

CORRUPTION IN THE NEW PUBLIC PROCUREMENT REGIME IN NIGERIA

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ABSTRACT

Corruption in the public procurement system has been a major obstacle to Nigeria's economic development and, as such, it has remained one of the prime concerns of successive governments, both military and civilian, since independence. Prior to the advent of the Fourth Republic, corruption was perceived to have been prevalent owing to weak and inadequate procurement law and obsolete and unprofessional procurement practice, prompting reforms in the sector following the restoration of democracy in 1999. However, despite the legal and institutional changes introduced by the reforms, corruption persists and permeates every facet of the nation's new public procurement practice.

This paper examines the causes of corruption in the new Nigerian public procurement policy and practice. It finds that certain notable factors give rise to the persistence of corruption in the country's procurement sphere. These factors include the following: collusion between public procurement officials and contractors; inadequacies in the Public Procurement Act of 2007 and the compromising of the procurement regulatory framework; government's partial implementation of and non-compliance with the Public Procurement Act; and political interference and nepotism. The paper concludes that the Nigerian government needs to take pro-active measures to curb procurement corruption, in order to minimise its effects on the viability of the country's public procurement system and to enable it to serve as a useful instrument

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for achieving long-desired social and economic development goals. Some recommendations in this regard are offered.

The paper adopts documentary methods of data collection and analysis. These methods were found to be appropriate for interrogating the subject matter of the discourse and achieving the objective of the study.

1 INTRODUCTION

Nigeria has battled with pervasive corruption in its public procurement system since independence. Throughout the post-independence period, the public sector procurement practice generally has been adjudged obsolete, inadequate and unprofessional, and has not kept pace with international standards and best practice. Consequently, corruption and related malpractices have been rife in this, the nation's most active business sphere. The view was advanced widely that, as in most other developing countries, the main cause of the problem lay in the observed deficiencies in the existing body of rules and regulations governing the country's public procurement practice. Indeed, the Treasury Circulars of 1958 were grossly deficient, and Nigeria also lacked a vibrant institutional mechanism to apply the rules to and regulate the procurement process. These failings allowed room for corruption and other illegalities, leading to massive economic and/or financial wastages, which successive governments, military and civilian, have battled with over the years.

Upon Nigeria's return to civil-democratic rule in 1999, the government of Chief Olusegun Obasanjo took a firm decision to address the myriad of problems besetting the country in all sectors through aggressive reform policies. One of the areas of priority to the Obasanjo administration in this regard was the public procurement system. President Obasanjo exhibited a unique interest in cleaning up public procurement on the understanding that its effectiveness was critical if his administration were to attend adequately to the urgent development needs of the country after many years of corrupt and autocratic military rule. He therefore initiated revolutionary reforms in the procurement sphere, with the help of the World Bank and International Monetary Fund (IMF) operating alongside a number of local procurement experts. The team's Assessment Report revealed that the weak and deficient legal and institutional frameworks were the major obstacles to the purposeful functioning of the system.

Thus, a major recommendation of the Assessment Team was that Nigeria needed to adopt global standards and best practice by formally enacting a body of procurement laws and establishing an institution to oversee the application and regulation of these laws. The rationale for recommending the establishment of legal and institutional frameworks was, and still is, to curb the hydra-headed beast of corruption that has besieged the country's public procurement practice for so long. Subsequently, Nigeria enacted the Public Procurement Act (PPA) of 2007 as the law governing all public procurement activities in the country. The PPA established the Bureau of Public Procurement (BPP) as the institution responsible for the application and regulation of the law in the nation's procurement process. These were considered quite revolutionary and a landmark achievement by all procurement observers, experts and practitioners, both locally and internationally. They were relieved that corruption and all its related illegalities in the country's public procurement system would be confronted. In the global community, this was a boost to Nigeria's image and reputation.

Unfortunately, despite the establishment of these legal and institutional mechanisms, the virus of corruption continues to inhabit the blood stream of Nigeria's new procurement system. Indeed, the spate, forms and dimensions of corruption under Nigeria's current public procurement regime propel skeptical and critical minds to the belief that the PPA is merely a policy document, enacted for the sake of formality. Some even argue that not only have the enactment of the PPA and the establishment of the BPP failed to achieve any meaningful reduction in the level of public procurement corruption in the country, but that said Act and Bureau are themselves major obstacles to the fight against such corruption. It is against this backdrop that this article investigates the causes of the pervasive corruption in the current Nigerian public procurement practice, and suggests ways of remedying the situation so as to enable the country to attain its desired development success.

2 UNDERSTANDING PUBLIC PROCUREMENT CORRUPTION

A proper understanding of the meaning of "public procurement corruption" necessitates a brief clarification or definition of the two major terms that constitute the concept, namely, "public procurement" and "corruption".

