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A Critique of the Unanticipated Powers Of The State Security Service In Nigeria and the Validity of their Source

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Abstract. Recently, one of Nigeria's intelligence and security agencies, the State Security Service (SSS) embarked on the search of the residences of and arrest of politicians and judges on allegations of official corruption. This move was met with both public approval and outcry. The focal point of the diverse contentions became whether the SSS possessed such powers and by what authority. This was a healthy culmination in the sense that it kick-started a debate that has, however, glossed over critical but unforeseen authorities. This article examines and ascertains the "shadowy" authorities on the true scope of the powers of the SSS.

Keywords: Critique, Powers, State, Security, Nigeria, Validity, Source

1. Introduction

Lately, the State Security Service (hereinafter referred to as "the SSS") in Nigeria executed search warrants at the residences of many senior judges and arrested them. Two of the judges arrested were justices of Nigeria's apex court, the Supreme Court. It was the culmination of the increasing activism of the SSS following searches also conducted at a government lodge owned by the Akwa Ibom State Government and a trenching into the goings on at the State House of Assembly. In many of these cases, the SSS has explained that the actions were undertaken in furtherance of anti-corruption investigations. Many questions have arisen on account of its claims with many wondering from where the SSS, which also addresses itself as, and has taken most of its actions in the alias of "Department of State Security (DSS)" derived its powers to investigate corruption crimes. An issue distilled by many from the foregoing is whether the DSS can exercise powers that are popularly known to have been statutorily vested in the SSS and, if not, whether the powers so exercised have been exercised by the appropriate authority. It turns out that there was an, until recently, rather anonymous Instrument (Instrument No. SSS1, 1999) issued sometime in 1999 by the then military Head of State, General Abdulsalami Abubakar, which purported to expand the investigative powers of the SSS to issues relating to economic crimes with the qualification that the powers exercisable had to be over economic crimes of a national security dimension. But the Instrument is not the only element in this discussion that is as shadowy as the security outfit whose powers it expands. It also turns out that a rather innocuous Supreme Court decision, in the context of the scope of the phrase "economic powers of a national security dimension", has also had a critical unanticipated influence in the discourse. This paper discusses

these current issues by addressing the validity of the aforesaid instrument in Section II, DSS; the legality of the supposed pseudonym in Section III; and, in section IV, whether crimes of corruption amount to "economic crimes of a national security dimension" against the background of the for now subsisting attitude of the Supreme Court. The article concludes with a brief summation of its findings and recommendations, going forward, regarding how the impasse may be avoided in future.

2. Is Instrument No. SSS I Valid?

Instrument No. SSS I recites that it is made pursuant to section 6 of the National Security Agencies Decree 1986 (hereinafter called "the NSA Decree"). It is important to note that it is not made pursuant to the National Security Organisation Decree or Act (the NSO Decree). If it was, it *might* (this is conditional) have sounded the death knell for the Instrument because:

- The NSO Decree has been repealed by the NSA Act;
- As such, it would not be a subsisting instrument.

On the other hand, the NSA Decree 1986 remained law in Nigeria until May 29, 1999 when the Constitution (Constitution of the Federal Republic, 1999 (as amended)) became operative. By virtue of section 315(1) (Constitution of the Federal Republic, 1999 (as amended)) it was "existing law" as of that date. Regarding what "existing law" is, section 315(4)(b) provides:

"existing law" means any law and includes any rule of law or any enactment or instrument whatsoever which is in force immediately before the date when this section comes into force or which having been passed or made before that date comes into force after that date.

