

Due Process or Necessary Process? The Fight against Corruption in Nigeria

Feyisara Olaitan Eunice
Faculty of the Social Science,
Department of Public Administration
Ekiti State University,
Nigeria.

olaitaneunice@gmail.com, olaitaneunice@gmail.com

Abstract

Due or Necessary process is the administration of justice, it balances the power of law of the land. To this end, the paper examines the roles of due process in the prevention or reduction of corruption in Nigeria. It argues that like several other African countries where corruption is endemic, one of the most prominent features of Nigeria is pervasive political and bureaucratic corruption. This has led to the absence of core social infrastructure, a near collapse educational system, dysfunctional health sector and the emergence of a traumatized and impoverished populace. The study found that the backwardness of Nigeria is traceable to lack of due process in public sectors hence, pervasive corruption. The paper recommends among others that government should fully deploy e-governance as anti-corruption tool.

Introduction

Due process is a framework for implementation and commitment to tackling corruption, promoting transparency and accountability Oguonu (2011:1-17) Ezekwesili (2005) opined that due process or necessary process implies that governmental activities should be carried out openly and transparently without corruptible tendencies. Sabo (2003: 1-7) also pointed out, that the strength of any government depends on the success of its developmental programmes which, to some extent, depend on the transparency and effective implementation of its programmes and policies. For a fairly long time,

Due Process mechanism has made reasonable progress in Nigeria. Within years of its implementation, progress has been made especially in the promotion of fair play and competition. A lot of savings have been made especially in the area of reduction to contract sums in some cases to the tune of \$500 million (Obasanjo, 2003). Obasanjo (2003) also stated that “the Due Process Mechanism has saved Nigeria over N102 billion in two years arising from various Federal Government’s over-bloated contracts”. Ezekwesili (2003) also disclosed that her office “saved N672.4 million (an equivalent of 4.1 million Euros) from a single project by the Ministry of Health meant to procure and supply equipment to tertiary health institutions”. Various contracts awarded with spending units that failed to comply with laid down competitive bid parameters have been cancelled. Inflation of contract has also reduced to a reasonable extent. There is also a general awareness of anti-corruption mechanism put in place by Government.

Good Governance

Good Governance is a pre-requisite to nation building and national development, it capsulates transparency and accountability in the management of public affairs and full involvement of all people in the political process and in decisions affecting their lives, good governance prevent tyranny, anarchy, corruption, instability etc. World Bank conceptualize good governance as the manner in which power is exercised in the management of a country economic and social resources for development, UNDP see good governance as the use of government to deal appropriately with the problem facing a country, it pointed out that the realization of the concept are citizen's participation in governance. Good governance is characterize by Accountability which is the key requirement for good governance, this does not only apply to governmental institutions but to civil society, any organization or institutions by virtue of good governance should be accountable by those affected by its decisions or actions. We also have Rule of law in which accountability cannot be enforced without transparency and rule of law (Aluko, 2004) Rule of law is supreme or predominant, equality before the law, good governance can better be promoted and strengthen through observant of rule of law. Equally we have transparency which means decision taken and enforcement are done in a manner that follows rules and regulation. To promote good governance, separation of powers which is indispensable to democracy, there should be checks and balance in government, participation also is the cornerstone of good governance.

Due Process and Good Governance

Over the years, the public procurement system in Nigeria has been grossly abused leading to high losses of resources. Past governments in the country had taken steps to address this problem but with no good result. With the emergence of the civilian administration under President Olusegun Obasanjo, a diagnostic study was commissioned in 2001 to investigate the stage of affairs of public procurement in Nigeria. In a bid to sanitize the system, the Federal Government set up a Due Process Unit under the presidency to undertake the exercise.

