World War.”⁶⁶ Moreover, between 2005 and 2014 about \$182,000,000,000:00k (One Hundred and Eighty Two Billion US Dollars) was lost through illicit financial flows from the country.⁶⁷

Corruption in Nigeria manifests itself in different forms which consist of misappropriation, kickbacks, over-invoicing, bribery, embezzlement, tribalism, nepotism, favouritism, money laundering, outright looting of public treasury and so on.⁶⁸ In Nigeria, most of the elected and appointed public office holders and top bureaucrats use their position of authority to actively engage in corrupt practices.⁶⁹ It should be noted that corruption is a national phenomenon that continues to plague every facet of the Nigerian society with all the negative consequences for the country, health⁷⁰ and education sectors are not immune from it.⁷¹

5. Conventional Means of Fight against Corruption

The major conventional methods for fight against corruption consist of sanctioning culprits, this could be done by investigating the alleged corrupt practice, arresting the suspect, seizure of the proceeds of corruption and where prima facie case is established against the suspect, he should be arraigned before a court of law for violation of relevant legislation, so that he/she should be punished accordingly.⁷² Public enlightenment is another method used to curb corrupt practices, some legislations establishing Anti-Corruption Agencies (ACAs) have empowered the agencies to sensitize the public about corruption so that the public would shun it.⁷³ Furthermore, some legislations empower ACAs to seize any property reasonably suspected to be proceeds of crime and apply to court for the property to be forfeited to the government civilly without prosecution (action in rem).⁷⁴ Also whistle blowing policy

⁶³ Ibid.

⁶⁴ Okwuagbala Uzochuku. Mike, *Corruption in Nigeria: Review, Causes, Effects, and Solutions* accessed 12 July, 2019.

⁶⁵ Ibid.

⁶⁶ Ogbewere Bankole Ijewereme, (n. 62).

⁶⁷ Global Financial Integrity, *Illicit Financial Flows to and from Developing Countries: 2005–2014*, (2017), <http://www.gfintegrity.org/wp-content/uploads/2017/05/GFI-IFF-Report-2017_final.pdf> pp. 30–34, accessed 3rd August 2019.

⁶⁸ Obuah Emmanuel, ‘Combating Corruption in a “Failed” State: The Nigerian Economic and Financial Crimes Commission (EFCC)’, *Journal of Sustainable Development in Africa*, (2010) 12, 27-53.

⁶⁹ Ibid.

⁷⁰ Nigeria accounted for 19 per cent of global maternal deaths in 2015 and was recorded to have made ‘no progress’ in achieving the Millennium Development Goal of reducing preventable maternal mortality rates by 75 per cent between 1990 and 2015. See World Health Organization (2015), *Trends in Maternal Mortality: 1990 to 2015: Estimates by WHO, UNICEF, UNFPA, World Bank Group and the United Nations Population Division*, <https://data.unicef.org/wp-content/uploads/2015/12/Trends-in-MMR-1990-2015_Full-report_243.pdf>, accessed 2nd September, 2019.

⁷¹ Journal of Commonwealth Law and Legal Education Vol. 12, No. 1, Autumn 2017 1; Nigeria’s rapid population growth and poor investments in education have put enormous pressure on the number of schools, facilities and teachers available for basic learning: see <https://www.unicef.org/nigeria/children_1937.html> Moreover, at an estimated 10.5 million, Nigeria has the world’s largest number of out-of-school children: see <<https://www.unicef.org/nigeria/education.html>>, accessed on the 2nd September, 2019.

⁷² Robert Hunja, *Here are 10 Ways to Fight Corruption*, <<https://blogs.worldbank.org/governance/here-are-10-ways-fight-corruption>> accessed 17th April, 2021.

⁷³ See section 6 (p) of Economic and Financial Crimes Commission Act; section 6 (e) of the Corrupt Practices and other Related Offences Act 2000, etc.

⁷⁴ See section 17 of Advance Fee Fraud Act; section 48 of the Corrupt Practices and other Related Offences Act 2000, etc.

issued by the government is another modern Anti- corruption method that encourages citizens to willingly disclose information about corrupt practices such as fraud, bribery, outright looting of public funds, financial misconduct or any other form of financial malpractice and certain percentage of whatever is recovered would be given to the whistle blower as his reward.⁷⁵ Many legislations,⁷⁶ rules, regulations and policies⁷⁷ were made in order to fight corruption in Nigeria, but all failed to yield any meaningful result as stated earlier, Nigeria has been consistently ranked among most corrupt countries in the world.⁷⁸ Hence, there is a need to re- strategize methods of fighting corruption, by possibly adopting other legal system applicable in the country.

