

## Military Rule in and the Bane of Corruption in the Nigerian Judiciary

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### ABSTRACT

The Nigerian judiciary has been lampooned as being corrupt. The demi-godly powers of the High Court judges and Supreme Court Justices have been demystified. The judiciary have been desecrated recently. This article embarked on an archival odyssey to unearth the antecedents of corruption in the judiciary. It was an exposition. The objective of this article is to trace how corruption infiltrated the judiciary and how this cankerworm can be checkmated in the Nigeria. The high-handedness of then military governments desecrated the hallowed chambers of the judiciary that invariably dovetailed to what is being experienced in the judiciary today. Thoughtful solutions for the imbroglio were proffered such as repealing ouster clauses and laws that limit the powers of the judges, the necessity of enthroning financial independence for the judiciary and dealing summarily with corrupt individuals including judges as seen in China, Japan, Singapore to mention a few.

**Keywords:** *Supreme Court, High Court, ouster clauses, corruption, military governments*

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## **Background to the Study**

The judiciary is reputed to be the last hope of the common man. It is seen as the bastion of truth, equity and good conscience. Of recent, the Nigerian judiciary is inundated with allegations of corruption that dovetailed in the invasion of the residences of judicial officers including judges of the Supreme Court. In fact, the hallowed chambers of the Bench was desecrated. The judiciary was humiliated and at crossroads. It is also a well-known fact that not all judicial officers are corrupt. There are good judges that respect their personalities, that will never condescend to tarnish their hard-earned reputation. The multi-million Naira question to ponder on is how did the judiciary find its reputation downtrodden in the social, economic, political and jurisprudential platform of Nigeria? The likely answer to this question necessitated the writing of this article to unearth the facts that led to the somersaulting of the judiciary within the precipice of Nigeria's jurisprudential landscape.

## **Objectives**

This paper seeks to:

1. Trace how for two decades and half, the military corrupted the judiciary
2. Proffer tentative solutions to this hydra-headed problem.

## **Methodology**

This paper relied copiously on secondary data by voraciously perusing through newspaper articles and magazines of not less than twenty years from the archives. From what was found in these papers and magazines, tentative facts and reasons why the corruption conundrum entangled the judiciary were unearthed and solutions proffered for this hydra-headed problem that has levelled the judiciary in Nigeria to a disheartening and frightening comatose.

## **What is Corruption?**

The World Bank defines corruption as

*Behaviour on the part of officials in the public or private sectors, in which they improperly and unlawfully enrich themselves and/or those close to them or induce others to do so, by misusing the position in which they are placed (Olajide, 2009)*

Also, Akinola Aguda said “corruption is a simple case of doing wrong things because of expectations of a desired preferent (Ojudu & Madumere, 1990). On his part, Aina, T., a Professor of Sociology described corruption as “the use of the advantages of office to illegally enrich oneself either through plunder, fraud or receipts of gratification for the performance of what should have been one's normal duties” (Ojudu & Madumere, 1990).

Walter Carrington, a former American Ambassador to Nigeria, made a scathing report on corruption in Nigeria, when he described it “as the most terrible monster that confronts Nigeria”. Emphasizing that virtually all the problems associated with governance would be removed if we can all summon the courage to tackle corruption and banish it from our activities (Guardian, 2013). A former Malaysian Prime Minister Mahati Mohamad once remarked that “corruption is driven in Nigeria by the absence of a sense of shame” (Guardian, 2013).

From the afore-stated description of corruption and its shameless application of some Nigerians, corruption can be described as a perverse mind with the ultimate aim of acquiring excess wealth without having an iota of conscience on its adverse effects on the principles of sustainability.

### **Elements of Corruption**

The elements of corruption are fraud, extortion, gratification, inflation of contract for grovelling kickbacks, over-invoicing of goods, payment for work not done, or supplies not effected or satisfactorily done, widespread poverty, predatory kinship structure, weak legal systems, youth unemployment, etc. For example, the Global Financial Integrity Report (2012) stated that

*129 billion illicit money was exported from Nigeria between 2001 and 2010; 19.66 billion dollars alone in 2010 and an average of 12.9 billion dollar per year. These humongous amounts were moved by corrupt politicians, businessmen and barons and other assorted criminals (Adamolekun, 2013).*

On the excessive wealth of former military governors that were in power that probably served as loadsters for the civilian governors, Prof. Aina, a Sociology lecturer at the University of Lagos observed that

