

THE ROLE OF THE JUDICIARY IN THE FIGHT AGAINST CORRUPTION:  
BEING A PAPER DELIVERED BY YUSUF ALI SAN<sup>1</sup>. AT THE 2017/2018  
FEDERAL HIGH COURT LEGAL YEAR CEREMONY AND ANNUAL  
JUDGES CONFERENCE HELD AT THE ABUJA HEADQUARTERS OF THE  
FEDERAL HIGH COURT ON 14<sup>TH</sup> SEPTEMBER, 2017

INTRODUCTION

when I received the invitation, to this event it was with mixed feelings and trepidation that I accepted. It is not easy for one who is just a lawyer to come into the midst of judges, who are used to issuing orders and directives, to address them on a sensitive matter like corruption. The choices available for a speaker on this kind of occasion are very limited. You either speak and address issues frontally or paper over cracks and play to the gallery. However, in the midst of this confusion, I remembered the Yoruba saying that "If two brothers enter a room to have a frank talk and come out of the room smiling, they have not shared the truth with each other," I then decided that it was better for us to address the issue affecting us head-on, for the good of the institution, the judiciary, which is not

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only the hope for the poor but the rich, but also for the powerful, the powerless, the well connected, and the unknown.

The essence of this paper, therefore, is to look into the role the judiciary can play in extermination of corruption in Nigeria. In doing this, we will take a look at the definition of the term corruption from various perspectives; we will also look at the causes of corruption and the role that stakeholders, especially the stakeholders can play in combating corruption.

Having made these prefatory remarks, I want to express my deep sincere gratitude to the Hon Chief Judge of this Court for inviting me to come and exchange ideas on this very important but controversial topic. My lord I am grateful for this honor of asking me to speak at your last annual conference of this court when you are still in the saddle of chief judge.

### **DEFINITION OF TERMS**

It is conventional, in this kind of discourse, to identify the key words and phrases and proffer definitions for the major reason of avoiding ambiguity and also to avoid the humpty dumpty doctrine.

According to the World Bank:

*‘Corruption occurs when a function, whether official or private, requires the allocation of benefits or the provision of a good or service. . . . In all cases, a position of trust is being exploited to realize private gains beyond what the position holder is entitled to. Attempts to influence the position holder, through the payment of bribes or an exchange of benefits or favors, in order to receive a special gain or treatment not available to others is also a form of corruption, even if the gain involved is not illicit under applicable law. The absence of rules facilitates the process as much as the presence of cumbersome or excessive rules does.*

*Corruption in this sense is not confined to the public sector and, in that sector, to administrative bureaucracies. It is not limited to the payment and receipt of bribes. It takes various forms and is practiced under all forms of government, including well-established democracies. It*

*can be found in the legislative, judicial, and executive branches of government, as well as in all forms of private sector activities. It is not exclusively associated with any ethnic, racial, or religious group. However, its level, scope, and impact vary greatly from one country to another and may also vary, at least for a while, within the same country from one place to another. While corruption of some form or another may inhere in every human community, the system of governance has a great impact on its level and scope of practice. Systems can corrupt people as much as, if not more than, people are capable of corrupting systems<sup>2</sup>*

According to the Merriam-Webster dictionary, the word means *"impairment of integrity, virtue, or moral principle."* The word is a noun that dates to the 14th century and is related to the notions of decay and depravity. The denotation also includes secondary definitions that account for the inducement of wrong in another via

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<sup>2</sup> Poverty Reduction and Economic Management THE WORLD BANK SEPTEMBER 1997: Helping Countries Combat Corruption The Role of the World Bank, p. 20 available at <http://www1.worldbank.org/publicsector/anticorrupt/corruptn/corruptn.pdf>

bribery, and notes that corruption is a departure from the original or pure form of a thing or idea.

Corruption has also been defined as the use of public office for private gain, or in other words, use of official position, rank or status by an office bearer for his own personal benefit.<sup>3</sup>

However, Corruption is not a new thing this is why we will have a recourse to the scriptural definitions of corruption. Pardon me to refer to the major religions of Islam and Christianity. In the holy Bible, we find the word, corruption referred to in a non-literal sense denoting moral depravity, which ends in utter moral ruin and hopelessness.<sup>4</sup>

In the holy Quran, the term ‘Fassad’ and its derivatives are used to refer to corruption in its various forms. Literally, Fassad means spoiling, adulteration, etc. According to Al-Khudrawi,<sup>5</sup> it is the

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<sup>3</sup> Asia-Pacific Development Journal Vol. 7, No. 2, December 2000 p. 3. This definition has, however, been criticized by making a distinction between public corruption from private corruption, and arguing that the above definition is a definition only of public corruption. For instance, if ordinary citizens lie when they give testimony in court, this is corruption; it is corruption of the criminal justice system. However, it does not involve abuse of a public office by a public official. And when police fabricate evidence out of a misplaced sense of justice, this is corruption of a public office, but not for private gain. Seumas Miller [2005] Corruption (Stanford Encyclopaedia of Philosophy).

