

# Power, Leadership, Responsibility With Accountability: Essentials For Nigeria's National Development\*

By

Professor Momodu Kassim-Momodu\*\*

## **Abstract**

*The paper examines the concepts of Integrity, Power, Leadership, Responsibility, Accountability and National Development, with the Constitution of the Federal Republic of Nigeria 1999 as the primary prism. It seeks to explore the relationship between these concepts and the importance of that relationship and interplay in national development. The critical roles of the executive, the legislature and judiciary, the three arms of government under the Constitution, and the necessity for these concepts to be engrained in the guiding principles for service by functionaries of the three arms of government is emphasized. The paper suggests that meaningful national development is achievable in Nigeria if both public and private sector functionaries entrusted with power and responsibility for playing roles in the different sectors of the economy exercise their power appropriately, take full responsibility for the demands of offices they hold, be transparent in executing their responsibilities and be always conscious of the fact that they will be held accountable for what they do or fail to do while in office. It recommends among other recommendations, very strict consequences for breaches of responsibility and accountability. It enjoins the courts to always resist allowing technicalities that may delay or prevent speedy trial of cases that boarder on accountability, or corruption, or abuse of office.*

**Keywords:** Accountability, Constitution, Development, Executive, Integrity, Judiciary, Leadership, Legislature, Power, Responsibility.

## **Introduction**

I have been confronted with the assertion that “...*the leadership of our country faces an integrity crisis borne out of misrepresented social values fostered (sic) by a corrupt judicial system*”<sup>1</sup> To say the least, I was stupefied by this description. Indeed, totally flabbergasted by the thought that the topic I had agreed to speak on at that occasion is presumably borne out of the search for solutions to national leadership challenges and integrity crisis foisted by an ostensibly *corrupt judicial system*. I need to first state very clearly that I do not share or hold the view that Nigeria has a *corrupt judicial system*. Nigeria has had some proven cases of corrupt judicial officers – a very tiny percentage of the number of judicial officers in the country. The *judicial system* or *judiciary* itself as an institution is not corrupt. Nigeria is very far from the state of institutionalised corruption in the judiciary, especially amongst judicial officers.

The other arm of the description of the topic as stated in my letter of invitation to deliver this lecture is the issue of *the leadership* of our country *facing integrity crisis*. What do we really mean by *leadership of our country*? Who are the leaders? We will attempt to answer that question later.

---

\*Revised text of paper delivered as Guest Lecturer for UNIFEMGA National Reunion Lecture 2019, Obafemi Awolowo University, Ile-Ife, Nigeria.

\*\* Professor and Dean of Law, Bola Ajibola College of Law, Crescent University, Abeokuta, Nigeria

<sup>1</sup> Olanlege AbdulFattah “Invitation as Guest Lecturer for UNIFEMGA National Reunion Lecture 2019” a letter dated 10 April 2019 and addressed to Professor Momodu Kassim-Momodu.

The other half of this other arm is the issue of *integrity crisis*. We will attempt to briefly clarify these two words to see where and how we can incorporate them into our discourse.

*Integrity* in the context of our discourse connotes *incorruptibility*. Firm adherence to code of morals. We can talk of integrity to not compromise on matters of principles. Integrity to refuse to play politics of deceit and self-service. Integrity to be a true patriot and nationalist. *Crisis* connotes "a difficult or dangerous situation that needs serious attention"<sup>2</sup>. The variants include a situation that has reached a critical phase. (e.g. the *environmental crisis*; the *unemployment crisis*);<sup>3</sup> and an unstable or crucial time or state of affairs in which a decisive change is impending; especially one with the distinct possibility of a highly undesirable outcome.<sup>4</sup> (e.g. *financial crisis*; the nation's *energy crisis*). If we agree that the explanation of the words *integrity* and *crisis* as presented is a true reflection of what we all understand or ought to understand them to represent, then you will agree with me that we have the task of identifying the root cause and other causes of the nation's *integrity crisis* outside of the judiciary or *judicial system*. Ideas are put forward here to stimulate discussion geared towards addressing some of the challenges Nigeria and African countries face, and the role power and responsibility with accountability ought to play in national development.

### **Clarification of Terms**

I will start by clarifying the key words of *power*, *responsibility*, *accountability* and *national development*, then proceed to interrogate how as a nation Nigeria has fared under successive post-colonial leaders, and the extent to which national development has been hampered by leaders who seek and get into position of power, fail to perform the responsibilities of those positions, and oblivious of accountability. Solutions to the malaise will be proposed as we proceed.

### **Concept of Power**

We are looking at the word *power* as a noun. As a noun, power is often attributive. Like the ability or right to take control of things or to control people; political control of a country or part of a country or area; control or influence over people or organizations by a person or even by an organization. With power, you can act, and you can produce an effect. You have legal or official authority, capacity, or right. You are in possession of control, authority or influence over others. We can also talk of power in terms of mental or moral efficacy. Power is without doubt an essential ingredient for national development if appropriately exercised by persons or leaders with mental and moral efficacy. Regrettably, post-colonial Africa has had the misfortune of nincompoops grabbing power and in most cases, absolute power. Ours in Nigeria has been cases of absolute power (especially for the 30 years of military dictatorship) inappropriately exercised by persons who were clearly deficient in both moral and mental efficacy. The result is underdevelopment and ruins in all facets of national life.

### **Concept of Responsibility**

Simpliciter, responsibility connotes something that you ought to and indeed should do because it is morally right, legally required, reasonably expected, beneficial, etc. It is the state of being the person who caused something to happen. It is a duty or task that you are required or expected to do. It connotes reliability, trustworthiness. It is the obligation to answer for an act done or an act

---

<sup>2</sup> Merriam-Webster Offline Dictionary, 2019 Merriam-Webster, Inc

<sup>3</sup> Ibid

<sup>4</sup> Ibid

that has been left undone. The requirement that any injury that may have been caused be repaired. Therefore, the quality or state of being responsible can be viewed from the angle of moral, legal, or mental accountability.

We should always remember that God, the Most High, created man and gave him life for a certain time. He gave him wisdom, strength, free will, wealth, etc. to enable him to use them in doing good and useful deeds, obtaining knowledge, and worshipping Him. If man wastes these blessings and bounties without taking any advantage of them, undoubtedly he will be held responsible and accountable for them on the Resurrection Day.