Before the Constitution came into operation, it was quite recognised in Nigeria that decrees were not only laws but were transcendent laws. An authority for this proposition of law is evident (*Labiyi & Ors. v. Anretiola*, 1992) where it was held that decrees of the Federal Military Government were superior to the unsuspended parts of the 1979 Constitution and that the courts cannot pronounce on the validity of making a decree or edict although it can declare an edict inconsistent with the unsuspended parts of the Constitution. Karibi-Whyte, JSC rather surgically articulated the hierarchy of legislation under the new legal order as follows:

(a) Constitution (Suspension and Modification) Decree 1984;
(b) Decrees of the Federal Military Government;
(c) Unsuspended parts of the 1979 Constitution;
(d) Laws made by the National Assembly before 31 December 1983 or having effect as if so made;
(e) Edicts of the Governor of a State; and
(f) Laws made by the House of Assembly of a State before 31 December 1983 or having effect as if so made (emphasis added).

This decision is corroborated by other Supreme Court decisions (see *Attorney General, Anambra State v. Attorney General of the Federation & Ors*., 1993). With respect, this is the law in Nigeria *as it is* not *as it ought to be* as many activism inclined lawyers would prefer. Thus, to make the decrees more amenable to the new democratic dispensation, two (2) further provisions were made:

(a) That the appropriate authority may at any time by order make such modifications in the text of any existing law as the appropriate authority considers necessary or expedient to bring that law into conformity with the provisions of the Constitution (see section 315(2));
(b) An existing law shall be deemed to be -
(i) an Act of the National Assembly to the extent that it is a law with respect to any matter on which the National Assembly is empowered by this Constitution to make laws; and
(ii) a Law made by a House of Assembly to the extent that it is a law with respect to any matter on which a House of Assembly is

> empowered by this Constitution to make laws (see section 315(1)).

It is further necessary to emphasise that the compendium called "Laws of the Federation of Nigeria 2004" is exactly what it is – a compendium i.e. a collection of valid Nigerian laws as of 2004. It does not mean that those laws were enacted in 2004 or that the commencement dates of each legislation that appears in the collection is 2004. This is why each statute in the collection not only indicates its origin but also its commencement date. In the case of the NSA Act, the Act indicates after the long title "No. 19 of 1986" i.e. Decree No. 19 of 1986 and directly under that "Date of Commencement: 5th June 1986".

The next question is - where does Instrument No. SSS I figure in this arrangement? This is the instrument that expands the powers of the SSS to include, amongst others, "prevention, detection and investigation of economic crimes of national security dimension" (see section 2(1)(c) thereof). The instrument was made in 1999 pursuant to section 6 of the NSA Decree and it is clear, adopting a community reading of sections 2(3)(c) and 6(d) that the latter authorises the President to make the instrument with respect to the matter contained in the former. It is clear that since the NSA Decree was valid law until May 29, 2009 and was never repealed unlike the NSO Act which was, the instrument itself retained its validity up to that point. It should be added in passing that even if the NSA Decree or Act had been repealed and another Decree or Act enacted in its place, the instrument would still be valid law provided it "is not inconsistent with the substituted enactment" (Section 4(2), Interpretation Act). In this case, it would not have been inconsistent with the replacement statute (NSA Act) either in terms of purpose or, given its modifications made to the NSA Act pursuant to section 315(1) and (2) and (4)(a) of the Constitution, in terms of functionaries. Thus, even where there has been repeal, invalidity is not necessarily an issue. The conclusion is that Instrument No. SSS I, never having been made pursuant to a repealed enactment, subsists.

This arrangement or structure makes the year 2004 entirely irrelevant in a discussion on the history and validity of the Act. Following this exposition, the following chain of validity can be established:

(a) There was a decree (the NSO Decree which was repealed by section 7(1) of the NSA Decree;
(b) The NSA Decree remained a subsisting law until May 29, 1999 when the Constitution came into being;
(c) By section 315(1)(a), the NSA Decree became an Act of the National Assembly given the power given to the National Assembly to make laws over the "Police and *other government security services established by law*" (emphasis added) (see Item 45 of the Exclusive Legislative List (Constitution of the Federal Republic, 1999 (as amended));
(d) Instrument No. SSS I was made pursuant to the NSA Decree, which itself was law "in force" as of May 29, 2015 and which became an "existing law" by virtue of section 315(1) and (4)(b) and consequently an Act of the National Assembly by the joint provisions of section 315(1)(a) and Item 45 of the Exclusive Legislative List;
(e) Going by the definition of "existing law" under section 315(4)(b) of the Constitution, Instrument No. SSS I is not only "existing law" but also law. This can be the only conclusion the subsection is clear when it say an existing law is "any law and includes … any enactment or *instrument*". Indeed, regarding its law status the courts have ruled that an instrument made pursuant to the Electoral Act has by operative rules of practice "become part and parcel of the Electoral Act" (Ihuoma v. Azubike & Ors., 2015); Ajadi v. Ajibola, 2004)).