On a continuous basis and in both the private and public sectors, efforts are usually made, to seek how to improve on the ways activities are carried out, if there is to be progress in the results being sought to be achieved. More importantly, in the public sector, those at the helm of affairs must make deliberate effort to improve on the system already put in place in all the three tiers of government if they must remain relevant in the global village which the world is turning into. The concept of control as applicable to the public sector has been undergoing various changes from one country to the other in the recent past. Each nation has been formulating policies aimed at improving resources utilization at the budget implementation stage. Considerable efforts have been made to find new techniques of control and to introduce institutional changes and improvements to the types of controls applied. In an effort to exercise control on the expenditure of government, it is not sufficient to rely on the fact that expenditure items have been provided for in the approved budget (via the Appropriate Act). At the implementation stage, approval for releasing the money must be tied to availability of funds to the extent to which the revenue budgeted for has been earned. Therefore, the process of controls involved under the overall expenditure control structure should cover monitoring of the activities, for example, contract approval for payment and release of funds. There must be commitment by top management staff at the relevant tier of government to the new ways of

doing things (Corporate governance).

Due Process rights in public contracting originated from 5th and 14 amendments of the United States of America constitution. They prohibit the government from depriving a person of “life, liberty or Property without due process of cause”. This is substantiated in the procedural due process and substantive due process of America Law. Due Process is defined as a mechanism for ensuring strict compliance with openness, competition and cost accuracy rules and procedures that should guide contract award.

According to Ezekwesilli (2004), Due Process is geared towards infusing the needed fiscal discipline and sound economic principles to ensure transparency, accountability and rebuild public trust in governance by attacking the much abused processes in the past.

The Due Process mechanism was conceived among other things to bring sanity to public procurement system in the country through the attainment of these performance targets: ensuring sustainable participation by reputable, competent and Reliable contractors; settlement of contract price at near marginal cost; faith by tenders in the tendering mechanism and value for money in projects execution and delivery.

The mechanism is also meant to carry out functions like regulating and Setting standards to enforce harmonized bidding and the tender documents; formulation of general policies and guidelines on public sector procurement and upholding professional ethics and reporting erring personnel amongst other statutory functions.

Due Process and Corruption

There seems to be no doubt that pervasive corruption is one of the most outstanding features of Nigeria. This has endangered the stability of democratic institutions, hampered effective service delivery and inhibited economic development. UNDP (2005) opines that fraudulent practices pose a major obstacle to the achievement of the millennium (developmental) goals. Fraudulent practice is connected to any behavior that violates some formal standard or rule of behavior set down by a political system for its public officials. Nye (1969:419) conceives political corruption as an act which deviates from the formal duties of a public role because of private or personal gains. Rogow and Lasswell (1963:132-133) perceive corruption as the violation of public interest and trust. It must be added however that corruption is multidimensional.

Corruption has been growing at an alarming **rate** due to lack of necessary process in the conduct of public affairs. Where these processes seemingly exist, they **are** hopelessly redundant or thoroughly ineffective. Dreadfully, sham practices have compromised the competence, credibility and performance capacity of the bureaucrats in governmental organizations leaving with serious implications for growth and developmental process in the society.

For the purposes of this study, corruption is defined as the violation of established rules for personal gain and profit, it is an act which deviates from rules of conduct, a desire to misuse the instrumentality of office or one’s position in pursuit of private interest (Ojo, 2016). Transparency International has categorized corruption into three;

Grand corruption, this occurs at the topmost echelon of government/t.

Petty corruption is the abuse of office by low-middle level public officials in their interaction with the public.

Political corruption is the manipulation of policies, institutions and rules of procedure for the purpose of self-aggrandizement and personal gain.

This disaggregation is important because corruption is often associated with political office holders whereas, petty corruption is more pervasive. Corruption is a worldwide phenomenon and has existed since human beings started organizing themselves into communities. This implies that corruption exists across the globe – what differs generally from country to country is its dimension, intensity and the disposition of the government and society to it (Harald Bammel: pp5). Corruption breeds grinding poverty, creates unbridgeable socio-economic inequalities and removes the resources that are meant for the common good from the common pool thereby denying citizen access to the so called ‘national cake’. Some of the consequences of corruption as pointed out by Transparency International are political, economic, social and environmental (Mwangi and John: **30, 31**). Political and governmental establishments in Nigeria are characterized by men who precipitate sorrow, those who multiply misery, men whose regime brutalized the citizen all as a result of corruption for personal gain leaving the society in grinding poverty with the citizens socially muzzled and economically cremated.