*In reality, state Governors has become too powerful... It is even more obvious under the Military. The amount of power they command has little or no relationship to their endowment in intellect, experience or cultural performance. The access they have to the trappings of power, completely lacks resonance with the way they have always lived in the barracks before they got public office and the way they would live after. They accumulate sufficient resources to be able to maintain their lordly life.*

This was what Karl Marx called primitive accumulation of wealth. On his own part, a highly respected retired jurist, Justice M. Akanbi (Rtd.), the pioneer Chairman of the Independent Corrupt Practices and Other Related Offences Commission (I.C.P.C.), while commenting on the dual roles of corruption as perpetrated by then military in government and civilians, opined that

*When the coup happened, the one that came to abolish corruption what was the effect? Every subsequent coup was hinged on corruption. And as the new one came in, corruption became the in-thing... So I will say the advent of the military also contributed to this issue. And since the military did not work alone, they worked with civilians, as they are doing their own thing, civilians among them are also doing their own. The end result was that we became terribly corrupt (Akanbi, 2005).*

### **A Trajectory View of Past Military Governments' Decimation of Judicial Powers**

As far back as 1966 when the military intervened in the political administration of Nigeria like a secretary bird that was determined to kill the corruption serpent, it exacerbated or compounded this problem by the introduction of ouster clauses and the outright refusal to obey court orders. It was pitiable. In actual fact, the then Head of State, General Aguiyi Ironsi issued a law in 1966 called the Public Officers (Investigation of Assets) Decree in order to investigate how political officers acquired their ill-gotten wealth. However, the Supreme Court in April 24, 1970 stated that “the military takeover of government on January 25 1966 was not a revolution and perhaps more seriously that the provision of Decree 45 of 1968 amounted to a usurpation of the judicial powers of the courts”. In fact, the Supreme Court declared that the then military decrees and edicts were ultra vires. This position annoyed the Federal Military Government to react by promulgating the Federal Military Government (Supremacy and Enforcement of

Powers) Decree of 1970 which came into force on May 9. The decree barred the courts from entertaining questions pertaining to the validity of decrees and edicts.

Also, the appointment of Chief Justices of Nigeria and Judges of the High Courts under the military era was an anti-climax. Due process was not followed, rather, appointments were made with military fiat. For instance, during the General Yakubu Gowon regime (July 1966 – 1975), he appointed Dr. Teslim Elias, the then Attorney General of the Federation to replace the Chief Justice of Nigeria, Justice Adetokumbo Ademola who had served the nation meritoriously. It is pertinent to state that Dr. Teslim Elias, though a well-read jurist, had never been a judge but was given such a sensitive position.

Few years after the appointment of Dr. Teslim Elias, he was removed unceremoniously and replaced with Justice Darnley Alexander. When Justice Darnley Alexander was appointed Chief Justice, there were other judges that were his senior in the Supreme Court. The much respected or hallowed tradition of seniority in the judiciary was thrown to the abyss. In fact, no explanation was offered by the then Supreme Military Council. Justice Darnley Alexander was also removed without any explanation and replaced with Justice Atanda Fatai Williams as the Chief Justice of Nigeria. Justice Fatai Williams was not the most senior judge in the then Supreme Court.

It is germane to state that the musical chairs replacement of the Chief Judges of the Federation under General Gowon as Head of State, was a way of cajoling and humiliating the judges to abide by the dictates, wishes, whims and caprices of the military goons in government. These negative actions over 3 decades ago, actually sowed the seed of the negative antecedents being experienced in the judiciary today.

The negative precedence of ousting the judicial decisions of judges and their arbitral appointments as afore stated was continued by succeeding military governments. For example, in the case of Saidu Garba vs. Attorney General of the Federation (1988) 1 NWLR 449, Garba had led a team of five officers to put out the fire that gutted NECOM house in January 1983. He was subsequently arrested and charged with the murder of two people that died in the fire. This ridiculous charge was quashed by the High Court a few days later. But the Permanent Secretary, Ministry of Internal Affairs (Mr. John Kenneth Oyegun) went ahead and suspended him. Garba challenged his suspension in the court. While the case was pending, Garba was dismissed from the service. He won the case at the High Court which ordered his reinstatement. The government ignored this order and appealed. The Court of Appeal held that the dismissal could not be challenged because it was made under the Anti-Human Rights Decree No. 17 of 1984. On further appeal the Supreme Court, the court did not only hold that Decree 17 did not apply but dwelt on the ominous implication of flagrant disregard of court orders by the Executive.