<sup>4</sup> See for example, Genesis 6:11; Exodus 32:7; Hosea 9:9; Galatians 6:8, etc.

<sup>5</sup> Al-Khudrawi, (2004) Dictionary of Terms 1<sup>st</sup> edition; Al-Yahmaneh, Beirut.

equivalent of corruption in English language. The Glorious Quran uses various derivatives of the word ‘Fassad’.<sup>6</sup> Some of the English translators sometimes translate ‘Fassad’ as ‘corruption’ as in Qur’an (30:41) and ‘mischief’ as in Qur’an (2:30), or ‘inequity’ as in Qur’an (89:9)<sup>7</sup> etc. The words ‘corruption’, ‘mischief’ and ‘inequity’ refer to different parts of the same thing, depending on the context. In fact, mischief and inequity in the contexts are literally synonyms of corruption. According to Wikipedia<sup>8</sup> (Arabic) the word ‘Fassad’ means ‘Derivation or debasing of cleanliness in performing public duties through bribe and favouritism’.<sup>9</sup>

From my perspective, corruption is not only about bribery and gratification, nepotism, influence peddling, name dropping, tribalism etc. all these are variants of corruption. Permit me to quote what I said in an earlier discourse on the issue of corruption:

*‘The range of corruption is as wide as the criminal mind  
that conceived them in today’s ever changing world.*

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<sup>6</sup> See for instance, Al-Qur’an: 5:33; 7:73; 30:41; 89:9.

<sup>7</sup> See for instance Pickthal M. (1983) ‘The Glorious Qur’an: Text and Explanation Translation, Taj Company, New Delhi.

<sup>8</sup> Available at [www.wikipedia.org/wiki/](http://www.wikipedia.org/wiki/)

<sup>9</sup> Hon. Justice I. T. Muhammad, CON ‘Fight Against Corruption in Nigeria: Sharia Point of View’ in ‘Anatomy of Corruption in Nigeria: Issues, Challenges and Solutions’, (Yusuf Ali SAN, ed. Intec Printers Limited, Ibadan 2016) 139–140.

*However, when we talk about corruption, bribery, blackmail, extortion, embezzlement, graft, nepotism and patronage systems readily spring to mind.*<sup>10</sup>

## THE JUDICIARY AND THE SOCIETY

The place of the Judiciary in a country cannot be over emphasized, irrespective of the kind of government be it democratic, autocratic, and military or monarchy. This point was made more clearly by Aguda that:

*“It is almost axiomatic that the judiciary plays a pre-eminent role in any democratic dispensation. Indeed a political system can be considered as on the basis of the extent to which the judicial arm is permitted to hold the scale of justice over and above the other arms of government. The source of authority of the judiciary for exercising this critical function is of course, the Constitution...”*

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<sup>10</sup> Yusuf Ali SAN ‘The Fight Against Corruption in Nigeria: Myth or Reality’ in ‘Anatomy of Corruption in Nigeria: Issues, Challenges and Solutions’, (Yusuf Ali SAN, ed. Intec Printers Limited, Ibadan 2016) 5

To confirm the importance of the Judiciary to any society, the military junta also relied on it for legitimacy. According to Peter Mudidi Walubiri:

*“Even in the most authoritarian regimes in Africa, a semblance of a court system survives. Initially, the system needs a judge to swear in the dictator, and courts to ‘lawfully’ jail or even kill opponents of the regime who are demonized and dubbed counter-revolutionaries, traitors, imperialist agents or simply backward forces.”*

If the Judiciary is this fundamental, central and critical to development of any nation then, the occupiers of the seat of judgment who hold the power of life and death must be above board. In other societies, the Judiciary is held in awe and treated like people from another planet. In fact the Supreme Court of the United States of America was described in the following words by Woodward and Armstrong with respect to the secrecy of their operations:

“For those nearly two hundred years, the Court has made its decisions in absolute secrecy, handing down its judgments in formal written opinions. Only these opinions, final and unreviewable, are published. No American institution has so completely controlled the way it is viewed by the public. The Court’s deliberative process—its internal debates, the tentative positions taken by the Justices, the preliminary votes, the various drafts of written opinions, the negotiations, confrontations, and compromises—is hidden from public view.”\_

In Nigeria before decisions are taken, the newspapers, the internet, television and radio are already doing the analysis and most often the speculation turn out to be true. For all you care, it may be mere coincidence. The question however is how did we get to this level? I dare say the major issue is comportment of the judicial officers and judicial staff. What do you make of judicial officers hobnobbing with politicians? What do you make of judicial officers attending “owambe” parties and spraying musicians? What do you make of a judicial officer permanently on the entourage of politicians?