We must not only be aware of our responsibilities but must feel the responsibility to God on the Resurrection Day. God, the Almighty, will hold each one of us to account on that Day for the wealth that He gave us and how we obtained and used it. Did you obtain it through lawful means like agriculture, industry, trading and the like, or through unlawful ways like deceiving others, diverting funds for the common good of citizens to your personal benefit, stealing, oppression etc? If a person acquired his or her wealth through unlawful actions, his or her lot will be punishment and torture in the hereafter. If his wealth was gained through lawful means, most surely God will reward him or her and be pleased with him or her.<sup>5</sup>

On the Resurrection Day, each one of us will be questioned about the property that we owned in the life of this world. How we came about the property and how we used it. Did we use or spend our wealth or property on forbidden things and frivolous entertainment, etc? Or, did we spend it on ourselves and our families, participating in establishing useful and charitable projects and foundations to help the poor and needy? Each one of us is a leader one way or the other. We each have responsibilities to ourselves, our families, our communities, our nation and above all to the Almighty God.

Where leaders whether they are political leaders in the executive arm or legislative arm of government, in the judiciary, or in commerce and industry are lacking in responsibility, or chose to not be accountable, essential ingredients required for national development will be missed out and that deficiency will be a major contributing factor to lack of development, or underdevelopment.

### ***Concept of Accountability***

There is a very close relationship between *responsibility* and *accountability*, especially when we view accountability as the state of being responsible for an act or omission; action and nonaction (or inaction). It is the obligation to accept responsibility or to account for actions taken or actions not taken. The willingness to accept responsibility or to account for actions taken or consequences for the failure to take actions. Accountability is one of the cornerstones of good governance and requires the due performance of tasks or functions by an individual or agency.<sup>6</sup> Such a mandate and performance are subject to another's oversight, direction or request that the individual or agency provides information

---

<sup>5</sup> More of this on <https://www.al-islam.org/a-muslim-in-society-al-balagh/responsibility> last visited on 7 July 2019

<sup>6</sup> Prof Ben Sihanya, JSD (Stanford), "The role of the Judiciary in the accountability and governance of the devolved Government structure Presentation to the Institute of Certified Public Accountants of Kenya (ICPAK)" 20<sup>th</sup> Economic Symposium at the Hilton Hotel, Nairobi, February 24, 2012.

or justification for its action.<sup>7</sup> Thus accountability exists where persons in authority are answerable for their actions and there is transparency in leadership.

We often hear of public officials lacking accountability. Accountability and responsibility tend to go together, and to be mutually reinforcing. Both are needed for effective leadership and sustainable development-oriented policies. In a federal system, like Nigeria is supposed to be, public accountability is a two-way process involving upward accountability and downward accountability<sup>8</sup>. Upward accountability comes through the governmental control over administrative authorities like power to dissolve them, approval of budget, auditing of budgets etc. Downward accountability is to the public which is relatively weak, and it comes primarily through their mandate in elections.<sup>9</sup>

All is not well with public accountability in Nigeria like many other African countries. Formal accountability systems are put in place for the most part, but they are not necessarily made to work. Many good laws have been enacted, but they are not always enforced or monitored. Public agencies are given mandates and funds, but their performance may not be properly assessed, and suitable action taken to hold them accountable. Public audits of accounts and parliamentary reviews are done but follow up actions may leave much to be desired. The existence of formal mechanisms of accountability does not guarantee actual accountability on the ground.<sup>10</sup>

### ***Concept of National Development***

National development here is the ability of a nation or part of it<sup>11</sup> to improve the social welfare of the people<sup>12</sup> e.g. by providing social amenities like quality education, potable water, electricity, medical care, transportation, infrastructure such as road network, etc. Features of national development include full-growth and expansion of industries, agriculture, education, social, and cultural institutions. National development implies development of all parts of a nation. All tiers of government ought to be fully oriented to sustainable development resulting in all-round and balanced development of different aspects and facets of the nation. Constraints to national development in African and other developing countries today revolve around what are generally called “*structural constraints*”<sup>13</sup> to development. The pace of development can be slowed down, or even reversed, by various factors affecting the economy.<sup>14</sup> Other common constraints on development that have been identified are high economic poverty, hunger, high mortality rates, unsafe water supplies, poor education systems, corrupt governments, war, and poor sanitation. Some of these constraints can be dealt with through economic and social policy, while others may be difficult to resolve.<sup>15</sup> It will be difficult if not impossible to

---

<sup>7</sup> Accountability in Governance, World Bank document.

<http://siteresources.worldbank.org/PUBLICSECTORANDGOVERNANCE/Resources/AccountabilityGovernance.pdf>. Accessed on 6 July 2019

<sup>8</sup> <https://www.lawteacher.net/free-law-essays/administrative-law/doctrine-of-public-accountability-administrative-law-essay.php>. Accessed on 7 July 2019

<sup>9</sup> *ibid*

<sup>10</sup> *Ibid*

<sup>11</sup> Local Government Area, State etc

<sup>12</sup> <https://www.google.com/search?> Accessed on 25 June 2019.

<sup>13</sup> Inefficiencies within the micro-economy; imbalances in the structure of the economy, a rapidly growing or declining population, lack of financial capital, lack of human capital, Poor governance and corruption. missing markets, over-exploitation of environmental capital, barriers to trade.

<sup>14</sup> [https://www.economicsonline.co.uk/Global\\_economics/Development\\_constraints.html](https://www.economicsonline.co.uk/Global_economics/Development_constraints.html) - accessed on 26 June 2019

<sup>15</sup> *Ibid*

deal with structural constraint to national development in a nation with power drunk leaders who have power but deficient in responsibility and accountability.

### **Freedom of Information Act as a tool for enforcing accountability**

A very important factor responsible for the absence of popular participation in the governance process is the lack of information. Accountability is more effective in an open Government environment. It is not enough for people to exercise their franchise once every four years to choose their rulers and once the votes are cast, they return into passivity and not taking any interest in the Government. The electorate should participate in monitoring the activities of Government and the individuals elected into office to represent them and run the affairs of government. The Freedom of Information Act 2011 (FOI Act) is a legislation that was enacted to make public records and information more freely available. It provides for public access to public records and information, protect public records and information to the extent consistent with the public interest and the protection of personal privacy, protect serving public officers from adverse consequences of disclosing certain kinds of official information without authorization and establish procedures for the achievement of those purposes and; for related matters. The FOI Act is supposed to guarantee open Government which is the new democratic culture of an open society towards which every liberal democracy is moving, and Nigeria should be no exception. To ensure the continued participation of the people in the democratic process they must be kept informed of the vital decisions taken by the government and the basis of such decisions.