The idea of public procurement is not new, and various definitions of it have been offered by different researchers, scholars and agencies in the field. According to Wittig, public procurement is a business process within a given political system, with

distinct consideration of integrity, accountability, national interest and effectiveness.¹ In a broad sense, the term is used to refer to “the purchasing, hiring or obtaining by any other contractual means of goods, construction works and services by the public sector”.² Public procurement has been defined also as the purchase of commodities and contracting of construction works and services if such acquisition is effected with resources from state budgets, local authority budgets, state foundation funds, domestic loans or foreign loans guaranteed by the state, foreign aid, or revenue received from the economic activity of state.³ From the foregoing, public procurement may be comprehended broadly as the most active business part of the entire governmental process, involving the acquisition or hiring, with public funds, of essential public goods, services and works to meet certain developmental, administrative and social welfare demands.

Corruption is a universal concept. It, too, has been the subject of a wide range of definitions, given that the term means different things to different people, cultures or societies and political systems. Corruption has been defined by Osaba as any:

anti-social behaviour conferring improper benefits contrary to legal and moral norms, and which undermines the authorities’ capacity to secure the welfare of all citizens.⁴

Khan sees it as:

behaviour that deviates from the formal rules of conduct governing the actions of someone in a position of public authority because of private-regarding motives such as wealth, power or status.⁵

In Nigeria, Section 2 of the Corrupt Practices and Other Related Offences Act 5 of 2000 affirms that corruption includes bribery, fraud and the other related offences. It also sees corruption as the abuse of power or position of trust for personal or group

1 Wittig WA (1999) *Building Value through Public Procurement: A Focus on Africa* Paper presented at the 9th International Anti-Corruption Conference, Durban, South Africa at 3, available at www.legacy.transparency.org (visited 8 December 2013).

2 Odhiambo W & Kamau P (2003) “Public Procurement: Lessons from Kenya, Tanzania and Uganda” OECD Development Centre, *Working Paper No 208* at 10, available at www.oecd.org/dataoecd/59/11/2503452.pdf (visited 23 September 2015).

3 Odhiambo & Kamau (2003) at 10.

4 Osoba SO (1996) “Corruption in Nigeria: Historical Perspectives” 23(69) *Review of African Political Economy* at 371.

5 Khan MH (1996) “A Typology of Corrupt Transaction in Developing Countries” 27(2) *IDS Bulletin* at 12.

benefit, monetary or otherwise. On his part, Akinyemi describes corruption as “the acquisition of that to which one (as a member of society not public official alone) is not entitled”.⁶ And Johnston defines it succinctly as “the abuse of public roles or resources for private benefit”.⁷ This paper conceives of corruption as any act or attempt at compromising the guiding rules and regulations of any organisation (public or private) or social setting by any individual in order to realise certain selfish desires.

In the light of the above consideration of the terms “public procurement” and “corruption”, an explanation of the meaning of “public procurement corruption” can be attempted. To begin with, it has to be noted that the menace of public procurement corruption is a universal problem. Although perceived to be more prevalent in developing nations with weak anti-corruption regulatory and institutional mechanisms, it is not exclusive to particular societies or nations. Rather, it is found in all societies and, as such, it is a challenge to both the developed and developing nations. However, the scale, degree and dimension of public procurement corruption differ from one society to another. Moreover, it is not an attribute of the public sector only, being evident in the private sector as well. In this regard, it may be asserted that corruption in the public procurement process has become critical to the operations of many organisations, both public and private.⁸

Importantly, the term “public procurement corruption” has been conceived and defined diversely in different political contexts and by various researchers and agencies. For example, according to the Regulation 6 to Nigeria’s Public Procurement Act of 2007, corruption in public procurement means “the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution”. And for Corsi, Gumina & Ciriaci:

By definition, corruption in procurement markets involves a different process of allocation of contracts than would have been obtained through a competitive process. Corruption either leads to a situation where the contract is not awarded to the lowest bidder (or the bidder who has

6 Akinyemi B (22 August 2004) “Corruption: A Battle Nigerian Must Win” *This Day* at 22.

7 Johnston M (1998) “The Search for Definitions: The Vitality of Politics and the Issue of Corruption” 149 *International Social Sciences Journal* at 89.