Corruption is a great obstacle to democracy and rule of law. In a democratic system, offices and institutions lose their legitimacy when they are misused for private advantage. It is extremely challenging to develop accountable political leadership in a corrupt climate. Economically, corruption depletes national wealth, it corrodes the social fabric of society. Environmental degradation is another consequence of corrupt system. Corruption is rife in Nigeria because people easily jettison their so called ‘*omo rere*’, ‘*omoluabi*’ for greed and selfishness. (Ojo:passim)

As Owolabi (2010:) has pointed out, fraudsters have devised new methods for their nefarious activities and that government should devise preventive and counter measures to check them. If well implemented, due process will give room for the establishment of oversight committees on corruption. Dan Fulani (2013:) has posited that e-governance could serve as a veritable anti-corruption weapon in Nigeria, He opined that the virus of corruption keeps spreading like bush fire in the public and private sectors and that e-governance will heighten transparency in the conduct of government business.

The backwardness of Nigeria in the comity of nations is traceable to corrupt practices in both private and public sectors. Corruption could be linked to the nature of the economy of a particular society. It is the economic situation of a society that determines the behavioral pattern in such society. The nature of Nigeria economy and the way it has always been handled accounts for the mode of economic behavior of various actors in the society. It has been argued that one of the causal factors of widespread corruption in Nigeria is the high rate of poverty. Shamija (2006; 112) assert that corruption is a mechanism that has been adopted by Nigerians to cope with or to avert poverty. In a situation where there are inadequate wages and non-payment of salaries, corrupt practices in various governmental establishments provide a means of augmenting one’s legitimate income. Besides, the inability of the government to sanction corruption in the society is an established problem. Shamija observed that the seeming reluctance of the government to sanction corruption creates the impression of support.

Reports show that investigatory panels of inquiry set up by different governments are often biased and even when they are sincere, their investigations, findings and recommendations are

never made public or implemented. The ineffectiveness of Nigerian leaders (both civilian and military) as well as their overt and covert support for corruption has had devastating effects on the socio-economic and political psychic of the country.

Corrupt practices in Nigeria have completely undermined governments' socio-economic development strategies, hampered public policy implementation and inhibited overall national development. Corruption has bled the Nigerian economy to the point of virtual collapse. The outcome of corruption in the nation has been the rise in poverty levels. A situation when leaders launder monies meant for job creation, provision of social amenities and even payment of workers' wages.

The Nature and Features of Corrupt practice in Nigeria

Corruption is using position of trust for dishonest gain. One powerful obstacle to economic development of Nigeria is corrupt practices. It must be added that corruption is not a recent phenomenon in Nigeria. Margaret Peil (1976:49) has noted that "Nigerians have been noted for being tolerant of corruption" Many of the governors and political office holders were found of acts of impropriety, however corruption reached its peak during the era of General Sanni Abacha. Several billions of dollars were recovered after his death. Corruption has caused decay and dereliction within the infrastructure of government and the society in physical, social and human terms, with corruption there can be no sustainable development, nor political stability. By breeding and feeding on inefficiency, corruption invariably strangles the system of social organization, it is, in fact, the literally and the antithesis of development and progress, dysfunctional regulations and poorly formulated policies often created incentives for individuals to short-circuit through the inducement of bribes. Corrupt practices are dishonest or fraudulent conduct by those in power, it is the illegitimate use of power to benefit private interest (Morris 1991). It is the giving of inducement to officials so that the truth will not be told; it involves embezzlement of public funds for personal use. As pointed out by Nwangwui, it is a patent cancer that has mercilessly eaten the Nigerian society to a state of stupor. Corruption in Nigeria society wears any kinds of unattractive and dirty clothes and the situation has made so many people feel a lot of pains as the resources which would have been used to reduce poverty are being used for personal or group advantage.