It is at this juncture that section 315(4)(b) of the Constitution, which defines "existing law" assumes fundamental importance. It defines "existing law" as "any law and includes any rule of law or any enactment or *instrument whatsoever which is in force immediately before*

the date when this section comes into force or which having been passed or made before that date comes into force after that date" (emphasis added). Two (2) things are worth noting:

(a) Any "instrument whatsoever" (this would include Instrument No. SSS I) which was validly made is an existing law; and
(b) The instrument in question was in force immediately before May 29, 2015. Given the unbroken chain of historical validity of the Instrument outlined above, it is clear that the instrument was indeed in force immediately before May 29, 2015 which qualifies it for validity as an "existing law".

3. On the "Dual" Identity of the State Security Service

Having recommended the validity of the Instrument, the issue of the legitimacy of the DSS may now be resolved by reference to it. It is clear from the instrument that the Department of State Security and the State Security Service are one and the same entity although the one created by the enabling statute i.e. the NSA Act is the State Security Service. The use of the name "Department of State Security" by the SSS is, however, permitted by Instrument No. SSS I (Instrument No. SSS 1, 2009). See section 13(2) thereof. The use of the name Department of State Security (DSS) is consequently backed by law.

4. Is an Offence of Official Corruption "An Economic Crime of National Security Dimension"?

The Supreme Court decision (*AG, Ondo State v. AG, Federation & 36 Ors., 2002)* in which Nigeria's apex court, the Supreme Court endorsed the link between corruption and internal security although in slightly difference circumstances. What is key, however, is the principle derivable from the decision. In that case, the National Assembly had enacted the Corrupt Practices and Other Related Offences Act 2000 but the Ondo State government had challenged the constitutionality of the Act on the ground that the National Assembly had no constitutional authority to enact it.

The Supreme Court is the apex judicial body in Nigeria with final and ultimate power to interpret our laws and resolve disputes. In this regard, Oputa, JSC has said of the Supreme Court and its powers, "We are final not because we are infallible, rather we are infallible because we are final" *(Adegoke Motors v. Adesanya, 1989, 80, 92).*

The following paragraphs set out and illustrate how the Supreme Court in the above decision endorsed the link between corruption offences and national/internal security:

1. Katsina-Alu, JSC called it a "cankerworm". In his words:

These submissions, in my view, overlook the reality of the situation. *Corrupt practices and abuse of power spread across and eat into every segment of the society*. These vices are not limited only to certain sections of the society. It is lame argument to say that private individuals or persons do not corrupt officials or get them to abuse their power. *It is good sense that everyone involved in corrupt practices and abuse of power should be made to face the law in our effort to eradicate this cankerworm.* This I believe is the intention of the framers of our Constitution (emphasis added) *(AG, Ondo State v. AG, Federation & 36 Ors., 364).*

First, what is a "cankerworm"? A reputable English language dictionary (Hornby, 207) defines "canker" in the sense in which the Supreme Court has used it in its judgment as "an evil and dangerous influence that spreads and affects people's behaviour".

Secondly, His Lordship says "everyone involved in corrupt practices should be made to face the law". Everyone without exception whether they are politicians, judges or lepers.

2. Chief Afe Babalola, in his amicus brief referred to corruption as being of "cancerous proportions". Most of the justices agreed with him. What is a "cancer"? The dictionary (Hornby, 205)

> defines "cancer" in the sense in which it is used by the their Lordships as "an evil or dangerous thing that spreads quickly".