The FOI Act is not a perfect legislation. There are provisions of some existing laws such as Official Secrets Act, Penal Code, Criminal Code, Public Complaints Commission Act etc. that affect the effective implementation of the FOI Act. They should be repealed or amended to cure the conflict with the FOI Act. It is conceded that sections 27 and 28 of the FOI Act overrides the provisions of the Criminal Code, the Penal Code, the Official Secrets Act or any other such enactment with respect to disclosure of any record, but the proper thing to do is to repeal those conflicting laws because they are adverse to the FOI Act.<sup>16</sup>

The FOI Act it is a good starting point and it has despite its flaws afforded Nigerians the opportunity to scrutinise public record and monitor activities of government functionaries and agencies. Indeed, it is to some extent serving as a good tool for enforcing accountability.

### **Fundamental Obligations of Government and Welfarism**

The Constitution of the Federal Republic of Nigeria 1999<sup>17</sup> provides that it shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of Chapter Two the Constitution.<sup>18</sup> The Chapter makes provisions for the fundamental objectives and directive principles of state policy. The Constitution also provides clearly that sovereignty belongs to Nigerians from whom government, through the Constitution derives all its powers and authority.<sup>19</sup> That the responsibility of government to commit to ensuring that the *security and welfare* of the people of Nigeria shall at all times be the *primary purpose of government* is explicitly stated in

---

<sup>16</sup> For more on obstacles to implementation of Nigeria's Freedom of Information Act 2011, See Madubuike-Ekwe & Mbadugha: *Obstacles to the Implementation of the Freedom of Information Act, 2011 in Nigeria*, NAUJIJ 9 (2) 2018

<sup>17</sup> In Chapter Two of the Constitution, Fundamental objectives and Directive Principles of State Policy

<sup>18</sup> Section 13

<sup>19</sup> Section 14 (2) (a)

the Constitution.<sup>20</sup> This provision is followed by ten other fundamental objectives and directive principles of state policy. They include **objectives** on political, economic, social, educational, foreign policy, environmental, cultural, media, national ethics matters and duties of citizens. The aim of these directive principles of state policy is to create social and economic conditions under which the citizens can lead a good life. They also **aim** to establish social and economic democracy through a **welfare state**. In other words, the combined effect of the provisions of Chapter two of the Nigerian Constitution is the prescription of welfarism as state policy or ideology. It follows therefore that all political parties ought to incorporate commitment to implementation of the provisions of Chapter two of the Constitution in their manifestos, be responsible for implementing them and be always prepared to be held accountable for them at all levels of government, including legislative representation. This serves as the architectural foundation for the formulation of policies that will drive national development.

### **The Executive**

Policies that drive national development are formulated, enforced and executed by the Executive arm of government.<sup>21</sup> The Executive arm comprises of persons who are elected, political appointees or career public and civil servants. While so much attention is paid to elected and appointed political operators in the executive arm of government regarding issues in the realm of power, responsibility with accountability, far less attention is paid to career civil servants and regular public officers including the Nigeria Police, members of the armed forces and establishments like the universities and other agencies of government. However, a new era of anti-corruption activism since 2015 appears to be directing focus and search light on the civil and public service. This should be accompanied by strict and effective consequences for abuse of power and irresponsible conduct and behaviour of the executive class including the civil service. There is need for a solid foundation for entrenching the values necessary for executive power and responsibility with accountability that will drive effective implementation of policies that will guarantee national development.

Professor T. M. Yesufu described Nigeria as “one of the most profusely endowed with natural and human resources for economic development.”<sup>22</sup> Also, Adelamo and Baba observed that “while the land area occupied by the country may not cast it in the mould of a giant, its resource endowment confers on it potentials which, properly utilised, could make it an economic giant.”<sup>23</sup> Granted that Nigeria is as endowed as asserted by these two well-known national and international economists, social analysts and academicians, one wonders why the country has remained underdeveloped. The answer may well be found in the fact that over the decades since independence, most of the nation's political leaders including the military have wallowed in obscurantism, deception and grabbing or acquisition of power, exercising the power irresponsibly and without accountability. The signs and evidence that the nation is endowed with the human and material resources including vast natural resources as asserted by T. M. Yesufu<sup>24</sup>, Adelamo and Baba<sup>25</sup> are there. We recognise

---

<sup>20</sup> Section 14 (2) (b)

<sup>21</sup> The Executive arm works with the Legislative arm if it involves legislation.

<sup>22</sup> T. M. Yesufu, **The Nigerian Economy: Growth Without Development**, 1996 (The Benin Social Science Series for Africa, University of Benin, Benin City Nigeria), p. 36.

<sup>23</sup> I. A. Adelema and J. M. Baba (eds): *Nigeria Giant in the Tropics (A Compendium)*, (Heritage Edition, Gabumo Publishing Co. Ltd) Vol. 1, p. 15. Also cited by T. M. Yesufu, *ibid*

<sup>24</sup> *Op. cit*

<sup>25</sup> *Op. cit*

the fact that the nation witnessed a brief era of infrastructural development immediately after the civil war of 1967 to 1970. We saw road constructions, bridges, iron and steel plants, refineries, vehicle assembly plants, and several private sector industrial and manufacturing efforts.

Unfortunately, all that disappeared with irresponsible leadership, distortion of the development plans, bastardization of the civil service, unbridled corruption and executive lawlessness. The new era political leaders who soon after being elected into offices started behaving like feudal lords with their accomplices in the civil service, rapidly ran the economy aground and dragged the nation, “the giant of Africa” into developmental retardation. They have held the country hostage. They have the power, which we gave them to be held in trust for us. They exercise the power irresponsibly without regard to accountability. At all levels of governance, people are eager to get into power but unwilling to accept the responsibilities and obligations; and will do everything and employ every means [using the resources of the people and the nation] to avoid accountability. Multimillion dollars voted for national development projects end up in private bank accounts. Contractors engaged for the construction of infrastructures connive with corrupt government functionaries to divert substantial part of the inflated funds to building skyscrapers, mansions in exclusive locations in major cities, housing estates, commercial schools’ buildings, industries, buying vehicles for government functionaries, political office holders and members of their families.