8 See generally Cooper RW, Frank GL & Kemp RA (1997) “The Ethical Environment Facing the Profession of Purchasing and Materials Management” 33(2) *International Journal of Purchasing and Materials Management* 2-11; Carter C (2000) “Precursors of Unethical Behavior in Global Supplier Management” 36(4) *Journal of Supply Chain Management* 45-56; Turner GB, Taylor GS & Hartley MF (1994) “Ethics Policies and Gratuity Acceptance by Purchasers” 30(3) *International Journal of Purchasing and Materials Management* 43-47.

offered the best solution from price and qualitative standpoints) but rather to the firm who has offered a bribe (or the highest bribe), or to a situation in which there are fewer bidders than would otherwise have been the case. In most cases, the end-user will end up paying more than he would have without the bribe and/or will receive lower quality services. In this sense corruption in public procurement implies a distortion of the competitive process.⁹

This paper sees the phenomenon of public procurement corruption, in its most generic sense, as the subversion or manipulation of the due process mechanisms involved in contracts for the hiring or purchasing of public goods, services or works by any individual in a bid to realise certain personal interests. Alternatively, public procurement corruption may be described as the elevation of personal gains above the core values or universal principles of public procurement, that is, transparency, integrity, competitiveness and merit — all of which make for effectiveness and efficiency of the procurement system and the achievement of value for public money in the procurement process.

3 CAUSES OF PUBLIC PROCUREMENT CORRUPTION IN NIGERIA

There are certain notable factors behind the persistence of corruption in Nigeria's new public procurement practice. This section examines some of these factors and the next section suggests ways of addressing them, in order to enable Nigeria to achieve its desired goal of long-term socio-economic transformation.

3.1 Collusion between Public Procurement Officials and Contractors

The bulk of corruption and other forms of malpractice that permeate the Nigerian public procurement system can be traced to what may be described as "insiders' abuse". Collusion by officials in charge of public procurement activities with contractors accounts for more than 80% of corruption that takes place in the procurement sector. Such collusion occurs at every stage of the procurement process, distorting procedures and compromising the quality of works, services and goods acquired by the government with tax payers' money. A summary of the chain of corruption at the various stages of Nigeria's public procurement process is provided by Okoduwa:

9 Corsi M, Gumina A & Ciriaci D (2006) *How E-Government May Enhance Public Procurement* Paper Presented at the Second International Public Procurement Conference, 21-23 September 2006, Rome, Italy at 379-380.

Project Conception — Contractor influences project to suit him; Project Design — Consultant over-designs or designs to suit a particular product or contractor’s technology; Project admitted into National Budget — Contractors or consultants lobby legislative assembly to over-appropriate funds; Project Implementation — Consultant manipulates figures or documents or process to suit a pre-arranged outcome usually with the connivance of the MDA; Project Execution — Contractor delivers poor quality job, consultant looks the other way, quantity overstated. Consultants or contractor or MDA collude; Project Completion — Auditor admitted into the chain. Auditor confirms project completed; Outcome: (corruption) — Consultant, contractor, MDA, all happy, project delivered at high cost when good; poor quality of work, value for money lost, and country loses.¹⁰

In furtherance of his argument, Okoduwa asserts that:

Sharp practices such as bribery, kick-back, inflated costs, bid-rigging etc. also occur at micro levels of procurement; these and the afore-painted macro scenario play out in Nigeria as well as several countries around the globe where the procurement environment is porous, leading to gargantuan costs without corresponding value, inefficient service delivery and huge indebtedness.¹¹

3.2 Compromised Legal and Institutional Framework

Following the recent public procurement reform, Nigeria has succeeded in establishing a legal and institutional framework for effective public procurement governance, as advocated by international donor agencies. This includes the enactment of the PPA and the establishment of the BPP as the principal regulator of all public procurement activities in the country. Despite these steps, public procurement corruption has continued to thrive, for two main reasons: firstly, there are deficiencies in the PPA itself which give room for corruption in the procurement process; secondly, both the institutional and legal mechanisms for checking corruption have been compromised by forces that want to maintain the *status quo*.

As to the first reason, it has to be acknowledged that certain gaps in the PPA create an environment for corruption and other unscrupulous activities to thrive in the

10 Okoduwa RA (2011) *Aspects of Corrupt Practices in Public Sector Procurement* Paper Delivered at a Workshop on Public Sector Procurement and Financial Management, 22 July, at the Public Service Institute of Nigeria, Dutsen Alhaji, Abuja at 11.

11 Okoduwa (2011) at 4.

procurement sector. Section 15 of the PPA, which deals with the scope and application of the law, provides ample evidence in this regard. Section 15(1) stipulates as follows:

The provisions of this Act shall apply to all procurement of goods, works, and services carried out by: (a) the Federal Government of Nigeria and all procurement entities; (b) all entities outside the forgoing description which derive at least 35% of the funds appropriated or proposed to be appropriated for any type of procurement described in this Act from the Federation share of Consolidated Revenue Fund.