Justice Uwaifo quoted copiously from the *amicus curiae* brief of Chief Afe Babalola SAN as follows *(AG, Ondo State v. AG, Federation & 36 Ors.*, 385-389) and I have italicised statements that are fundamental to this issue and underlined the ones that are critical. First, he said in the preamble to the brief:

In the last 20 years, the pervasiveness of corruption in all its ramifications has assumed renewed dimensions of cancerous proportions in Nigeria, to the extent that the Germany-based Transparency International, a respected independent, universal, non-governmental organisation, ranked Nigeria in the unenviable position of being the most corrupt nation in the world for a consecutive period of more than 7 years. The unpleasant news was published in all national newspapers in Nigeria.

In foreign countries, Nigerians are regarded and treated as corrupt people. Unlike other nationals, no bank would allow Nigerians to open a bank account as of right. *The Nigerian Green Passport is synonymous with corruption. Consequently, at foreign airports, Nigerians with green passports are separated from other nationals. While others are allowed to go freely, Nigerians are subjected to degrading and inhuman treatments and treated as pariahs on the ground that they are Nigerians who hail from the most corrupt country in the world.*

National newspapers are filled with stories of looted money stashed in foreign banks. *The stolen resources, lost by Nigeria through endemic corruption and abuse of office have had inimical effect on the economy of the country.* First, is the issue of inflation and its pressuring effect on the economy as a result of irregular distortions in economic indices and lack of control on monetary and fiscal policy engendered by the availability of slush funds of massive proportions outside normal economic activity. Secondly the inflationary trends had effect of lowering living standards to stupendous proportions such that what is known as the 'Middle Class' was virtually wiped out, so that what hitherto were basic necessities of life became luxuries.

It is a notorious fact whilst in 1979 the US Dollar exchanged with the Nigerian Naira at the rate of US$1 to N0.85k, it has plummeted to the commercial rate of US$1 to N142 in 2002. In the corresponding period, whilst inflation rate in the United States rose by about 15% in real terms in 23 years, it has risen by about 2000% in Nigeria.

All these stark statistics are induced by all means in no small measure, by illicit capital flight engendered by corruption.

*The crisis which endemic corruption has triggered off in Nigeria, certainly poses exceptional peril to the economic, social and political stability, the National interest and integrity of the Nigerian Nation. This, no doubt, goes beyond local and state concern (*Note that Uwaifo, JSC also italicised this portion of Chief Afe Babalola's brief).

The eradication of corruption is therefore a National one, as the perilous effect touches and affects every Nigerian regardless of tribe, religion and state of origin. Indeed, a Nigerian is not known or linked to a state of origin outside Nigeria.

The learned Senior Advocate later drew attention to the March 1997 Edition of Transparency International Newsletter where it was recorded that the United Nations Economic and Social Council adopted a resolution in which it called on "all governments to fight corruption more decidedly." He then stressed that there was a global concerted effort to ensure that the issue of corruption was addressed and tackled universally. There is an international body based in Berlin, Germany, hosting several member countries poised to combat bribery, which is known as the Organisation for Economic Co-operation and Development (OECD). Chief Babalola quoted from the Supplement to Transparency International Newsletter of September, 1994 as follows:

OECD governments today (Paris, 27th May 1994) agreed to take collective action to tackle the problem of bribery in international business transactions. The OECD recommendation on Bribery in International Business Transactions is the first multilateral agreement among governments to combat the bribery of foreign officials and represents a breakthrough in a difficult area. While nearly all countries have laws against the bribery of their own officials, most do not provide legal sanctions for the bribery of foreign officials by their nationals or their domestic enterprises.

Bribery presents moral and political challenges and, in addition, exacts a heavy economic cost, hindering the development of international trade and investment by raising transaction costs and distorting the operation of free markets. It is especially damaging to developing countries since it diverts needed assistance and increases the cost of that assistance.