The environment soon became hostile to economic development, infrastructures decayed, industries closed, manufacturers became importers of finished products and foreign investors moved to neighbouring countries and to South Africa, a country that less than a decade previous, looked up to the “giant of Africa” for development and survival at the onset of post-apartheid era. Nigeria became the great importer of toothpicks, pencils, erasers, pens, pins, baby clothes, rice, vegetable oil, champagne, including customised champagnes for special occasions, exotic wines, human hair and synthetic hair, body creams, hair creams, umbrellas etc.

There is the general perception and misconception of the provisions section 308 of the Nigerian Constitution 1999 as having given protection to some elected executives of government from accountability and from consequences for corruption and other civil or criminal wrongs while in office. Section 308 of the 1999 Constitution provides as follows:-

(1) *“Notwithstanding anything to the contrary in this Constitution, but subject to subsection (2) of this section*

*(a) no civil or criminal proceedings shall be instituted or continued against a person to whom this section applies during his period of office;*

*(b) a person to whom his section applies shall not be arrested or imprisoned during that period either in pursuance of the process of any court or otherwise; and*

*(c) no process of any court requiring or compelling the appearance of a person to whom this section applies, shall be applied for or issued:*

*Provided that in ascertaining whether any period of limitation has expired for the purposes of any proceedings against a person whom this section applies, no account shall be taken of his period of office.*

(2) *The provisions of subsection (1) of this section shall not apply to civil proceedings against a person to whom this section applies in his official capacity or to civil or criminal proceedings in which such a person is only a nominal party.*

(3) *This section applies to a person holding the office of President, Vice-President, Governor or Deputy Governor, and reference to the period during which the person holding such office is required to perform the functions of the office."*

This was the foundation of the issues in the case of *Fawehinmi v. Inspector-General of Police and 2 Others*<sup>26</sup> where the Supreme Court of Nigeria agreed with the Court of Appeal that "while recognising that the functionaries protected under Section 308 of the 1999 Constitution could not be arrested, imprisoned or prosecuted, ... that section was not intended to completely shield them from investigation of an alleged crime." The views were expressed that:

- 1) the police could conduct their investigation up to a point that would not amount to a breach of Section 308;
- 2) the investigation would need to be discreet and could be overt or covert; and
- 3) when the investigation is concluded as far as it is possible to go, and the allegation or the commission of crime appears supported, the police must remember that they cannot proceed further to the stage of arrest.

The Supreme Court emphasised that a blanket authority is given to the police to question any officer mentioned in Section 308(3) while in office, but no matter how strong such evidence might be against him, such evidence must be kept in the cooler until such time the officer vacates the office. The officer may be arrested and prosecuted after he vacates office. Also, the evidence may be used by the legislature in proceedings for the removal of the officers from office under section 143 (in respect of the President and Vice-President of Nigeria) and section 188 of the Constitution (in respect of the Governor and Deputy Governor of a state).

It is clearly settled in law from the pronouncements of both the Court of Appeal and the Supreme Court that Section 308 of the Constitution of the Federal Republic of Nigeria does not grant to the officers mentioned in subsection (3) thereof immunity from police investigation into allegations of crimes made against them. The officers (the President of Nigeria, the Vice-President of Nigeria, the Governor of a State and the Deputy Governor of a State) are also not immune from investigation by the Independent Corrupt Practices Commission, and the Economic and Financial Crimes Commission. Findings of such investigation may be used in impeachment or removal from office proceedings by the National Assembly for the President and Vice President, and State House of Assembly for a State Governor and Deputy Governor. The Supreme Court emphasised in *Fawehinmi v. Inspector General of Police and 2 Others* that "investigation into a criminal complaint is not tantamount to instituting or bringing criminal proceedings. Criminal proceedings cannot be said to be instituted or brought until a formal charge is openly made against the accused

---

<sup>26</sup> *Fawehinmi v. Inspector General of Police and 2 Others*. (2002) 8 SC M 77, (2002) 7 NWLR (Pt 767) 606, (2002) All NLR 357

in court. In other words, criminal proceedings commence when the accused is arraigned before the court on a formal charge and his plea taken.”<sup>27</sup>

### The Legislature

The system of government to which the artificial nation of Nigeria and its people have consistently been constitutionally held hostage since Sir Frederick Lugard’s speech on January 1, 1914<sup>28</sup>, prescribes legislation and legislative structures as the tools for formulating laws for peace, order, good government, and development. The extent of power exercisable by both public officials and private corporate executives, as well as the procedure for holding these executives accountable for their actions or inactions is regulated by legislation. The 1999 Constitution of Nigeria reinforces this with the provision that the legislature “...shall have power to make laws for the peace, order and good government of the Federation or any part thereof...”<sup>29</sup> The Constitution gives both the federal and state legislatures power and control over public funds.<sup>30</sup> Including authorisation of expenditure from Consolidated Revenue Fund,<sup>31</sup> authorisation of expenditure in default of appropriations,<sup>32</sup> and Contingency Fund.<sup>33</sup> The National and State Assemblies or legislative houses have the power and control over the funding of projects including economic development projects. How they exercise this power and responsibility given them by the Constitution, and how the executive arm of government correspondingly exercises the power and responsibility to diligently and transparently execute the projects, go a long way in determining the extent to which national development is advanced. Legislators often demand cash and other special benefits from government organisations they are overseeing. They share budgetary allocation for development projects in their constituencies with contractors and civil servants. They demand special favours for themselves, members of their families and their close associates from government departments, statutory corporation and agencies.