On the Garba's case, Justice Nnaemeka Agu observed inter alia

*for the Permanent Secretary to have proceeded to dismiss the appellant (Garba) while his case challenging his interdiction was pending in court was an act of lawlessness in the extreme and a calculated interference with the courts duty to perform its adjudicative function. This should not be.*

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<sup>1</sup>This case brought to the fore the question of whether it is really necessary to serve this nation with the whole of your mind. But for the courageous nature of the Supreme Court, a dedicated staff would have been humiliated.

Also it is very important to state that at the High Court level, where Garba's case was looked at, the Permanent Secretary was summoned five times and he ignored the summons five times which was contemptuous. Justice Yaya Jinadu, who presided over the case was helpless. Justice Jinadu retired from service saying: "I cannot be a party to this humiliation and disgrace to the Judiciary".

The Judge gave a notice of his resignation but the Supreme Military Council ordered the notice to be made effective immediately (emphasis mine). It shows commonsensically that the disrespectful attitude by the Permanent Secretary might probably have the backing of the then military government.

The autocratic penchant of the military in governance to cow the judiciary was also seen in the inauguration of special military tribunals during the regime of General Muhammadu Buhari. These tribunals tried former public officers accused of corruption. The composition of the tribunals was made up of High Court Judges and military personnel. The laughable and ridiculing aspect of the tribunals was that they were headed by military officers. What a way of compelling the judicial officers to playing second fiddle. That was a quintessential way of eroding the supposed powers of the judicial officers.

Another case that whittled down the powers of judicial officers and probably inundated the judicial officers with intimidating attitude was a case in Benue State in the mid-80s. Col. Bayo Lawal, the then Military Administrator of the State, set up a judicial tribunal to probe certain public officers where one of the officers (Baba Odangla) was found guilty. He contested the findings of the tribunal, arguing that he was not given a fair hearing. He appealed to the High Court presided over by Justice Idoko. Justice Idoko decided the case in favour of Odangla and quashed the findings and recommendations of the tribunal. The government replied with an edict ousting the jurisdiction of the court from entertaining cases arising from the recommendations of the tribunal. Justice Idoko nullified the edict. The government replied with an edict nullifying the judgement of the court. The case further showed how the military used all available means to crush the judiciary thereby making nonsensical, the much touted respect for human rights. It is my humble opinion that this intimidating stance by the military many years ago, might have paved the way for the monumental corruption in the judiciary that is being experienced.

It is interesting to note jurisprudentially that twenty-seven years ago, there was a clarion call by Prof. Itse Sagay, a legal luminary and an academic of international repute that "the military that enact the laws, disobey the same laws thereby making mockery of the judiciary". In fact he stated inter alia "our dismal experience in the country is that successive governments are the greatest violators of the rule of law".

Bashorun (1989) corroborated Sagay by stating that

*the rule of law is undergoing a crisis of worrisome dimension in the country due to government interference in the dispensation of justice...Regrettably, our Attorneys General see themselves as errand boys of the military and as such are prepared to offer legal opinions that make mockery of the rule of law... that is why edicts and decrees promulgated from time to time oust the jurisdiction of the courts to the detriment of the Nigerian citizens.*

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<sup>1</sup>Prof.ItseSagay is currently the Chairman, Presidential Advisory Commission on Corruption.

The above assertion is preposterous and that is probably why the judiciary is the apron string of the executive in government. It is very probable that they became very susceptible to corruption in order to live according to the desires of their employers. This is in tune with the age old aphorism that “he who pays the piper, dictates the tune”.

The roller coaster of the military in governance really threw the judiciary into the current quagmire or doldrums it has found itself. A British statesman, Stalin Baldwin (1870-1953) said “a platitude is simply a truth repeated until people get tired of hearing it”. This adage is in tandem with what Dr. Akinola Aguda, a legal luminary and former Chief Judge of Botswana, adumbrated that

*The intervention of the military in our political administration in 1966 was the beginning of our undoing... even till this day, military training is perhaps the worst type of training for the governance of an articulate politically conscious and loving people as Nigerians.*

His assertion was quite correct because since 1999 when civilian governance started, the Presidents are former military leaders short of President Goodluck Ebele Jonathan. The military regimentation culture is infused in former President Olusegun Obasanjo and President Muhammadu Buhari. They were the harbingers of corruption in the judiciary.