The recommendation calls on Member countries to take effective measures to deter, prevent and combat bribery of foreign public officials. Such measures include reviewing their criminal, civil and administrative laws and regulations and taking 'concrete and meaningful steps' to meet this goal, as well as strengthening international co-operation. The recommendation appeals to non-Member countries to join with OECD Members in their efforts to eliminate bribery in international business transactions. It also provides for a follow-up mechanism to monitor implementation.

The OECD believes that this initiative could act as a catalyst for global action and could help companies refuse to engage in such practices in host countries by setting standards of behaviour to which they could refer. Combating bribery through firm and joint actions by Member countries can also strengthen the multilateral system for trade and investment by ensuring equitable competitive conditions. The recommendation will also help to promote good governance.
The angst about corruption has shown even in the United Nations (UN) where it is said that that body has signalled its intention to take on the battle against corruption in international business transactions. The UN Secretary-General Mr. Kofi Annan was reported to have declared: I encourage the governments of Africa to undertake the necessary changes in economic development. This implies good governance, competent elites and, above all, the disappearance of corruption." The UN Economic and Social Council has by consensus adopted a resolution in which it calls on all governments to fight corruption more decidedly and that the UN Secretary -General should report on actions pursued within the UN and by member states to curb corruption: see Transparency International Newsletter, March 1977, page 7. Chief Babalola argues that only a centrally co-ordinated approach to the fight against Corruption in view of the shape it has taken and the international pressure for meaningful action can have the desired result.

3. Uwaifo, JSC with reference to Chief Afe Babalola's brief states, "I am in *total* agreement with him" and that includes the part that talks about corruption *certainly posing "exceptional peril to the economic, social and political stability".*

Ogwuegbu, JSC also said the following:

4. "The first defendant in its brief of argument predicated his defence of the Act on what is generally the perception about the way corruption has adversely affected this country. Reference was made to a paper titled: Legal and Institutional Frame work for Combating Corruption in Nigeria, presented by Taiwo Osipitan and Oyewo, published in a document called UNILAG READINGS LAW, where the following was expressed:

   "Corruption is evidently Nigeria's greatest problem. Since the attainment of independence, corruption and abuse of office have enjoyed steady growth. They have consequently become cankerworms reaching the dimension of epidemic in our body politic. While

> admission and examination scandals are examples of corruption in our educational institutions, payment of salaries to ghost workers, over invoicing of goods and services, and the raising of fictitious local purchase orders, are examples of corruption in our private and public sections. *It suffices to state that a nation where corruption is an accepted norm is bound to suffer economic backwardness and isolation. We therefore support the view that lawless and unaccountable government not only guarantees economic backwardness, it insures societal breakdown"'* (emphasis added).

"Section 4 (2) of the constitution conferred on the National Assembly power to make laws for the peace, order and good government of the federation or any part thereof with respect to any matter included in the exclusive legislative list set out in part 1 of the second schedule of the constitution. Section 4 of the constitution recognises the need for peace, order and good government in relation to Nigeria as a nation just as it recognises the need for peace, order and good government in relation to each separate state of the federation hence it conferred power on the National Assembly to enact laws to achieve that objective. *Corrupt practices and abuse of power can, if not checked threaten the peace, order and good government of the Federation or any part thereof" (AG, Ondo State v. AG, Federation & 36 Ors.,* 337-338).

It appears to me that if something threatens *the peace and order* of Nigeria, it could be said that such a thing threatens the internal/national security of Nigeria.

5. With respect to Nigeria being treated as a pariah state on account of corruption, Ogwuegbu, JSC, after quoting the aforesaid submission of Chief Afe Babalola SAN, said:

"If these were the only consequences of corruption, it would not have been so threatening. The deadly threat is the effect on the economy of the country with the attendant inflation and lack of control on the monetary and fiscal policies of the government" (emphasis added) *(AG, Ondo State v. AG, Federation & 36 Ors.,* 338).