The legislatures both at federal and state levels have the power to remove from office the President of Nigeria, the Vice-President of Nigeria,<sup>34</sup> the Governors and Deputy Governors of the states<sup>35</sup> for gross misconduct in the performance of the functions of their respective offices. “Gross misconduct” with regards to the President and the Vice-President has been defined in the Constitution of Nigeria as “...a grave violation or breach of the provisions of this Constitution or a misconduct of such nature as amounts in the opinion of the National Assembly to gross misconduct”<sup>36</sup> For the Governor and Deputy Governor, the Constitution defines “gross misconduct” as “...a grave violation or breach of the provisions of this Constitution or a misconduct of such nature as amounts in the opinion of the House of Assembly to gross misconduct”<sup>37</sup> The procedure includes the Chief Justice of Nigeria where the allegation is against the President or Vice-President; and the Chief Judge of a State, where the allegation is against the

<sup>27</sup> Ibid. Also see *Asakitiki v The State* (1993) 5 NWLR (Part 296) 641).

<sup>28</sup> See Appendix 1 **Amalgamation Proclamation of 1914**, below.

<sup>29</sup> Section 4(2)

<sup>30</sup> Chapter V Part I (E) and Chapter V Part II (E)

<sup>31</sup> Section 81 and S. 121

<sup>32</sup> Section 82 and S. 122

<sup>33</sup> Section 83 and S. 123

<sup>34</sup> Section 143 of the Constitution of the Federal Republic of Nigeria 1999

<sup>35</sup> Section 188 of the Constitution of the Federal Republic of Nigeria 1999

<sup>36</sup> Section 143 (11)

<sup>37</sup> Section 188 (11)

Governor or Deputy Governor of a state; setting up a Panel of seven persons to investigate the allegations of gross misconduct on the request of either the President of the Senate or the Speaker of the State House of Assembly. The legislature on receipt of the report of the Panel then decides by two thirds votes of its members on the removal from office of the President or Vice-President and Governor or Deputy Governor as the case may be. Proceedings or determination of the Panel or of the legislature or any matter relating to such proceedings or determination cannot be entertained or questions in any court.<sup>38</sup> This power of the legislature and the removal from office procedure which is generally referred to as *impeachment procedure* is a check on the executive arm by the legislature and it is meant to ensure responsibility and accountability of the President, Vice-President of the Federation; and Governors and Deputy Governors of the states. If any of the executives is removed from office as provided in the Constitution, he or she may be charged to court to account of his actions or consequences of inaction while in office. They really do not enjoy any immunity from being held accountable for their responsibilities under the Constitution and other laws. Furthermore, they can be investigated by the Police, the Independent Corrupt Practices Commission and the Economic and Financial Crimes Commission while in office and if there is any findings of wrong doings or infraction of laws and provisions of the Constitution, findings of such investigation can be materials for impeachment proceedings in the legislature as we discussed earlier.<sup>39</sup> The legislature unfortunately has not played the patriotic and responsibility role that is necessary for ensuring that the leadership of the executive arm of government are routinely checked for effective responsibility and accountability.

To contribute effectively to national development, both arms of the National Assembly and the State assemblies must think out of the box and members must purge themselves or be purged of corruption and abuse of office. For effectiveness in legislative functions and participation in efforts to advance national development efforts, professional legislative aides or assistants and expert consultants in the different fields are needed to assist legislators with research, project evaluation, oversight functions, financial and project audit, analysis of government economic development policies, national budget proposal scrutiny and analysis etc.

Indeed, my preference and recommendation are to have part-time legislators, each legislator remunerated for the number of days clocked in for work, for a maximum of 200 days each legislative year. Both the National Orientation Agency<sup>40</sup> and national electoral body<sup>41</sup> should mount continuous citizens education on elections and civics (the rights and duties of citizens and of how government works). Legislators should be held accountable by the electorate for the exercise of the power delegated to them by the citizens, and the obligations and responsibilities concomitant to the delegated powers. For effective contribution to the nation development, the citizens should be knowledgeable in civics and the weight of the power they can exercise with their ballot. The citizens should not support the election or re-election of constituency

---

<sup>38</sup> Section 143 (10) and Section 188 (10) of the Constitution of Federal Republic of Nigeria 1999.

<sup>39</sup> *Fawehinmi v Inspector General of Police and 2 Others*, op. cit

<sup>40</sup> Established under the National Orientation Agency Act 1993 No. 100. The Agency is to, among other things, re-orientate and encourage Nigerians to take part actively and freely in discussions and decisions affecting their general and collective welfare and for matters other similar matters.

<sup>41</sup> The Independent National Electoral Commission established by the Independent National Electoral Commission (Establishment, etc.) Act 1998 to organise, conduct and supervise elections and matters pertaining to elections into certain elective offices as provided for in the Constitution of the Federal Republic of Nigeria or any other enactment or law.

representation (whether in the Senate, House of Representatives, House of Assembly or Local Government), who have no regard for acceptable code of conduct or decency in public office.

### **The Judiciary and Judicial Power**

*Judiciary* connotes that which is done while administering justice. It connotes judges taken collectively; as, the liberties of the people are secured by a wise and independent judiciary.

*Judicial power* is the constitutional and legal power given to the courts and the judges to

- 1) preside over and render judgement on court-worthy cases;
- 2) enforce or void statutes and laws when scope or constitutionality are questioned;
- 3) interpret statutes and laws when disputes arise.

The judiciary is thus expected to play core functions to ensure accountability and good governance in the government and in the polity.

The judicial powers of the federation are vested in the federal courts,<sup>42</sup> while the judicial powers of a State are vested in the State courts.<sup>43</sup> It is the duty of a wise and independent judiciary to decide according to the allegations and the proof. That is indeed the duty of every single judge – *Judicis est judicare secundum allegata et probata*.<sup>44</sup> Consequences for breach of the code of ethics, irresponsibility of persons who are entrusted with the exercise of the people's power and who abuse those powers are ensured by a wise and independent judiciary. Such consequences ought to be severe. It is those consequences that will ensure that persons who are given power or who acquire power perform the responsibilities of their offices and exercise the power responsibly. It is the strict enforcement of those consequences that ensures accountability. A corrupt or weak judiciary will create the fertile environment for misuse of power, irresponsibility and lack of accountability in the polity. The consequence of that is often inimical to national development.