Section 15(2) then goes on to state that:

The provisions of this Act shall not apply to the procurement of special goods, works and services involving national defence or national security unless the President's express approval has been first sought and obtained.

Under this subsection, then, national security agencies are excused from subjecting their procurement activities to the provisions of the PPA. In other words, they may conduct their procurement activities without any recourse to the Act and free of regulation by the BPP.

A recent development in the conduct of government procurement in Nigeria vividly demonstrates that Section 15(2) of the PPA constitutes a fundamental inadequacy, paving the way for corruption in the procurement process. The matter at hand is the \$2.9 billion arms deal scandal involving the former Nigerian National Security Adviser, retired Colonel Sambo Dasuki. The scandal involves a controversial arms procurement deal which led to the embezzlement of \$2 billion through the office of Colonel Dasuki.¹² The administration of former President Goodluck Jonathan set up a panel on 31 August 2015 to probe all arms procurement activities undertaken between 2007 and 2015. Upon receipt of an interim report by the panel, which allegedly indicted Colonel Dasuki over the fictitious award of arms supply contracts, President Muhammadu Buhari ordered his arrest.¹³ Dasuki denied the allegations, arguing that:

12 *Premium Times* (30 November 2015a) "EFCC Arrests Former Minister, Others over Alleged \$2 billion Arms Deal", available at <https://www.premiumtimesng.com/news/top-news/194185-breaking-efcc-arrests-former-minister-others-over-alleged-2billion-arms-deal-2.html> (visited 19 May 2018).

13 Daniel S & Omonobi K (18 November 2015) "\$2.9bn Arms Deal: My Story, by Dasuki" *Vanguard (Online)*, available at <https://www.vanguardngr.com/2015/11/2-9bn-arms-deal-my-story-by-dasuki/> (visited 19 May 2018).

In a theatrical manner, the Presidency fed the public with many allegations against my person and yet-to-be-named former public officers.

To draw sympathy, the Presidency quoted some absurd findings including extra-budgetary interventions; award of fictitious contracts; 53 failed contracts; payment for jobs without contractual agreements; non-execution of contracts for the purchase of four (4) Alpha jets, bombs and ammunition.¹⁴

The report of the panel indicates an extra-budgetary spending of N643.8 billion and an additional spending of \$2.2 billion in foreign currency under former President Jonathan's administration.¹⁵ Judicial processes in the Dasuki arms deal scandal are ongoing, in an effort to determine how such huge and scarce public money was misused by the office of the National Security Adviser. However, the point being made here is that the \$2 billion arms deal controversy, which has presented a very bad image of Nigeria to the international community, is a result of the inherent flaws in the PPA as regards the procurement of arms and security equipment for the nation.

As to the second reason referred to above, there is no doubt that powerful forces wanting to maintain the *status quo* have compromised and weakened both the institutional and legal mechanisms meant to check corruption in the country's public procurement activities. Sometimes the laws are enforced partially; at other times they appear to be non-existent. This circumstance is common to many developing countries, prompting Agaba & Shipman to argue that "even with a procurement law in place, supported by regulations, guidelines and standard bidding documentation, enforcing compliance will continue to be a formidable challenge".¹⁶

Evidently, in spite of the passage of the PPA and the establishment of a procurement cadre in government ministries, departments and agencies, the procurement system in Nigeria is not functioning as it ought to and remains blighted

14 Daniel & Omonobi (18 November 2015).

15 *Premium Times* (30 November 2015b) "Why EFCC Arrested Yuguda, Bafarawa, ex-PDP Chairman's Sons, Others over \$2billion Arms Deal, available at <https://www.premiumtimesng.com/news/headlines/194213-exclusive-why-efcc-arrested-yuguda-bafarawa-ex-pdp-chairmans-sons-others-over-2billion-arms-deal-2.html> (visited 19 May 2018).

16 Agada E & Shipman N (2006) "Public Procurement Reform in Developing Countries: The Uganda Experience" in Piga G & Thai KV (eds.) *Advancing Public Procurement: Practices, Innovation and Knowledge-Sharing* Roca Raton: PreAcademic Press 373-391 at 387.

by corruption, fraud and irregularities.¹⁷ Hence, the existence of laws and institutions for fighting public procurement corruption in a developing society such as Nigeria does not guarantee success. As Oluka & Ssenoga note:

Loose or opaque rules that are also poorly enforced, patronage arrangements, maintenance of the status quo, protection of vested interests at all cost, formation of local business cartels that lock out competition especially from international firms, and procurement used as a basis for rewarding political supporters, and to finance political parties are critical issues that have perpetuated corruption in developing countries.¹⁸