6. Use of Sharia Courts in Fight against Corruption

There was great enthusiasm by Muslim society upon introduction of Shari'a which was introduced by twelve Northern States. The then existing Area Courts inherited from colonial masters were converted to Shari'a Courts, sequel to enacting various Shari'a Court laws by States. Shari'a Penal Codes and Shari'a Criminal Procedure Codes were equally enacted by the said States.⁷⁹ Many Muslims supported the introduction of Shari'a on the grounds that it is their right and Shari'a would hold corrupt political leaders and elites accountable by subjecting them to Shari'a courts and the Sharia would ensure social justice and their economic development.⁸⁰

However, few years after the introduction of Shari'a, reports started disseminating that corrupt Muslim elite bribed police in order not to be arraigned before Shari'a courts rather they prefer their cases be taken before magistrates' courts that equally operate hand in hand with Sharia Courts in all Shari'a States.⁸¹ Eventually, Muslim political leaders did not allow the Shari'a to work coupled with the defective premise upon which the Shari'a was built ab-initio. Therefore, contrary to expectations of masses Shari'a fails to hold corrupt Muslim political leaders responsible and accountable, likewise it fails to improve their standard of living.⁸² Other obstacles that characterise the Shari'a Courts which hinder them from effective and proper administration justice include constitutional provisions which subjected Shari'a to constitution. For the Shari'a to have any meaningful, it has to be supreme, but reverse is the case, as Shari'a derives its validity from the Constitution. Also, constitutional requirement of codification of Shari'a took away the judges' discretionary powers sentencing which removes the freshness of Shari'a.⁸³ Also, because of the appeal system in the country, appeals from cases decided by Shari'a courts would eventually end up before the conventional courts while the investigating and prosecuting agencies are the same in both Shari'a and conventional courts, hence, such have negatively affected the functions of Shari'a Courts.

Furthermore, the procedure for appointment of judges in Sharia courts is mostly full of nepotism and favouritism. Appointments are not competence based, poor funding, lack of internal mechanism to deal

⁷⁵ M. Chigozie Onuegbulam, Whistle Blowing Policy And The Fight Against Corruption In Nigeria: Implications For Criminal Justice And The Due Process, *NAUJILJ* [2017], 8, 2, 175.

⁷⁶ The major laws enacted by National Assembly to fight corrupt practices include: EFCC Act, ICPC Act, Code of Conduct Bureau and Tribunal Act, 2004, Recovery of Public Property (Special Provisions) Act, 2004, Public Complaint Commission Act, 2004, Fiscal Responsibility Act, 2007, Public Procurement Act, 2007, Money Laundering Act, 2011, Advance Fee Fraud and Other Fraud Related Offences Act 2006, Banks and Other Financial Institutions Act, 2004, Nigerian Financial Intelligence Unit Act 2018 and Nigeria Extractives Industries Transparency Initiative Act 2004, etc.

⁷⁷ Apart from legislations there are for example, Presidential Executive Orders, Whistle Blowing Policy 2016, Practice Directions by Courts of Records for accelerated hearing of Corruption Cases, Special Control Unit against Money Laundering (SCUML) Regulation 2013 etc.

⁷⁸ B. Bazuaye, and Others, 'Combating Corruption in Nigeria: The Role of Judiciary', in Abdulqadir I. A. and Others, (eds), *Corruption and National Development*, (Being a conference proceeding of the 46th Annual Conference of the Nigerian Association of Law Teachers, held Auditorium and Faculty of Law University of Ilorin from 22nd to 26th April, 2013), pp.567.

⁷⁹ Usman Muhammad Shu'aib, (n. 31). p. 65.

⁸⁰ Brandon Kendhammer, 'The Shari'a Controversy in Northern Nigeria and the Politics of Islamic Law in New and Uncertain Democracies', *Journal for Comparative Politics*, (2013), 45, 3, p. 298.

⁸¹ Ibid.

⁸² Ibid, p.306.

⁸³ Ibid.

and sanction erring judges and other supporting staff, etc. are prevalent in Shari'a Courts⁸⁴ Persons with questionable character are appointed to man Sharia courts. Shari'a Court system is made family and friends affair. Even after the appointment, apart from poor remuneration which make some of the judges to engage in corrupt practices, there are hardly workshops or seminars organised for them.⁸⁵

7. Conclusion.

From the forgoing, it is observed that it is not in doubt that Nigeria is a rich country, however, because of corruption and uneven distribution of the Nigeria's commonwealth, nothing meaningful achieved by the country compared to its resources from independence to date. Series of measures and mechanisms were employed by successive regimes to fight corruption, nevertheless, corruption remains defiant. It is equally evident that conventional methods of fighting corruption in Nigeria have woefully failed to tackle corruption. Furthermore, the current set up of Shari'a Court in Northern Nigeria whose appeals end up before the conventional courts coupled with the fact that the investigation and prosecuting agencies are the same with that of the conventional courts has negatively affected Shari'a. It is the finding of this paper that prosecuting Muslim corrupt public officials before the existing Shari'a Court in northern Nigeria would not make any difference. Hence, it is recommended that government should strengthen the Anti – Corruption Agencies, review the procedure of nomination and appointing judges and ensure adequate public enlightenment against corruption. Above all, to curb corruption in Nigeria country, every citizen needs to be patriotic and convert himself to an anti-corruption crusader.

⁸⁴ Ahmad Muhammad Bachaka and Muhammad Mansur Aliyu, Access to Justice in Area/Shari'a Courts: An Islamic Perspective, Caliphate Bar Journal (CALIBAJ) 2019, 1, 1, P. 191.

⁸⁵ Ibid.