The Court of Appeal and the Supreme Court of Nigeria have made significant contributions to the war against corruption and abuse of office. It is not difficult to see the efforts the courts are making in ensuring that legislation that seek to ensure accountability and transparency are enforced to the letter. A good example is the case of *Gabriel Daudu v Federal Republic of Nigeria*<sup>45</sup> where the Supreme Court upheld the decision of the Court of Appeal that “The burden lies on an accused person to explain properties he acquired which are disproportionate to his KNOWN legitimate earnings.” This decision sends unambiguous message to Nigerians that once it is established that they have more they ought to have in their bank accounts or in assets than their legitimate earning can account for, then they have the burden of proving proof of the source of such funds or assets. Where they fail in satisfactorily explaining the sources of such funds or assets, there will be forfeiture to the government and other consequences including being liable to any other statutory punishment for the offence.<sup>46</sup>

---

<sup>42</sup> The Supreme Court; Court of Appeal; Federal High Court; The High Court of the Federal Capital Territory Abuja; The Sharia Court of Appeal of the Federal Capital Territory Abuja; The National Industrial Court. See also S. 6 of the Constitution of the Federal Republic of Nigeria 1999.

<sup>43</sup> The High Court of a State; Sharia Court of Appeal of a State; Magistrate Court etc.

<sup>44</sup> Latin, meaning it is the duty of a judge to decide according to the allegations and proof.

<sup>45</sup> (2018) 10 NWLR (Pt.1626) 169

<sup>46</sup> The decision of the Supreme Court in *Gabriel Daudu and Federal Republic of Nigeria* (2018) 10 NWLR (Pt.1626) 169 has given judicial approval to statutory provisions in Section 19(2) of the Money Laundering (Prohibition) Act 2004, Section 15(a)(b) of Advance Fee Fraud and other Fraud Related Offences Act 2006 and section 18(5) of the Economic and Financial Crimes Commission (Establishment Act) 2004, making it easier for prosecutors of related corruption and money laundering cases to speedily deal with cases.

## **Institutions Established to Deal with Corruption and Ensure Honesty, Transparency and Accountability.**

### ***Code of Conduct Bureau***<sup>47</sup>

The Code of Conduct Bureau (CCB), the pioneer anti-corruption agency in Nigeria was established in 1979 after thirteen years of military dictatorship.<sup>48</sup> The CCB was established to maintain a high standard of public morality in the conduct of government business and to ensure that the actions and behaviour of public officers conform to the highest standards of public morality and accountability. It has the primary responsibility of checking corrupt practices in the Nigerian Public service. The 1979 Constitution of the Federal Republic of Nigeria provided a list of Codes of Conduct for public officers.<sup>49</sup> The military administration inaugurated a CCB Board in July 1979, before handing over power to the civilian government on the 1<sup>st</sup> day of October 1979. However, the CCB Board could not function and had no impact because the civilian government that succeeded the military failed to enact the enabling law. Ten years later in 1989, the Bureau got its legal mandate under another military administration that overthrew the civilian government that was elected in 1979.

Paragraph 11 of Part 1 of the Fifth Schedule to the 1999 Constitution of Nigeria requires, every public officer to submit to the Code of Conduct Bureau a written declaration of all his properties, assets and liabilities and those of his or her spouse (if not a public officer) and his unmarried children under the age of eighteen years. Any Statement in such declaration that is found to be false by any authority or person authorized in that behalf to verify it is to be deemed to be a breach of this Code.

### ***Code of Conduct Tribunal***<sup>50</sup>

The Code of Conduct Tribunal (CCT) like the CCB was established to deal with complaints of Corruption by public servants and for the breaches of the Code of Conduct<sup>51</sup> for public officers<sup>52</sup>

---

<sup>47</sup> Established by Section 153 (1) (a) of the Constitution of the Federal Republic of Nigeria 1999.

<sup>48</sup> The Code of Conduct Bureau is found in governments all over the world. It is operated under different names in different countries and its history can be traced as far back as the 6th century AD in the Middle East. It was established within the Islamic Court of the Caliphate, to monitor the behaviour and check the excesses of officials, etc.

<sup>49</sup> The Code of Conduct provision has since then been included, in the 5th schedule of all constitutions of Nigeria: 1989, 1993, 1995 and the 1999 constitution.

<sup>50</sup> Established by Paragraph 15(1) of Part 1 of the Fifth Schedule to the 1999 Constitution of Nigeria and S. 20 of the Code of Conduct Bureau and Tribunal Act, CAP C15, Volume 2, Laws of the Federation of Nigeria, 2004

<sup>51</sup> Paragraphs 1 – 14 of Part 1, Fifth Schedule to the Constitution of the Federal Republic of Nigeria 1999

<sup>52</sup> The Second Schedule of Code of Conduct Bureau and Tribunal Act 2004 list the following as public officers: The President of the Federation; the Vice-President of the Federation; the President and Deputy President of the Senate, Speakers and Deputy Speakers of the House of Representatives and of the Houses of Assembly of States, and all members and staff of Legislative Houses; Governors and Deputy Governors of States; Chief Justice of Nigeria, Justices of the Supreme Court, President and Justices of the Court of Appeal, all other judicial officers and all staff of courts of law; Attorney-General of the Federation and Attorney-General of each State; Ministers of the Government of the Federation and Commissioners of the Governments of the States; Chief of Defence Staff, Head of the Army, Navy, Air Force and all members of the Armed Forces of the Federation; Inspector-General of Police, Deputy Inspector-General of Police and all members of the Nigeria Police Force and other Government security agencies established by law; Secretary to the Government of the Federation, Head of the Civil Service, Permanent Secretaries, Directors-General and all other persons in the civil service of the Federation or of the States; Ambassadors, High Commissioners and other officers of Nigerian Missions Abroad; Chairman and other members and staff of the Code

as enumerated in the Nigerian Constitution and the provisions of the Code of Conduct Bureau and Tribunal Act.<sup>53</sup> The CCT is to ensure standard of morality in the conduct of Government business and to ensure that the actions and behaviour of public officers conform to the highest standards of public morality and accountability. The CCT can be described as the anti-corruption and transparency tribunal in Nigeria.