A judicial officer is expected to be a recluse of a kind, sparingly seen outside of the courtrooms; they have a closed circle of friends and deliberately avoid the camera and limelight. Today, some judges in courtroom will address the journalists and tell them to record their names correctly so that Nigerians will know the Judge that decided a particular matter. If we may ask, “to achieve what goal”? The only answer is that they are sending signals to “appropriate quarters.” There are insinuations that sitting on a particular panel to determine a case in a particular manner is a ticket to elevation to the next level in the judicial ladder.

The accusation of corruption against the judiciary is a very heavy one and as noted earlier, it may well be perception but it must be stressed that there is no smoke without fire. Let me state that I share the view of Aremu that:

*“Corruption erodes the moral fabric of every society, violates the social and economic rights of the poor and the vulnerable. The truth is that what is stolen by few rogues*

*cannot be made available for the mass of the desperate multitude.”*

It is even worse if this is happening in the Judiciary. This is because the strength of the judiciary is the confidence reposed in it by the people who approach it for resolution of disputes. Hon. Justice Warren Burger put it in perspectives when he opined:

*“A sense of confidence in the Courts is essential to maintain the fabric of ordered liberty for a free people and three things could destroy that confidence and do incalculable damage to society; that people come to believe that inefficiency and delay will drain a just judgment of its value; that people who are for long been exploited in the smaller transactions of daily life come to believe that Courts cannot vindicate their legal rights from fraud and over-reaching; that people come to believe the law in the larger sense cannot fulfil its primary function to protect them and their houses, at their work and on the public streets.”*

It is imperative to bear in mind what Allah Says on corruption in the seat of judgment . Allah said:

*“O David! We did indeed make thee a vicegerent on earth, so judge thou between men in truth and justice. Nor follow thou the lusts of thy heart for they will mislead thee from the path of God. For those who wander astray from the path of God, is a penalty grievous for that they forget the day of account.”*

Even the former President Jonathan admonished judicial officers by underscoring the effect of corruption thus:

*“A partisan judge compromises his or her oath of office and acts unfairly. A corrupt judge disgraces the Bench on which he or she sits and the title that he or she wears”*

The former Chief Justice of Nigeria, Hon. Justice Mariam Aloma-Mukthar unequivocally told the Senate during her screening admitted that there are allegations of corruption pending against judicial officers when answer to a question posed on corruption retorted thus:

*"Is very bad and I am saddened by it. I will try as much as possible to ensure that as for the bad eggs that are there, there will be a cleansing by the NJC based on petitions."*

On the issue of corruption in the judiciary, Chief Folake Solanke SAN in July, 2009, lamented as follows:

*"Indeed if Hon. Justice Idris L. Kutigi – Chief Justice of Nigeria,<sup>11</sup> was constrained to declare publicly, at the swearing in of the new Federal High Court judges, which event took place recently, that erring judges to wit: corrupt judges would be punished, then there is much cause for anxiety and lamentation over the profession. Oh ye gods! And of course, the media, both print and electronic, are having a field day publishing allegations of corruption against judges and electoral tribunals with sheer abandon. Some of the stories now making rounds are unprintable and unspeakable.*

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<sup>11</sup> As he then was

*... Thus, my lamentation is: how did we sink to that unimaginable nadir? Surely, the words 'Honourable Justice', which we are so fond of, must mean what they mean.*

*In 1963, it was unheard of to hear even a whisper or a rumour of corruption against any cadre of the judicial hierarchy. Painfully, the cancer of corruption started to rear its ugly head in the last two decades. And now, most tragically, it is shamefully pervasive.<sup>12</sup>*

The above will show us that all is not well and that we can not play the ostrich on the issue under discussion. The best way of solving a problem is to first admit the existence of same before proffering solution.

## CAUSES OF JUDICIAL CORRUPTION

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<sup>12</sup> An Address at the introduction of the Hon. Justice B. O. Adeniji as the New Chief Judge of Oyo State to the Bar, Bench and the Public pp 2-3.

Life itself is founded upon causes and effect. Therefore, this is an appropriate place to identify what are the causes of corruption in the judiciary. This is more so since the judiciary can only fight a disease it knows exists.