A society inflicted by corrupt practices will be characterized by the following:

- *Governmental revenue will be undermined thereby limiting the ability of government to invest in productivity-enhancing programs while government effort to reduce poverty will be shrunk, corruption also distorts the decision making connected with public investment projects Tanzi and Davoodi (1997) opined that large capital projects provide tempting opportunities for corruption.

- * The economic activities of a society inflicted with corrupt practices will go underground, this will go a long way to discourage private sector innovations, high incidence of corruption means an additional financial burden on the economy which undermine international competitiveness Mauro (1995) used some indices of corruption and institutional efficiency to show that corruption lowers investment in a society.

- * Society pinned with corrupt practices will misallocate human resources and focus on activities that draw their attention and resources away from production and strategic plans that

could promote development. Davoodi and Alonso-Terme (1998) have shown that corruption worsens income distribution, therefore, lower economic growth, pushes up income inequality. Where corruption is rife, political office holders will want to remain in office for as long as possible not to serve the public but because they want to yield to others the pecuniary benefit of high office

*Corruption is a betrayal of trust; it diminishes the legitimacy of the state and moral stature of the bureaucracy. Corrupt practices lead to other forms of crime, there is actually no limit to the extent to which corruption can go once it is unleashed – it undermines the stability of the state. It does not make room for good governance in any society where it holds sway and it undermines the concept and practice of democracy.

Due Process and Bureaucratic Corruption

Johnston (1999) defines corruption as a ‘misuse of public power for private benefit’ e.g bribing of public officials, kickbacks in public procurement or embezzlement of public funds. Transparency International (1999) sees corruption as giving or receiving an undue advantage in the course of business activities leading to acts in breach of a person's duties. Akcay (2002) mentioned several reasons for corruption in public sector to be include poverty, low level of public sector salaries, lack of well-developed labour market and lack of risk spreading mechanism.

The Nigeria Public Bureaucracy is to be the avenue through which socio-economic policies and developmental would be enhanced and sustained, they are to foster, perfect and drive the administrative system in the country due to the vital roles it plays in policy formulation and implementing. However, unfortunately, Nigeria presents a typical case of a country whose development has been undermined and retarded by the menace of corrupt practices in governmental organizations. The allegations and charges of corruption now play a more central role in our bureaucratic system thereby becoming one of the most severe obstacles to development. The bureaucrats collaborate with political office holders to steal money meant for development in their various organizations, thereby leaving the country in a retrogressive position.

Due process and E-governance

Due process could be defined as regulatory instrument designed to curb graft, sham or corrupt practices in governmental organizations. Due process has the potentials of tackling corruption, promoting transparency and accountability in Nigeria Oguonu (2011). Due Process also connotes the application of rule of law in governance. Simply put, due process is the requirement that established laws and standard of behavior must follow by public office holders in the course of discharging their duties. It prohibits office holders from using their position for corrupt enrichment or depriving other persons of their rights. It upholds equity, fairness and justice. Procedural due process protects individuals during governmental proceedings while substantive due process guarantees individual rights, Corruption is the major vice militating against sensible governance and social group-development in Nigeria. Although, there are a number of anti-corruption agencies in Nigeria, corruption is still commonplace and almost palpable. Agencies like the Economic and Finance Crimes Commission (EFCC) and the Independence Corrupt Practices and other Related Offences Commission (ICPC) are either

selective or subjective in the so called fight against corruption. It is therefore not surprising that the virus of corruption keeps spreading in both public and personal sectors. At some points, e-governance was introduced to heighten transparency in the conduct of state businesses. Implementation of e-governance in Nigerian was created with ICT revolution. E-government is the use of ICT as a means of exchanging information, providing services and transaction with citizens, businesses, and other arms of government. Akunyili, former NAFDAC chairperson defined e-government as the use of information and communication technology to enhance access to, and delivery of government services for the benefit of all. It is also said that e-governance is a process whereby the use of information and communication technology is deployed and employed by the government in the delivery of services to members of the public and the use of same in the internal running and linkages among different government departments and agencies. It's the art of using tools offered by information technology in various aspects of the process of governance with the objective of achieving efficiency, transparency, accountability, and user-friendliness in all transactions.