3.3 Partial Implementation of and Non-Compliance with the Public Procurement Act

As observed earlier, Nigeria has enacted the PPA as the main legal framework for regulating all public procurement activities in the country. However, since the PPA came into effect in 2007, the Nigerian Government is yet fully to implement and apply all its provisions to the management of the public procurement business of the country. Unsurprisingly, non-state actors and stakeholders in the economy have observed lapses in the implementation of the PPA and have called upon the Federal Government to redress the situation urgently. The petitioners complain that despite the passage of the PPA, the establishment of the BPP and formulation of regulations for the public procurement process, corruption in the sector has been on the increase, because of the failure of those in authority to comply with the law¹⁹

A major instance of this non-compliance with or partial implementation of the law is the failure by the Federal Government to constitute the National Council on Public Procurement (NCP), as provided for in Section 1 of the PPA. In this regard, Onyekpere contends that:

17 Elegbe SW (2012) *A Comparative Analysis of the Nigerian Public Procurement Act against International Best Practice* Paper presented at the Fifth International Public Procurement Conference, 17-19 August 2012, Seattle, Florida, USA.

18 Oluka N & Ssenoga F (2008) "Tackling Corruption in Public Procurement: A Case of Local Governments in Uganda" *Third International Public Procurement Conference Proceedings* 1110 – 1132 at 1114, available at http://www.ippa.org/ippc3_proceedings.html (visited 23 May 2018).

19 Akosile A (29 September 2010) "Procurement Act: Experts, Stakeholders Challenge Government" *ThisDayLive*, available at <http://www.thisdaylive.com/articles/procurement-act-experts-stakeholders-challenge-govt/77748> (visited 16 November 2013).

the refusal of the President to constitute the Council is not a matter of negligence but a deliberate state policy to ensure that the law is not respected.²⁰

As Onyema notes:

based on the provisions of the Act, the powers and responsibilities of the Council are very enormous and critical to the activities of the Bureau and practice of public procurement in Nigeria.²¹

Hence, the absence of the NCPP remains a critical challenge facing the current public procurement regime.²² According to the Public and Private Development Centre, failing to establish the NCPP and allowing performance of its statutory functions by other bodies and individuals not recognised by the PPA can result in the politicisation of procurement decisions, coupled with the possibility of the decisions being reversed upon judicial review.²³ The Public and Private Development Centre goes on to contend that:

the indication to an onlooker is that the Bureau of Public Procurement may be reporting to other bodies of the Federation, contrary to the provisions of the Act that subject the Bureau to the approving authority only of an independent Council in specific instances.²⁴

Onyekpere also submits that the failure to inaugurate the NCPP and the usurpation of its statutory functions by other bodies “provides a chain reaction for open and consistent violation of the letters and spirit of the Act”.²⁵

In a letter, dated 8 September 2009, addressed to the former President

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- 20 Onyekpere E (2010) *Diagnostics on the Implementation of the Public Procurement Act* Abuja: LASEC Consulting Ltd at 18.
- 21 Onyema ME (30 September 2011) “Challenges and Prospects of Public Procurement Practice in Nigeria” *Newdiaryonline*, available at <https://nigeriaworld.com/articles/2011/sep/233.html> (visited 25 August 2013).
- 22 *Punch* (16 June 2013) “Making Procurement Act Work Well”, available at <http://www.punchng.com/editorial/making-procurement-act-work-well/> (visited 16 November 2013).
- 23 Public and Private Development Centre (2011) *Implementing the Nigerian Procurement Law — Compliance with the Public Procurement Act, 2007: A Survey of Procuring Entities, Civil Society Observers, Bidders and Contractors, Legislators, and the Bureau of Public Procurement* at 73, available at: <http://library.procurementmonitor.org/backend/files/Implementing%20the%20Nigerian%20Procurement%20Law.pdf> (visited 19 May 2018).
- 24 Public and Private Development Centre (2011) at 72.
- 25 Onyekpere (2010) at 18-19.

Umaru Yar'Adua and former Attorney General and Minister of Justice, Mike Aondoakaa, the Centre for Social Justice (CSJ) drew attention to the government's failure to constitute and inaugurate the NCPP, but the letter did not receive the desired response. Subsequently, in another letter, dated 16 April 2016, addressed to then Acting President Goodluck Jonathan and the Attorney General of the Federation, Mohammed Bello Adoke, the CSJ again raised the issue of non-establishment of the NCPP and brought to their notice the implications of this omission.