1. Lack of Personal Integrity: When a man or woman has no integrity there is nothing he is incapable of doing. To have integrity, one must have self worth, self value and a minimum irreducible moral level below which one will not sink. One must have a standard world view beyond which one will not bend. One must have worthy principle for which one is willing to lay down his life or forfeit benefits. One must believe in the social contract of being one's neighbor's keeper. Anyone without these qualities cannot have integrity and without integrity, any form of corruption is considered as normal. A man without integrity can not cherish uprightness, openness, transparency, honesty, fidelity to noble causes or even loyalty.
2. Ignorance of the Law: Islamic jurisprudence identified 3 types of judges: the one who does not know the law but accepts to be judge, the one who knows the law but, due to whatever reason

perverts the law and the third is one who knows the law and is ready to stand by his oath of office and justice. It is said that of the three categories, only the last one will enter paradise. The other two will enter hell on the day of reckoning. It is a form of serious corruption for somebody who knows that he is not capable of administering justice to accept that office in the first place and, in any event an ignorant judge will, in most cases, if not all, pervert the course of justice and will thereby corrupt the course of justice by his ignorance. Ignorance may lead to the dearth of law and justice. Pervasive ignorance on the bench will also lead to loss of confidence of the citizens who ordinarily sees the judiciary as the sanctuary of the best and the brightest. Unscrupulous lawyers will take undue advantage of such judges to practice their mischief. It is still a great jurisprudential debate as to who is worse as between an ignorant judge and an outright corrupt one.

3. Personal, filial and pecuniary interest: Where a judge has personal interest in the outcome of a matter, there is no way his decision can be upright. It will appear that the second pillar of

fair hearing, *nemo iudex an in causa sua*, was developed to stem this kind of issue. It is quite obvious that where a judge has pecuniary interest in the outcome of a piece of litigation, justice will only not be served, it will be corrupted. Of course, blood relation or other forms of social relations will corrupt a judge from doing justice. A judge that wants to exhibit fidelity to his oath of office will scamper from adjudicating on any matter in which he or anyone close to him has pecuniary interest . As it is often said justice must only be done it must be seen to be done. Perception is 50% of conclusion.

4. Government and Governmental Agencies: When the government of the day or any of its agencies has interest of any type in a matter before a judge, especially in the political dispensation that we are in, it will take a judge of high principle and undiluted allegiance to the rule of law, to do justice to such matters if the powers that are put pressure on the Judge to do their bidding. If in any matter in which the government is involved, directly or indirectly, and the powers that are the are unable to divorce themselves or their persons,

in such instances, judges will be unduly pressurized to do the bidding of the temporary holders of position in government. The body language of the government in cases involving it before a court is also crucial. Subtle or apparent pressure for the court to decide in favor of the government is a veritable corrupting act.

5. Litigants: Most litigants in Nigeria believe that justice has a price and because of that frame of mind, they go to any length to compromise the judge when they have matters in court. Unfortunately, they are very quick to accuse judges, mostly falsely, of having been compromised, even when such accusation has no factual basis nor support. In their warped reasoning, where a judge says no to an offer of bribe from a party in a matter before him then it is assumed that he must have accepted a higher offer from the other party. Cynicism has become a national disease.

6. Counsel: The Rules of Professional Conduct 2007 has express provisions on how counsel should conduct themselves so

that there will not be an appearance of trying to compromise a judge. For example, Rule 31 (4) and (5) provides as follows:

*‘(4) Except where the opposing lawyer fails or refuses to attend and the Judge is advised of the circumstances, a lawyer shall not discuss a pending case with a Judge trying the case unless the opposing lawyer is present.*

*(5) Except as provided by a rule or order of court, a lawyer shall not deliver to the Judge any; letter, memorandum, brief or other written communication without concurrently delivering a copy to the opposing lawyer.’*

Rule 34, dealing with lawyers’ relationship with judges, also provides as follows:

*‘34. A lawyer shall not do anything or conduct himself in such a way, as to give the impression, or allow the impression to be created, that his act or conduct is calculated to gain, or has the appearance*

*of gaining special personal consideration of favour from a Judge.’*

Also Rules 15(2) & (3a) expressly prohibits Counsel from accepting any form of gratification a matter in the following words:

*‘15(2) In his representation of his client, a lawyer shall-*

*(a) keep strictly within the law notwithstanding any contrary instruction by his client, and if the client insists on a breach of the law, the lawyer shall withdraw his service;*

*(b) use his best endeavours to restrain and prevent his client from committing misconduct or breach of the law with particular reference to judicial officers, witnesses and litigants and if the client persists in his action or conduct, the lawyer shall terminate their relations.*

*(3) In his representation of his client, a lawyer shall not-*

*(a) give service of advise to the client which he knows or ought reasonably to know is capable of causing disloyalty to, or breach of, the law, or binging disrespect to the holder of a judicial office, or involving corruption of holders of any public office?*

Unfortunately, however, from the stories that make the rounds, there are some of the members of the legal profession who are playing less than holy roles in these matters. Some of the stories one has had was to the effect that some of the counsel have perfected a way of taking money from litigants with assurance to the clients that the money was meant for the judge handling the particular case but such lawyers pocket such monies and it would not get to the judge. This unfortunately, paints the judges in bad light when they are not beneficiaries of such criminal behavior. This unholy practice has promoted most of the unsubstantiated rumor of corruption that make the rounds against innocent judges. What a shame! What a pity!