Paragraph 18 of Part 1 of the Fifth Schedule to the 1999 Constitution of Nigeria specifies the punishment for any contravention as follows:

*“(1) Where the Code of Conduct Tribunal finds a public officer guilty of contravention of any of the provisions of this Code it shall impose upon that officer any of the punishments specified under sub-paragraph (2) of this paragraph and such other punishment as may be prescribed by the National Assembly.*

*(2) The punishment which the Code of Conduct Tribunal may impose shall include any of the following:*

*(a) vacation of office or seat in any legislative house, as the case may be;*

*(b) disqualification from membership of a legislative house and from the holding of any public office for a period not exceeding ten years; and*

*(c) seizure and forfeiture to the State of any property acquired in abuse or corruption of office.*

*(3) The sanctions mentioned in sub-paragraph (2) hereof shall be without prejudice to the penalties that may be imposed by any law where the conduct is also a criminal offence.”*

In the case of *Dr. Olusola Abubakar Saraki v. The Federal Republic of Nigeria*,<sup>54</sup> the Supreme Court of Nigeria upheld the decision of the Court of Appeal that the Code of Conduct Tribunal is not only an administrative tribunal but also a tribunal that has quasi-criminal jurisdiction with the necessary powers to put into effect its mandate of ensuring accountability, probity, transparency etc of public officers in public office.

### ***Independent Corrupt Practices and Other Related Offences Commission***

The Independent Corrupt Practices and Other Related Offences Commission (ICPC),<sup>55</sup> was inaugurated on 29 September 2000 following the enactment of the enabling legislation. The mandate of ICPC is to receive and investigate reports of corruption and in appropriate cases prosecute the offender(s). Also, it has the mandate to examine, review and enforce the correction of corruption prone systems and procedures of public bodies, with a view to eliminating corruption in public life, and to educate and enlighten the public on and against corruption and related offences with a view to enlisting and fostering public support in combating corruption.<sup>56</sup> Provision

---

of Conduct Bureau and Code of Conduct Tribunal; Chairmen and other members and staff of local government councils; Chairmen and members of the Boards of other government bodies and staff of statutory corporations and of companies in which the Federal or any State Government has controlling interests; All staff of universities, colleges and institutions owned and financed by the Federal or State Governments or local government councils; Chairmen and other members and staff of permanent commissions or councils appointed on full-time basis.”

<sup>53</sup> CAP C15, Volume 2, Laws of the Federation of Nigeria, 2004

<sup>54</sup> *Dr. Olusola Abubakar Saraki v Federal Republic of Nigeria* (SC.852/2015) [2016] NGSC 53 (5 February 2016) (SC.852/2015) [2016] NGSC 1 (04 February 2016).

<sup>55</sup> Established by Section 3 (1) of Corrupt Practices and Other Related Offences Act, No. 5 2000

<sup>56</sup> Section 6 Corrupt Practices and Other Related Offences Act, No. 5 2000

has also been made for the protection of anybody who gives information to the ICPC in respect of an offence committed or likely to be committed by any other person.

Corruption is a global problem. So, apart from national efforts demonstrated by the enactment of the ICPC Act and the constitutional provisions on code of conduct for public officers and then establishment of the CCB and the CCT, Nigeria is a party to other international laws and protocols to combat the malaise. Prominent amongst these are the African Union Convention on Preventing and Combating Corruption (AUCPCC) and the United Nations Convention Against Corruption (UNCAC).

### ***Economic and Financial Crime Commission***

The Economic and Financial Crimes Commission (EFCC) was established in 2003<sup>57</sup> to investigate financial crimes such as bank fraud, tax evasion, money laundering, advance fee fraud, corruption, and the other types of economic crimes that affect Nigerian economy and development.<sup>58</sup> EFCC was established in response to pressure from the Financial Action Task Force on Money Laundering (FATF), which named Nigeria as one of 23 non-cooperative countries in the international community's efforts to combat money laundering. Internally, there was the need for additional and more stringent efforts at dealing with the challenges of corruption and lack of accountability evident in the behaviour of political office holders, public officials and executives of financial institutions including banks.

### ***Bureau of Public Procurement***

The Bureau of Public Procurement (BPP) was established by section 3 of the Public Procurement Act, 2007. Public procurement had been a major avenue for corruption and reckless abuse of office and open display of conflict of interest by military leaders, public officers and politicians over decades. The decision to commence Public Procurement Reforms in the country followed a World Bank Country Procurement Assessment survey conducted in 1999. The assessment established the direct link between poor and weak public procurement procedures and the monumental corruption and corrupt practices in Nigeria. It also exposed the far-reaching damaging consequences on national critical infrastructures and economic development.

The Assessment Report showed that 60 per cent of the cost of procurement and projects execution by government was being lost to underhand practices and brazen corruption. The Report further revealed that "an average of ten Billion US Dollars (\$10b) was being lost annually due to fraudulent practices in the award and execution of public contracts through inflation of contract cost, lack of procurement plans, poor project prioritization, poor budgeting processes, lack of competition and value for money and other kinds of manipulations of the procurement and contract award processes."<sup>59</sup> To deal with this malaise, the federal government of Nigeria initiated the Public Procurement Reform initiative as part of its Economic Reform agenda designed to restore due process in the award and execution of federal government contracts.<sup>60</sup> Consequently, the Budget Monitoring and Price Intelligent Unit (BMPIU), otherwise known as known as Due Process, was set up in 2001 to implement the government's Public Procurement Reform Policy focused on minimizing flagrant abuses and disregard of extant rules, processes and standards in

---

<sup>57</sup> Section 1 Economic and Financial Crimes Commission (Establishment) Act 2002

<sup>58</sup> Ibid Section 5 and Section 6

<sup>59</sup> Bureau of Public Procurement, History. <https://www.bpp.gov.ng/background/> accessed on 05/09/2019

<sup>60</sup> Ibid

procurement, the award and execution of public sector contracts. The need to institutionalise and sustain the modest gains from the initial efforts informed the enactment of the Public Procurement Act in 2007.<sup>61</sup>

The Public Procurement Act 2007 provides the legal and institutional framework and professional capacity for public procurement in Nigeria. The key objectives of the BPP established by the Act are to:

- 1) Harmonize existing government policies and practices on public procurement to ensure probity, accountability and transparency in the procurement process;
- 2) Establish pricing standards and benchmarks;
- 3) Ensure the application of fair, competitive, transparent, value-for-money standards and practices for the procurement and disposal of public assets; and
- 4) Attain transparency, competitiveness, cost effectiveness and professionalism in the public sector procurement system.