An extract from the letter sent by the CSJ to the Acting President Jonathan reads thus:

We are disturbed that since June 4 2007 when the PPA became law, the President has failed, refused and neglected to constitute the National Council on Public Procurement ("Council") as envisaged under section 1 of the PPA. The functions, duties and powers of the Council are clearly stated in sections 2, 5, 6, 7, 8, 9, 10, 12, 13, etc. of the PPA. Essentially the Council approves procurement policy on the recommendation of the Bureau of Public Procurement ("Bureau") including the monetary and prior review thresholds for the application of the PPA. The Council also has the power to appoint principal officers of the Bureau and recommend a candidate to the President for appointment as the Director General of the Bureau after competitive selection. The Council is further empowered to appoint staff for the Bureau, make staff regulations, approve the fund of the Bureau, receive financial and other reports from the Bureau, etc.²⁶

Regarding the consequences of the failure to initiate the NCPP, the CSJ states the following in the letter:

The implication of the non-constitution of the Council two years ten months after the coming into force of the PPA is obvious. The policies, prior review and monetary thresholds set by the Bureau for the implementation of the PPA did not receive the blessing of the approving authorities envisaged by the PPA. Suffice to state that if the above policies are challenged in a court of law, they run the risk of being nullified. Further, the refusal to constitute the Council plucks feathers off the rule of law posture of the present administration and portrays it as one that deliberately violates laws which it enacted.²⁷

26 Onyekpere (2010) at 18.

27 Onyekpere (2010) at 18.

From all indications, therefore, the failure on the part of the Nigerian Government to create and inaugurate the NCPP betokens non-compliance with the PPA, and that in itself constitutes a huge corruption of sorts. This undesirable situation raises the fundamental question of whether the government has a genuine and sincere sense of purpose to make the ongoing reform of the country's procurement system produce the desired results.

3.4 Political Interference and Nepotism

Another factor responsible for the increased level of corruption in Nigeria's public procurement system is overwhelming interference in the procurement process by political office holders. Politicians often use their positions to hijack and manipulate the procurement process in order to influence contract awards in favour of their friends, relatives, associates or party members as compensation for their support during electioneering. Onyema affirms this assertion, arguing that:

Despite the clear distinction made by the Act, in terms of responsibilities between Ministers as political heads and the Permanent Secretaries as Accounting Officers, evidence has shown that the Ministers dictate the procurement processes and override the powers and functions of the Accounting Officers. In many instances, contracts are alleged to have been shared by the politicians, with the assistance and supervision of the Ministers manning the Ministries even before they are advertised. Also, perhaps, in order to obey their Masters, the Accounting Officers, are also alleged to often time direct Procurement Officers to work towards ensuring "preferred" Contractors/Service Providers are pre-qualified and emerge as winners of contracts.²⁸

Born of undue influence and interference in the procurement process, such nepotism usually is accompanied by an outrageous over-valuation of projects or supply services and, in most cases, project abandonment in order to maximise monetary gains. And the results of this often are huge losses for the government and increased poverty and suffering for the citizenry.

3.5 Opaque Procurement Procedures

A major rationale for the recent reform of the Nigerian public procurement system was to introduce a greater degree of transparency, competitiveness, fairness and

28 Onyema (30 September 2011) para 12.

publicity about government contracts, as well as egalitarianism in terms of giving opportunities to all seeking contract awards from government. Unfortunately, lack of transparency or openness, which was one of the major characteristics of the old public procurement system, has come to be also one of the prime factors endorsing corruption in the current public procurement regime. Most often, the majority of individuals and contracting firms seeking to do business with government are kept in the dark about government contracts available for bidding by the manipulations of self-interested officials who want to favour certain contractors from whom they would receive a percentage of the contract sum. For instance, evidence shows that Nigerian procurement process is still replete with many anomalies such as:

Presidential waivers on some projects, anticipatory approvals, contract-splitting, cases of officials of the BPP and Residents Due Process in MDAs leaking privileged tenders' information to intending contractors or bidders.²⁹

Therefore, as it stands, "some contractors have undue advantage over other bidders as well as cases of gratification from service providers".³⁰ For this to happen, the procedures for bidding for and awarding of contracts often are not made transparent and public as they ought to be, in order drastically to reduce competition during the bidding process and to enable corrupt procurement officials to award contracts to their favoured contractors. The procurement process is rendered opaque when contractors in the procurement market are not kept abreast of the latest information concerning government contracts because government business opportunities are not advertised to the general public.

3.6 Technicality of Public Procurement Activities

Public procurement is a technical process and very few citizens have the knowledge, training and tools required effectively to monitor the process and report on their monitoring in a way that feeds into remedial action.³¹ Certainly, not too many Nigerians actually have sound knowledge of the public procurement process. In fact, even principal government officials, including those in the Ministries, Departments and

29 Fayomi IO (2013) "Public Procurement and Due Process Policy in Nigeria: Thrusts, Prospects and Challenges" 1(4) *Peak Journal of Social Sciences and Humanities* 39-45 at 44.