7.The Larger Society: I have decided to separate them from the litigants because litigants are direct beneficiaries of the judgment of a court. The larger society is culpable in permissiveness of corruption in line with the *Machiavellian* theory that the end justifies the means. The society has grown so permissive of corruption that, directly or indirectly the society condones it. The allegation of corruption is accepted depending on who is saying it. If it is Yoruba against non Yoruba, it is considered as ethnic issue, if it is Muslim against Christian, it is seen as Religious based, if it is Male against Female , it is Gender-based. Therefore, the larger Nigerian society is a major contributor or promoter to the principle of corruption in the judiciary. The different discordant views expressed by many Nigerians on the midnight raid by the DS on the houses of certain judges between Friday 14th and Sunday 15th October 2016, is a clear case in point. It would appear that the Nigerian society had been looking for scapegoats in the judiciary, because most public commentators did not see anything wrong in the method employed. The view

I held and which I still hold on that raid is that you cannot attain legal ends by employing illegal means. We cannot ignore the observance of the rule of law in fighting any of the myriad of problems confronting our nation. Impunity is also a specie of corruption.

7. Conditions of Service: A nation gets the type of judiciary it is ready to pay for. Compared to other serious countries, Nigerian judges are poorly paid. Depending on the cadre, a Judge in the UK, as at April 2017, gets an annual salary of between € 252,079 and € 108,171.<sup>13</sup> Also, in the United States, a Judge earns as high as \$186,720 per annum.<sup>14</sup> Judges salaries are said to be in the top 99% of all careers in the United States.<sup>15</sup> The payment in Nigeria is not only poor, it has surfaced in recent times that, even the payments are delayed and there is not much to write home about on the conditions of service generally, in terms of the tools of work like power and I.T. etc , which are taken for granted in other places. Truly a hungry man is a madman and is a man that can be compromised. We

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<sup>13</sup> Approximately between N119144560 and N51126775.44 at the current exchange rate of N472.65 per GBP

<sup>14</sup> Approximately N66845760.00 at the current exchange rate of N358.00 per Dollar.

<sup>15</sup> <https://www.sokanu.com/careers/judge/salary/>

must stop to pay lip service to the overall welfare of our judges if we truly want an incorruptible judiciary. I am not by any means saying that poor pay is an excuse for judicial corruption. What I am saying and canvassing is that the governments must do all that is necessary to make corruption unattractive to the members of the bench.

8. Media: The greatest contribution of our country to the hall of infamy in the adjudicatory process is a media trial. By salaciously reporting mere allegations of corruption against the citizens, as if they have been found guilty, the media puts a lot of pressure on the judges. Some judges may be tempted to work to the answer to meet the expectation of the consumers of these media blitz. The most recent of this infamous practice was the over publicized allegation that the current Chief Justice of Nigeria, Hon. Justice Walter Samuel Nkanu Onnoghen, is under the searchlight of the EFCC. His Lordship promptly denied this and, maybe for once, the EFCC has come to corroborate His Lordship that, indeed he is not under any investigation. Thankfully also the office of the Attorney-

General of the Federation has also made the point in the Dailies of *9<sup>th</sup> September, 2017* that the Chief Justice of Nigeria is not under any investigation. Unfortunately, the Nigerian reading public is sceptical so much so that anything found in the media is the gospel truth, notwithstanding any subsequent denial. It is worth quoting part of the press release of the Attorney-General of the Federation, as published on page 11 of The Punch Newspaper of *9<sup>th</sup> September, 2017*, where the No 1 law officer of the Federation stated as follows:

*‘We therefore use this opportunity to reaffirm our deep respect for the distinguished person and office of the Honourable Chief Justice of Nigeria, and we will never be party to any unpatriotic effort to denigrate his exalted office. We wish to state unequivocally that the office of the Honourable Attorney General of the Federation will continue to collaborate with His Lordship in his efforts to reform the judiciary and galvanise the anti-graft war. Indeed the present administration appreciates His*