The aspiration is to fully professionalise the process of procurement to ensure accountability, transparency, efficiency, competition, integrity and value for money to support national growth and development.

### **Need for *Fit-and-Proper* Policy**

The **fit-and-proper-person test** is recommended for the election or selection of persons into positions of power or authority. It is a test aiming to prevent corrupt or untrustworthy persons from serving or holding public office. It is character screening aimed at preventing corrupt and untrustworthy characters from holding positions of power in both the public and private sectors. The policy will also be beneficial to the private sector and ultimately good for national development. The electorate and appointing authorities should always identify persons who have been responsible for, privy to, contributed to or facilitated any serious misconduct or mismanagement (whether unlawful or not) in the course of carrying on previous activity or in previous employment. Persons of immense financial means and, or high social contact whose source of income are unknown or questionable should be prevented from getting into positions of power and positions with responsibilities that could impact development or good government. There should be a search always for the noblest amongst the constituents for election or selection into positions power, responsibility and leadership.

Very often, we see persons who are known to have been involved in serious misconduct or mismanagement work their way into positions of power and responsibility with disastrous consequences for the economy and for national development. The electorate and appointing authorities should go beyond academic or paper qualifications and standard eligibility requirements to scrutinise character, competence, skills for the performance of the tasks intrinsic to responsibilities and experience necessary for the office or position. We should search for and engage *“the noblest”* amongst the populace.

### **Conclusion and Recommendations**

For there to be meaningful national development in Nigeria, both public and private sector functionaries entrusted with power and responsibility for playing roles in the different sectors of the economy must exercise their power appropriately, take full responsibility for the demands of

---

<sup>61</sup> The Public Procurement Act was signed into law on June 4 2007, eight years after the World Bank Country Assessment Report that recommended the reforms and an enabling legislation..

offices they hold, be transparent in executing their responsibilities and be always conscious of the fact that they will be held accountable for what they do or fail to do while in office.

There should be very strict consequences for breaches of responsibility and accountability. The courts should resist allowing technicalities that may delay or prevent them from speedily dealing with cases of corruption, and abuse of office.

A system of part-time legislators where legislators are paid allowances for the number of days they work should be adopted. Emphasis should shift from full time legislator who in fact are not on duty full time, to the use of full time knowledgeable professional legislative aides and ad hoc consultants in the legislative function.

Provisions of laws such as Official Secrets Act, Penal Code, Criminal Code, Public Complaints Commission Act etc. that affect the effective implementation of the Freedom of Information Act should be repealed or amended to cure the conflict with the Freedom of Information Act, and give the public a more assuring tool for the monitoring of public officers and government, and enhancing public participation in ensuring power and responsibility is accompanied with accountability.

## APPENDIX 1

—————**Amalgamation Proclamation of 1914**—————

Speech by the Governor-General (Sir F. Lugard) on the declaration of the Constitution of the Colony and Protectorate of Nigeria, January 1, 1914.

YOU are all aware that His Majesty's Government, after long and mature consideration, arrived some time ago at the conclusion that it would be to the great advantage of the countries known as Southern and Northern Nigeria that they should be amalgamated into the one Government, conforming to one policy and mutually co-operating for the moral and material advancement of Nigeria as a whole.

This policy had been strongly advocated by Sir William Macgregor as Governor of Lagos, by Sir Ralph Moor as High Commissioner of Southern Nigeria, and by myself as High Commissioner of Northern Nigeria about ten years ago. It has continued to be advocated by Sir Walter Egerton and my successors in Northern Nigeria.

The construction of rival railways in Northern and Southern Nigeria accentuated the necessity having a single railway policy, with a single administration, and over a year ago the Secretary of State decided that the time had come to give effect to the scheme of constituting a single Government for Nigeria.

Mr. Harcourt was pleased to select me to carry out this difficult task, and he appointed me in the first instance as Governor separately of the two distinct Governments of Northern and Southern Nigeria, with a view to informing myself of Local conditions and submitting to him my proposals for Amalgamation.

I had the honour to submit those proposals for his consideration on May 9th last. They were accepted in all essentials, and today they are to take effect. I desire therefore as briefly as possible to describe to you, and through you to the official and unofficial community of Nigeria the basis on which this Amalgamation is to be carried out, and the principal changes which will result.

The Colony and Protectorate of Nigeria will be placed under the control of a single officer upon whom His Majesty has been pleased to confer the title of Governor-General, thus indicating the importance of this country among the Crown Colonies and Protectorates of the Empire. That portion which has hitherto been Northern Nigeria will be known in future as the Northern Provinces, while the Protectorate of Southern Nigeria will be known as the Southern Provinces of Nigeria; each will be under the immediate control of a Lieutenant-General responsible to the Governor-General. The Colony in view of its separate status and traditions will preserve a separate identity, under an Administrator of its own dealing direct with the Governor-General. For the present, the Central Headquarters will remain at Lagos, and the Governor-General will divide his time between the Headquarter Stations of the Northern and the Southern Provinces.

His Majesty, through the Secretary of State, has been pleased to confer on me the high honour of appointment as Governor-General, and I humbly hope that I may be enabled to discharge the functions of this office, the great responsibilities of which I deeply appreciate, in such a manner as to deserve His Majesty's approval, and to the satisfaction and contentment of His Majesty's loyal subjects and of all the people of Nigeria. To succeed in such a task would be impossible unless I have the goodwill and co-operation of all classes, Official and Unofficial, irrespective of race or creed, and I take this opportunity of earnestly asking for that co-operation and loyal assistance, assuring you at the same time that, so far as in me lies, I shall not spare myself nor find any work too hard or arduous, if I can thereby advance the true interests of this country and of each individual person in it, whatever his race or creed, or however humble his rank.

For the high and responsible posts of Lieutenant-Governors of the Southern and Northern Provinces His Majesty has selected Mr. A. G. Boyle, C.M.G. and Mr. C. L. Temple, C.M.G. officers in whose loyalty and ability he has the highest confidence, and in whose hand the welfare of the Protectorate is assure. As Administrator of the Colony the Secretary of State has selected Mr. F. S. James, C.M.G. whose long experience in the South marks him out as the most fitting officer for the post. I may be permitted to offer to these officers my congratulations, and to express my deep satisfaction that I am privileged to work with them as my colleagues.