The President of the Federal Republic of Nigeria during his inaugural speech on 29th May, 1999, resolved that his government will tackle the menace of corruption and abuse of power and that resolution gave birth to the ICPC Act. On the 13th June, 2000 when he signed the ICPC bill into law, he also stated thus:

With corruption, there can be no sustainable development, no political stability. By breeding and feeding on inefficiency, corruption invariably strangles the system of social organisation. In fact, corruption is literally the antithesis of development and progress (AG, Ondo State v. AG, Federation & 36 Ors., 385-389).

According to His Lordship, the Court is conscious of the history of corruption in Nigeria *(AG, Ondo State v. AG, Federation & 36 Ors.,* 385-389). The imperative question, if the consequence of corruption is that it constitutes a "deadly threat" to the economy; if corruption ensures that "there is no political stability as well it strangles the system of social organisation", does this not raise internal security issues?

6. Apart from calling corruption "an evil practice", Mohammed JSC said:

It is quite plain that the issue of corruption in Nigerian society has gone beyond our borders. It is no more a local affair. It is a national malaise, which must be tackled by the Government of the Federal Republic. The disastrous consequences of the evil practice of corruption has taken this nation into the list of the most corrupt nations on earth (AG, Ondo State v. AG, Federation & 36 Ors., 347).

Citing the Canadian decision, His Lordship equated the issue of corruption with an emergency. In his words:

In *Re-anti-Inflation Act (1976) 9 NR 541; 68 DLR G (3d) 452 the Supreme court of Canada saw no reason why the "emergency" principle*

enunciated in Japanese-Canadian's case could not apply to a situation created by highly exceptional economic conditions prevailing in times of peace. In the opinion of the Supreme Court of Canada it was observed that an urgent and critical situation adversely affecting all Canadians and being of such proportions as to transcend the authority vested in the Legislatures of the Provinces and thus presenting an emergency which can only be effectively dealt with by parliament in the exercise of the powers conferred upon it by section 91 of the *British North American Act (1867)* "to make laws for *the peace, order*, and good government of Canada.

The imperative question - is an emergency not a question of internal security?

7. With respect to Nigeria, His Lordship then added:

Coming back home it is abundantly clear that the intendment of the framers of the Constitution on in providing that the State shall abolish all corrupt practices and abuse of power is not to use the information media only to discourage corrupt practices. It also cannot be said that only State governments and Local government are to enforce this Fundamental Objectives. How then can the Nation *tackle this evil practice*? The answer is clear; a criminal law has to be promulgated providing that every person shall be liable to punishment for every act or omission contrary to the Corrupt Practices etc. Act (2000), which he shall be found guilty of committing. *This is the only way the evil of corruption can be tackled nationally* (emphasis added) *(AG, Ondo State v. AG, Federation & 36 Ors.,* 348).

8. His Lordship further added:

The State has been directed in Chapter II of the Constitution to abolish all corrupt practices and abuse of power. (Section 15(5)). *A legislation enforcing such Fundamental Objectives and Directive Principles* (in this case, the provision directing the State to abolish all corrupt practices and abuse of power) *will be for the peace, order and good government of this nation"* (emphasis added) *(AG, Ondo State v. AG, Federation & 36 Ors.,* 349-350).

Again the imperative question – if there is no peace and order on account of corruption, is that not an insecurity problem?

9. According to Uwaifo, JSC, the ICPC was formally inaugurated on 29 September, 2000, by Mr. President, Chief Olusegun Obasanjo, GCFR. On the day of signing the Bill into Law, the President said:

"With corruption, there can be no sustainable development, nor political stability. By breeding and feeding on inefficiency, corruption invariably strangles the system of social organization. In fact, corruption is literally the antithesis of development and progress" *(AG, Ondo State v. AG, Federation & 36 Ors.,* 366).