30 Fayomi (2013) at 44.

31 Public and Private Development Centre (2009) *The Public Procurement Act: Procurement Practice* at 1, available at <http://www.procurementmonitor.org/index.php?page=Procurement> (visited 16 November 2013).

Agencies in charge of public procurement, lack adequate knowledge of the technicalities involved in the process. This makes them vulnerable to experienced field agents and contractors who leverage their wealth of knowledge to perpetrate all sorts of sharp and corrupt practices to actualise their selfish material interests at the expense of the entire citizenry. Lack of technical know-how in public procurement on the part of the majority of Nigerian citizens and officials involved in the activity is the cause of rampant inflation of contract costs, delivery of poor quality products and services, delay in project completion, and project abandonment by contractors. The effect of this is massive wastage which drains the economy and inhibits the social and economic growth of the country.

3.7 Government Indolence and Lack of Political Will

Corruption thrives in the Nigerian public procurement sector because of a lack of political will at all levels of government to rid procurement processes of the menace. The PPA was enacted to safeguard public funds and guard against corrupt practices, but governments indulge in selective implementation of the provisions of the Act.³² The implication, therefore, is that successive governments in Nigeria have initiated anti-corruption programmes only to create a good image and win public support for themselves, without sincerely having the intention to tackle and eradicate the evil of corruption that is ravaging all the sectors of the economy. This is evident in the high level impunity enjoyed by the members of the so-called political class in the country. Evidence of large-scale scams and frauds involving high-ranking government officials and politicians regularly make the headlines in our national dailies, particularly in relation to procurement, but the culprits seldom are prosecuted to the full extent of the law. The reason for this is that said culprits are usually either friends or party political affiliates of the President, Governors or Local Government Chairmen. As a result, these cases usually die down as soon as public attention is shifted from them and the perpetrators go on to celebrate their loot, even being praised by those who, in one way or another, benefit from their ill-acquired wealth.

When persons who commit corruption of any kind are not prosecuted and punished, corruption becomes a norm rather than an anomaly, and the most attractive means of becoming rich quickly. The Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices and other Related Offences Commission (ICPC), two major anti-corruption agencies in the country, have not helped matters.

32 Fayomi (2013) at 44.

They have teeth but cannot bite. As a matter of fact, they can bark only. Many government officials and other individuals have been arraigned before the two anti-graft agencies with evidence of their being involved in corrupt acts, but none have been prosecuted and punished fully. It is not surprising therefore that these agencies have been described as mere instruments for oppressing political opponents on behalf of the ruling party.³³ Indeed, it is arguable that the anti-graft agencies themselves are the hot-beds of massive corruption.

3.8 Lack of Procurement Monitoring Capacity by Civil Society Organisations

The PPA provides for the full participation and involvement of civil society organisations (CSOs) in the public procurement process.³⁴ They are to act as observer groups representing the Nigerian masses in the procurement sector, with a view to ascertaining whether due process is followed in the conduct of government business and whether the process is free of corruption. In other words, they are to ensure transparency or openness in the award and execution of government contracts.³⁵ In terms of the Act, then, CSOs are one of the major stakeholders in the Nigerian public procurement process.

Unfortunately, many of the CSOs lack the requisite knowledge and capacity for effective procurement monitoring. As a consequence, non-state actors, as well as relevant legislative committees, merely were going through the motions of fulfilling their legal obligations, without really achieving the intended outcomes of improved transparency and accountability as envisaged by the PPA.³⁶ More worrisome is that procuring entities — the Ministries, Departments and Agencies (MDAs) — usually allow very limited or no access to CSOs to observe the procurement process, even in the face of regulations entitling them to do so. By denying CSOs the opportunity to monitor procurement processes, MDAs contribute to reducing their effectiveness. MDAs indulge in this habit as a way of increasing their chances of smoothly carrying out their usual unethical conduct that has continued to inhibit the viability of the procurement sector and the overall growth and development of the country.

33 Toromade S (11 July 2018) “Buhari's APC using EFCC, ICPC to Pursue Political Opponents, Ex-President says” *Pulse*, available at <https://www.pulse.ng/news/local/apc-using-efcc-icpc-to-pursue-political-opponents-obasanjo-id8602613.html> (visited 25 August 2018).

34 Section 19(b) of the PPA.

35 Section 19(b)(i)-(ii) of the PPA.

36 Public and Private Development Centre (2009) at 3.

4 HOW TO TACKLE PUBLIC PROCUREMENT CORRUPTION IN NIGERIA

Despite its pervasiveness and institutionalisation, the phenomenon of corruption and related unethical practices bedevilling the present public procurement practice in Nigeria can be tackled adequately if proper measures are put in place to rebuff the scourge. Some of the ways in which Nigeria can address the problem are considered below.