*Lordship for his unwavering support for its anti-corruption drive.*

*“We wish to state further that we are neither aware of nor privy to any purported probe or ongoing investigation of the Honourable Chief Justice of Nigeria by any security or anti-graft agency.*

*“The office of the Honourable Attorney General of the Federation dissociates itself from the baseless allusion or suggestion obviously made in bad faith to the effect that His Lordship is under any form of probe or investigation whatsoever.*

*“In view of the above, the Honourable Attorney General of the Federation and Minister of Justice wishes to emphatically reiterate that he has profound confidence in the Chief Justice of Nigeria and wishes His Lordship the very best in the discharge or performance of his daunting duties to the nation at large.’*

Having identified few of the things which to our mind could promote corruption on the Bench, we should then address our minds to what role the judiciary should play in the fight against corruption. In treating this issue, one will be playing the ostrich if we close our mind to the role other stakeholders will be playing in the fight against corruption. This is more so since the judiciary cannot corrupt itself. There are other agents that help, facilitate, promote and act as purveyors for corruption. We will therefore do a quick excursion into what roles these other stakeholders must play before zeroing in on what the judiciary would do. Our first port of call is the government

### **THE ROLE OF THE GOVERNMENT**

- a) Cooperation from Government and its Agencies with Court Procedures and Orders: The government must provide the enabling conducive environment for the judiciary to thrive without corruption. When government and its agencies have litigation in court, they should not see it as personal defeat if cases are decided against them. This will go a long way in

ensuring that there is no undue influence on judges in the discharge of their duty. Once the citizens know that the government upholds the rule of law, it will have percolating effect on the populace in their attitude to the judiciary.

b) Discourage impunity: Nigeria does not suffer from shortage of laws, enforcement of law is the albatross in the fight against all vices in the country. This negative perception is promoted by impunity by people in high and low offices of government. Impunity will only leave our land if temporary holders of power stop to pay lip service to the observance of the rule of law. It has been argued by writers that a country that is low on the observance of the rule of law is also very low in the measurement of development index.<sup>16</sup> The lack of appreciable development in our land can be traced to our repugnant attitude to the rule of law. A time has come when the bar must put in place ways to checkmate our colleagues who as attorney generals get involved in pressurizing the bench to do wrong

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<sup>16</sup> A. Ozpolat et al. 'Does Rule of Law Affect Economic Growth Positively?' Research in World Economy [Vol. 7, No. 1; 2016] available at <http://rwe.sciedupress.com/>; Haggard, S., & Tiede, L.B. (2011). The rule of law and economic growth: where are we? World Development, 39(5), 673-685 available at <http://www.gsdrc.org/document-library/the-rule-of-law-and-economic-growth-where-are-we/>

things. If our colleagues who occupy the exalted positions of attorney generals stand on the side of the rule of law then our judiciary will be protected.

c) Security Agencies: Since the security agencies are the brainchild of the government, the government must ensure that it invests heavily in the human capital development of these agencies so that they can deploy modern forensic technology in their investigation. It is a national malaise that, till now, we do not have a reliable data bank for fingerprints in the country. The security agencies resort to unorthodox methods in investigation because of the lack of modern knowledge of forensic investigation. As long as the security agencies are rudimentary in the way they carry out their investigation, it will have a negative carry over effect on the judiciary and affect the discharge of duties in the institution. The resort to media trial is also one of the negative side effects of improper investigation. Media trial as earlier stated can lead to corruption of the bench . When a pending case is

sensationally reported it can lead to desperation from the prosecution and the defendant.

- d) Better working condition for the members of the judiciary: To attract more upright incorruptible and courageous persons to the bench, the government must improve the working conditions. Remuneration must be comparable to other climes. The working environment and the tools of work will have to be modernized. Frustration could be an express way to personal corruption. Judges are not miracle workers, they cannot deliver 21st century services with 18th century implement. With the parlous and deplorable state of the working environment of our judges it will be difficult to attract successful practitioners who are upright to take up appointment as judges.
- e) Proper use of whistleblower and Freedom of Information: It is our view that if the government assiduously implements the whistleblower policy and allow for the effective implementation of the Freedom of Information Act, the fight against corruption in the judiciary will be easy to handle.

Corruption is not an event carried on in the open and its hardly practiced alone. A man hardly decides the quantum , the where and how bribe will be offered, it is a decision always taken in a group. Therefore in order to detect corruption you need an insider who will spill the beans as a whistle blower. Also the effective use of getting information about government processes through the use of the Freedom of Information Act will assist in the fight against corruption in the judiciary judiciary.