On corruption, Justice Akinola Aguda said

*There is no system which is fool-proof against the selection or appointment of corrupt men and women into the higher benches. The position (on selection of judges) until the military take over of Dec. 31, 1983 was capable of abuse. And it was abused in many of the States in the sense that some governors felt it was their prerogative to appoint judges. They were even referring to them as “my judges”. And corruption does not begin and end with just taking money. It deals with much other gratification. If I beg you before my appointment as a judge, you will come to my court once you have a case and expect me to side you. That is corruption (Aguda, 1986).*

### **The Way out of this Judicial Imbroglia**

- 1) In the Asian countries, especially in China and Japan, if a suspect is caught notwithstanding his high profile status, he is prosecuted. If found guilty, he/she is shot or executed. This punitive means of dealing with supposed criminals instill fear in the populace. This should be applicable to Nigeria. This can be done by passing laws that will summarily deal with corrupt individuals. This implies that the constitution should be amended to make room for this.
- 2) High profile appointments in the judiciary must not be politicized. The judiciary should be insulated from politicians and the executive arm of government.
- 3) The judiciary should be financially independent. The President and state Governors should apportion a befitting financial allocation from the budget to the judiciary. This should be left in the hands of appropriate officials in the judiciary i.e. from the Chief Judge and other accounting officers. But the executive should not pull the strings to indirectly control the affairs of the third arm of government.
- 4) The enactment of legislations with ouster clauses or laws that desecrate justice, equity and good conscience should be discouraged. Their ostracisation will give the judiciary a breathing space to act formidably taking into cognizance the essence of championing the tenets of the rule of law.

- 5) Politicians should ingrain the principle of accepting defeat when electoral results are announced. The winner takes all approach and not conceding defeat should be defaced in the minds of politicians. They should borrow a leaf from British and American politicians who accept defeat and congratulate the winners without qualms.
- 6) The Nigerian government should implement the provisions of the United Nations Convention Against Corruption (UNCAC) where they will partner with other signatories of the convention to check corruption in the country. This Convention was signed on December 9, 2003.
- 7) Public officers must be guaranteed handsome retirement benefits. This will discourage them from stealing public money.
- 8) Corrupt public officials must be identified, put on trial and if found guilty, stigmatized and placed on the roll of dishonor in the country in addition to meeting appropriate punishment as stipulated by the law.

### **Conclusion**

Military governance is an aberration hence they are very fast in suspending the Constitution because their actions are illegal. This illegality is reflected in most of their societal actions because they rule via the nozzle of ammunitions. Hence they enthrone corruption, disrespect human rights, encourage groveling sycophancy and of course self-aggrandizement. In order to achieve these unmerited booties of power, the courts cum the judiciary become pawns in their invidious hands to achieve their gluttonous objectives. Hence the widely observed corruption in the judiciary today had already been laid by the military not less than thirty years ago. It is very apt to conclude with these words of wisdom of Aldow (Leonard) Huxley (1894-1963) that “good is that which makes for unity; evil is that which makes for separateness!”

## References

- Adamolekun, L. (2013). Integrity in the problem of corruption. *The Guardian*, p.67.
- Agbese, D. (1986). Judiciary on trial. *Newswatch*, pp. 15-20.
- Akanbi, M. (2005). Our judges are corrupt. In Osagie, E. (2005, Oct. 15). *Saturday Sun*, p.5.
- Anonymous, S. (2010). *Pearly Wisdom. Collected Wit and Wisdom*. Educational Printing and Publishing Books Services Nig. Ltd.
- Bashorun, A. A. (1989). *Newbreed Magazine*, p.12.
- Carrington on Corruption. (2013). *The Guardian*, p.14.
- Governor of Lagos State vs. Chief Odumegwu Ojukwu (1986), 1 NWLR 621
- Igbeare, F. (1989). When law makers break laws. *African Concord*, pp. 26-27.
- Iloegbunam, C., Edokpayi, B. & Oghuma, A. (1986). Aguda: The versatile jurist. *Newswatch*, pp. 11-17.
- Obeya Memorial Specialist Hospital vs Attorney General of Benue State (1981), 3 NWLR 325
- Ohakwe, S. (1989). Justice on her knees. *Newbreed Magazine*, pp. 7-13.
- Ojudu, B. (1989). Of judges without justice. *African Concord*, pp.29-32.
- Ojudu, B. & Madumere, E. (1990). Corruption a Nigeria. *African Concord*, p.32.
- Okeke, C. (2016). Is disciplining of judicial officers, exigency or certainty of law? *The Guardian*, p.46.
- Olajide, B. (2009). Corruption: and eternal bogey in Nigeria? *The Guardian*, p.23.
- Saidu Garba vs. Attorney General of the Federation (1988). 1 NWLR 449
- Terrence, M. (2012). Partnership to combat corruption. *The Guardian*, p.68.
- The United States of America report on corruption in Nigeria. (2013). *The Guardian*, p.26. Case Law