Through this method, multiple fallacious avenues of siphoning public resources by public servants like double payment of contracts and the phenomenon of ghost workers were substantially addressed and enormous resources saved by the 3 tiers of government. With the speedy growing of ICT across the country and increasing experience, there is the possibility of further reduction in the level of graft if the officials saddled with the responsibility demonstrate sufficient professionalism and the government sufficient political will.

Research objectives

The research work is designed to see how Due or necessary Process could be used to enhance good governance and to get rid of corrupt practices both in governmental organisation/institutions and in the society at large.

Empirical study

Study Area

The Research was carried out in Nigeria Public Institutions, governmental organisations and general public where different categories of people were interviewed,

Discussions presentation of findings

Corruption as a norm in the society

Different categories of people were interviewed to actually know the reasons why corruption has become a norms in the society, because it is observed that corruption has disabled the civil service, it has become a dearth of effective service delivery among the political office holders, and in the society generally it has come to stay, below are the responses from different categories that were interviewed.

The Bureaucrat:

Different categories of people from various governmental parastatals, educational Institutions were interviewed. People said low government wages in the country result to decline of public sector and create opportunities for corruption and misuse of public resources, some said the culture of accountability and ethical behavior has been thrown overboard therefore give way

for corrupt practices at all level of administration, Many from the Interviewer complained of poor pay packages by government while that same government can afford to pay politicians huge amount of money in just four years, monies that the sum of the salaries of most civil servants for 30years cannot come close to, and many civil servant are living from hand to mouth. With bitterness of heart majority of the people interviewed complained that, unless government is willing to pay civil servant well, corruption will continue to blossom in the society, that civil servant will continue to inflate contracts sums in return to kick-backs

Political Corruption

While others are trying to defend their offices, others are sincere about the fact that politicians aim at political offices so as to take their own share in the so called national cake thereby jettisoning national development and interest for selfish interest. It was also observed that political office holders are corrupt because the government is not doing anything reasonable to curb it, the so called anti-corruption crusade is often biased, sentimental in their judgments. The moment the identified persons are in their caucus, it becomes a ‘no case’ situation. .

Youths

The youths are supposed to be the strength of a nation. Those interviewed ones spoke extensively about corruption being the norm in the society. According to them, this is a as a result of unemployment which has put people in a desperate position and out of frustration engage in corrupt practices. The quest for expensive and worldly allurements, over-ambition to get wealth/riches quickly has often made the youth to engage in fraudulent practices. Some talked about the effect of bad leadership and governance in the society leaving bad legacies for the up-coming generation.

The Publics

People spoke about the role of the judiciary in normalizing corrupt practices in the society by delaying justice, slow down judicial process which gives way for people to perpetrate criminal acts and escape punishment. Oftentimes, the judiciary is manipulated to pervert judgment in court. Respondents said the government has virtually legalized corruption in the society and therefore has become a norm. There are weak government institutions, the absence of effective anti-corruption tools as well as poor pay incentives. They also observe that poor education and illiteracy has led to ignorance and societal class. So, the class of poverty-stricken are the poorly educated and the illiterates and out of desperation to get out of their status quo are easily influenced by way of bribes, which has become a societal norm as it is often said that you need to “settle” to get things done.

Necessary ways by which corrupt practices can be ridden off in the society?

Corrupt and fraudulent practices have become a norm in all aspects of Nigerian society. People constantly engage in obtaining power, influence and other personal gains through illegitimate means, more embarrassing is the fact that no punitive measures are place to curb this. However, a number of my respondents

The same categories of people that responded to question one were equally interviewed on the

above question and the summaries of their responses are as follows:

That citizens should be engaged on profitable things that can alleviate poverty in society, and that there should be a normal process of doing things, we are to say no to corrupt practices in offices, “don’t take, don’t give” people are to disclose fraudulent practice to the public and there should be justice.