**f) THE ROLE OF THE PUBLIC AND LITIGANTS**

1. The society must be alive to its responsibility to act as the conscience of the nation. The public should stop seeing allegations of corruption as proof of same. In the same vein, we should stop the coloration of allegations of corruption in either religious or ethnic or gender garbs. What is bad is bad. The moral values of the society must be hyped. A morally degenerated society cannot give birth to nor encourage a corruption free judiciary. Litigants must accept the fact that in any court matter the two parties cannot be both right or

wrong. In other words one party will win , while the other loses.

2. Rumor mongering has virtually become the past time of most Nigerians. Unverifiable and unsubstantiated rumors against members of the judiciary will have to stop. I dare say that majority of our judges are men and women of impeccable character. A situation where the society makes sweeping brush of shames of corruption on everyone is not only injurious but counterproductive. The security agencies may have to act and proceed against persons who make allegation against others, especially judges, which are not substantiated. The sections of our criminal law that punishes giving of false information must be activated to protect innocent judges against whom false allegation may be made. We must discourage those whose stock in trade is the maligning of good people.

3. Litigants and general members of the public should stop pressurizing judges before whom they or their relatives have cases. The members of the public must act as the bastion of a corrupt judiciary. Under this segment lawyers have a great role

to play by not encouraging, condoning nor act as the conduit for corrupting members of the bench. We must go further by discouraging our colleagues that have tendency for doing the wrong thing. We should act in the best tradition of our profession by reporting aberrant members of the bar to the appropriate authorities once we have notice of untowed practice by any of our members. If only for enlightened self interest lawyers must fight for a corrupt free judiciary because the day the mass of the ordinary people loose confidence in the adjudicatory roles of the judiciary our survival as legal practitioners will be imperiled.

### **THE ROLE OF THE PRESS**

The press holds a very central place in the fight against corruption, not only in the judiciary but the polity as a whole. In order to fulfill this mission, it has to embark on the following:

- i. The press must at all times know that it is the conscience of the country. It must see its duty and discharge same with patriotic zeal. Objectivity, balance and fairness have a thin

string that runs through them that their existence provides the basis for the journalist to ensure that he or she does the job without any shred of doubt as to the commitment to strict professionalism. Otherwise, they have similarities and ingredients that make them a sort of ‘Siamese Triplet’ if you permit my coinage. Facts we are told is sacred, this must be upheld by the press. Objectivity, truthfulness, patriotism, fairness and loyalty for what is good are qualities the press must have.

- ii. The press will have to avoid sensationalism and media trial. The press will have to moderate the way it reports various allegations against members of the judiciary bearing in mind at all times that nothing is precious as a man’s good name. Information disseminated must be determined to be true, not false. Manipulation, disinformation and spreading of rumours should be avoided at all times. Never assume that information is true. Other sources must confirm it. There is nothing I know that can assuage for an

unwarranted assault on the good name and integrity of a man wrongly accused of corruption.

iii. The press should be at the vanguard of reorientation of the values of the society. The press should stop the celebration of men and women whose sources of sudden wealth are unknown. They should stop hailing men and women of doubtful pedigree. The press must go back to the days of yore when honesty, truthfulness, excellence, loyalty, transparency and good work are celebrated. Having dealt briefly with the roles of the stakeholders, it is now important to highlight the roles of the judiciary in the fight against corruption.

iv. THE ROLE OF THE BAR

v. The Bar and the Bench are two sides of the same coin. Without the Bar, there will be no Bench. As a corollary, a corrupt bar will give birth to a corrupt bench. Therefore, the bar must not only play more feasible role in the appointment of judges, it must also ensure that its members are taken to account on the rules of professional ethics. The members of

the bar must see themselves as principal stakeholders in a non corruptive judiciary. Once there is level playing ground in the judicial space, the Labour of hard by practitioners will be rewarded. Lawyers will know that if a case is lost it is not due to subteranian influence. It is therefore in the interest of lawyers to help, assist and support a corrupt free judiciary.

- vi. The Bar, like it did, during the unfortunate late night raid on the houses of judges, must at all times stand to the defence of our judges in all deserving cases of unwholesome, general but unproved cases of allegations of corruption. The Bar must be critical in its intervention when these cases of allegation of corruption arise against judges. The bar must be courageous at all times to align with judges that are upright, uphold their oaths of office and stand out. The Bench must also rise up to its traditional role of reporting members of the Bar who act as conduit for the perpetuation of corruption.