First of all, the government should demonstrate sincere commitment and determination to rid the country's procurement system of corruption and other underhand practices. This can be done by the government empowering and supporting the appropriate agencies in the on-going war against public procurement corruption, while ensuring that it itself does not constitute a stumbling block to the "clean-up" exercise through undue interference.

Another critical aspect of demonstrating the required determination on the part of the government is for it to implement fully all the provisions of the PPA, especially those applicable to constituting and inaugurating the NCPP, whose role in tackling corruption in the procurement system cannot be appreciated until it actually comes into existence and becomes operative. Also, constituting the NCPP and other bodies as provided for in the PPA would help to restore and rebuild public confidence and faith in the government, especially amongst public procurement experts and observers, and hence win their support in the effort to address the problem of corruption in the procurement system.

At present, a bill seeking to amend the PPA is at its third reading in the Nigerian National Assembly. The proposed amendments ought to confront those provisions, such as Section 15(2), which expose the procurement system to corrupt practices. All such loopholes in the Act enabling perpetrators of procurement corruption to continue with their mischiefs should be closed through the amendment process. Moreover, the BPP, as the principal agency responsible for monitoring and regulating all public procurement activities in Nigeria, should be revamped and strengthened through the amendment. In particular, the amended PPA should empower the BPP to deal with cases of corruption in the country's procurement sphere. This can be done by endowing it with powers to prosecute and punish public procurement corruption and related offences.

Aspects of the PPA which restrict the involvement and participation of the appropriate CSOs, acting as the representatives of the mass of the citizens in the public

procurement process, should be repealed. CSOs should be given absolute freedom to play their watch-dog role. Needless to say, CSOs should ensure that their representatives who take an active part in the procurement process are possessed of the appropriate acumen to monitor the procurement activities effectively.

Nobody, be it government procurement officials or contractors, caught in the act of procurement corruption should be spared. They must be made to face the full force of the law. Of course, the gravity of the punishment meted out to public procurement corruption offenders would reveal whether or not the government really is determined and ready to do battle with public procurement corruption. Certainly, such corruption would be curbed if perpetrators realise that severe consequences await them should they be caught.

Nigerians in general need proper orientation and education on public procurement matters in order to raise the level of citizen awareness of the conduct of government business. This could be achieved through national radio and television programmes, which would enlighten people and avail them of the opportunity to ask important questions about government procurement activities. An appreciable level of public procurement education amongst citizens would place them in a good position to blow the whistle on any observed illegality in the management of government business, thereby consolidating the government quest for a corruption-free public procurement system.

Nigeria's anti-corruption agencies — the EFCC and ICPC — should take their mandates seriously and display more activism than before in tackling corruption in Nigeria's public sector. There is a need to upgrade their modes of operation by adopting techniques and measures used by the developed countries for pro-active anti-graft operations, such as E-Monitoring and Tracking Systems. In addition, an in-house clean-up campaign would be expedient to eliminate unscrupulous insiders, especially in the upper echelons of these agencies, who frustrate national anti-corruption efforts. Personnel employed by the agencies must be patriotic and trustworthy citizens, with a record of proved integrity and goodwill towards the country. This would help to flush out saboteurs and compromisers, who sacrifice the general interests of the country to their selfish goals, thereby rubbishing the reputation of the anti-corruption bodies.

5 CONCLUSION

Pervasive corruption in the public procurement system has remained one of the major barriers to the attainment of Nigeria's national development agenda since independence. The trend has been very worrisome, and successive governments have made practical attempts to address the situation, but all efforts have failed to yield the desired results. The latest attempt at cleaning up the country's public procurement system was the reform undertaken by the government of Chief Olusegun Obasanjo upon Nigeria's return to democratic rule in 1999. This reform sought to institutionalise modern global best practice and techniques in the country's public procurement system, in a bid to improve its effectiveness and efficiency and rid it of endemic corruption. The reform was very significant in the history of public procurement practice in Nigeria in that it marked a shift from the deficient, inadequate and old public procurement order to a new regime with formal legal and institutional mechanisms — the Public Procurement Act and Bureau of Public Procurement — dedicated to the eradication of corruption and associated unethical practices in the public procurement system.

However, it is an irony that, despite the new procurement law (PPA) and regulatory institution (BPP), large-scale corruption and illegal activities continue to engulf the nation's public procurement system and practice. Some of the factors responsible for the persistence of this odious trend have been examined in §3 above. Although it seems that the problem of public procurement corruption has become entrenched in Nigeria to the extent that it appears almost intractable, all hope is not lost. With proper implementation of the recommendations set out in §4 above, the problem, if not eliminated, yet may be reduced drastically.