Effort should be made to change the mindset of people, integration should start from families, moral and ethics should be given attention to, anti-fraud training/course should be introduced to our educational curriculum from basic education to secondary and to university, this will change the mindset of upcoming generation and re-orientate them.

People spoke extensively about openness in government spending, there should be room for citizens to scrutinize government activities and debate of the merit of public policies, civil society should be cultured to participate in supporting various strategies aimed at reducing corruption in the society, all loopholes should be closed, misconceived rules that encourage corrupt behavior should be eliminated.

Very many people talked about creating value for integrity in our society, there should be proper application of rules and regulations and sanction against those who do not comply with rules, due process should be enforced, rules should be applicable to all irrespective of one's position, there should be morals in every nook and cranny of the society, punishing corruption without compromise is a vital component of any effective anti-corruption effort.

That there should be proper fair and just remuneration of public servant which can go a long way to help demotivate corruption, the government should also learn how to reward merit at all levels, there should be equity and justice. The government should equally focus on education, skills that can empower youth in order to be self-dependent and productive, there should be good youth empowerment programmes, illegal ways of acquiring wealth among the youth which has led to internet frauds should be discouraged, youth should learn to use their brain for something profitable not defrauding others.

That government should make use of the power of technology to build dynamic and exchange between government and citizen, society groups, media and academia, Information communication technology should be used in money transaction such as buying products, tax collection, and procurement process. They should equally invest in a sustainable policy that will bring about development, endorse sensible rules and practices that allow for change and build on legacies. The government should give room for people to participate in government, identify problems, set priorities right and provide realistic solutions to societal problems and monitor progress.

Others said free and fair election can stop or curb the menace of corruption by electing the right person for the appropriate job, the system of government should be built on election free from fraud, let there be free and fair election, the issue of godfathers should be eliminated, all the money government spend on politician should be reduced to the minimal there should be spirit of patriotism.

People said there should be judicial reforms, appointment of more judges and creation of new

courts to speed up judicial process, to inspect and monitor judicial activities for proper application of rule of law.

Conclusion and Recommendations

This paper examined the state of corruption in Nigeria and expressed the view that corruption and development are diametrically opposed to each other. For a fairly long time, corruption has been the bane of Nigeria's development and the major cause of widespread poverty. The paper expressed the view that the backwardness of Nigeria in the comity of nations is traceable to widespread graft and corruption particularly among political office holders. Also, anti-corruption agencies established by different governments have not succeeded in combating corruption because of a number of factors particularly because of bias and the selective nature of their operations and investigations. The paper also examined some of the characteristics of a society inflicted with corrupt practices and this reveals the true picture of Nigeria. The paper pointed out that due process can be deployed as anti-corruption instrument in governmental organizations because as it has the ability to promote transparency and accountability. On the basis of its findings, the study makes the following recommendations:

One, people of questionable integrity, self-serving leaders and mediocrity should be prevented from holding public offices. Two, a course/subject on corruption and its consequences to nation building should be included in the nation's educational curriculum just as entrepreneurial studies is included. This will go a long way in orientating people (from childhood to adulthood) and change their mindset towards the nation's development. Three, government should fully deploy e-governance as anti-corruption tool. Four, governmental efforts at stopping or reducing corruption and achieve sustainable development should have the full participation and involvement of youths. Five, government should promote the culture of integrity which should be upheld and promoted in every sector within the society. Six, there should be effective mechanisms for checking and monitoring measures to promote accountability. Seven, government should endeavor to fight an all-embracing and inclusive (as opposed to the present selective and subjective) anti-corruption crusade. Eight, Due Process should be decentralized and adequately strengthened at all level of governmental administration, it should remain in nation's policy for economy efficiency and effective utilization of resources Lastly, individuals should imbibe the spirit of contentment through attitudinal change.

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