## THE ROLE OF THE JUDICIARY

1. One of the easiest ways for the judiciary to fight corruption is for judges to decide cases brought before it in accordance with the law. The courts, given the prevalence of corruption in our land, should in all proven cases impose the maximum allowable sentence upon conviction. Anyone that is found guilty of corruption should not be given a slap on the wrist. In specific terms, the role of the judiciary in the fight against corruption involves the application of the provisions of various laws contained in the ICPC Act, EFCC Act etc the Penal and Criminal Code Laws of the various states of the Federation, to the cases brought before the courts.<sup>17</sup> The court must show their aversion to corruption. In the case of *AG Ondo v. AG Federation*<sup>18</sup>, the Supreme Court, irked by the endemic nature of corruption in the country, held as follows:

*‘Corrupt practices and abuse of power can, if not checked threaten the peace, order and good government of the Federation or any part thereof.....’*

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<sup>17</sup> S. D. Kawu J. ‘Extermination of Corruption: The Role of the Judiciary’ in ‘Anatomy of Corruption in Nigeria: Issues, Challenges and Solutions’, (Yusuf Ali SAN, ed. Intec Printers Limited, Ibadan 2016) 427.

<sup>18</sup> (2002) 9NWLR (Pt. 763) 264.

*If these were the only consequences of corruption, it would not have been so threatening. The deadly threat is the effect on the economy of the country with the attendant inflation and lack of control on the monetary and fiscal policies of the government.....*

*The court is conscious of the history of corruption in Nigeria and should not be at liberty to construe the ICPC Act or any Act of the National Assembly by the motives which influenced the legislature, yet when the history of the law and legislation tells the court what the policy and object of the legislature were, the court is to see whether the terms of the acts are such as fairly carry out the policy and objective. See *Holmes v. Guy* (1877) 5 Ch. D 901 at 905, *Knowlton v. Moore* 178 U.S. 41, 205 Ct. 747 at 768. See also *Bronik Motors Ltd. & Or. v. Wema Bank Ltd.* (1985) NCLR Vol.6 I, and *Re: Anti-Inflation Act* (1976) 9 NR 541;*

*68DLR (Ed.) 452.....*

*The ICPC Acts is an enactment for the peace, order and good government of the Federal Republic of Nigeria. Any legislation on corruption and abuse of power must be of concern to every Nigerian notwithstanding that its operation will affect property and civil rights for citizens in a State. Such an enactment like all enactment of the National Assembly will be of paramount force. See Munro v National Capital Commission (1966) SCR 663 at 670, 671, 57 DLR (2d.)753 at 758, 759 (Can. SC) and Attorney- General for Ontario v. Attorney-General for the Dominion supra at 366.'*

2. Judges should promote & encourage their own personal integrity, honesty and transparency. Anyone that lacks the personal quality of integrity, transparency and honesty has no place on the bench and if he is already there, should be shown the way out.

3. Members of the Bench must shun unbridled social life. It does not befit the office of a judge to be a socialite. The acceptance of the office of a judge calls for restraint on the social plane. A self-respecting judge should not be found on the disco floor. Unrestrained social interaction by a judge will be a veritable vehicle for men and women of shady character to and influence the judge in the discharge of his duties.
4. The National Judicial Council, The Federal Judicial Service Commission and other State Judicial Service Commissions must be alive to their duties in wielding the big stick against all judicial officers who are found wanting in the discharge of their duties. We must try and avoid any situation where these bodies will be used as scapegoats by any branch of the executive to commit any act of impunity as it happened after the midnight raid on the houses of judges last year. All allegations of unprofessional behavior against any judge must be dealt with openly, transparently and with dispatch.

## **CONCLUSION**

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In this paper, we have tried to draw attention to the definition of corruption from the point of view of the World Bank, religious books and other writers. We have tried to identify a few of the things which, in our mind, are causes of judicial corruption. We have also, in trying to unlock what the roles of the judiciary should be, made allusion to the roles of government, the public and litigants and the press. We capped our discussion with what, in our view should be the roles of the judiciary in the fight against corruption.

Under that segment, we canvassed that judges should decide in accordance with the law and that appropriate maximum sanctions should be imposed on anyone found wanting. We also called attention to the issue of personal integrity of judges, the need for judges to shun unbridled social life, what the bar can do to assist in the fight against corruption on the bench and the critical role of the NJC, FJSC, and the States Judicial Service Commissions.

It is appropriate to point out that the different roles we have tried to identify for the stakeholders, if pursued, will assist us to battle this hydra headed monster to a standstill. It is my view that the identified

roles which are not exhaustive could serve as my recommendations on this topic.

The last single duty I have is to extend my profound gratitude to the outgoing Chief Judge of this Court, Hon. Chief Justice I. N. Auta (OFR), his brother judges and all those that have endured the few minutes I have spent in delivering this paper. I thank you and wish you a very fruitful legal year. I wish my lord the chief judge a successful life in retirement.