10. His Lordship also equated corruption in Nigeria with an emergency at the level of a state of emergency of national importance, of real necessity, of natural disaster or of war while citing the cases of *Attorney General for Ontario v. Canada Temperance Federation* (1946) and *Cooperative Committee on Japanese Canadians v. Attorney General for Canada* (1947) and added:

My respectful view is that even without the above provisions, the National Assembly would have been able to make laws for national emergency, disaster or a state of war by virtue of section 14(2)(b) which is brought under the Exclusive Legislative List by item 60(a). But there are other provisions of Chapter II, apart from section 15(5) such as section 15(2) and section 16(2)(d), among others, to which I shall return later, which can be made, enforceable by legislation. It all depends whether any or which of the provisions of Chapter II demands urgent and pressing national attention, and can be practicalised by legislation. The National Assembly can be trusted in their collective wisdom to recognise what is in the best interest of the polity" *(AG, Ondo State v. AG, Federation & 36 Ors.,* 384-385) adding, "*There is also to be taken into consideration, the*

serious and embarrassing menace of corrupt practices which ought to be confronted through national effort. I have already made reference to section 11 (1) and (3) of the Constitution which concerns disaster and war" (emphasis added) *(AG, Ondo State v. AG, Federation & 36 Ors.,* 366).

At p. 411 of the judgment, His Lordship Uwaifo, JSC adds:

Notice ought to be taken of propositions (2) and (3) particularly as they reflect on matters for legislation which have attained such dimensions as to affect the body politic of the nation, and also matters which are necessarily incidental to effective legislation by the nation's Parliament. Obviously, there are certain matters which are of such utmost national concerns as they affect the polity that legislation intended to meet the challenges is ensured to coast through passage in the legislature, and is implemented even if it trenches on some subjects or powers allocated to other authorities. The issue of corrupt practices and abuse of power in Nigeria is of such dimension.

The question must be asked – is it possible that something like corruption, which has been equated with and has "attained the dimension of" a state of emergency, natural disaster and war can be divorced from the internal/national security of the Nigerian state?

From the foregoing, it is clear that even in the view of the Supreme Court of Nigeria, Nigeria's supreme judicial body, that a corruption offence is an internal/national security problem.

Indeed, it only remains to add that Instrument No. SSS I, which is the instrument that has expanded the powers of the SSS, must be given a community reading instead of the isolated reading that has been given section 2(1)(d) of the instrument. This is a measure, it appears, no one has paid any attention to otherwise more prominent reference would be made to section 1 thereof, which provides:

Without prejudice to the generality of the provisions relating to the general duties of the State Security Service set out in section 2 – (3) of the decree, the objective of the State Security Service shall be the protection and preservation of Nigeria's internal security and *economy against acts of subversion, sabotage and other threats to the stability of Nigeria.*

It is necessary to emphasise the point that in the above judgment of the Supreme Court, the apex court consistently talks about corruption being inimical to the political stability of Nigeria. This brings corruption within the phrase "other threats to the stability of Nigeria" as provided for by the aforesaid section 1.

One may surmise that the concept of "official corruption" is narrower in scope than the concept of "economic crimes" i.e. that "economic crimes" encompasses official corruption as well as other economic crimes. The inevitable way to read the Supreme Court decision, therefore, appears to be that all public corruption is a threat to internal or national security although it is possible that there are other forms of economic crimes that are not of a national security dimension. The Supreme Court did not make a distinction between classes of corruption or between "ordinary" corruption cases and corruption cases which threatened internal security. All types of official corruption were considered by the Supreme Court to be capable of jeopardising Nigeria's political stability and internal security.

It is possible for the Supreme Court to reverse its view now or for the lower courts to distinguish this decision and this would be a legal, if not legitimate, measure as many would argue that it would amount to approbation and reprobation given the proximity and involvement of judicial personnel.

It would appear that in virtually every democracy, corruption is clearly linked to national security. If one uses a search engine like Google and searches for "corruption and national security", the predominant response one gets clearly establishes a connection between corruption and national security. This is the case in many countries including India and the U.S. In the case of the latter, a model of advanced democratic practices, the concept that offences of corruption are national security issues is also obtainable. For instance, the Federal Bureau of Investigation (FBI)'s "top criminal investigative priority" is public corruption, which "*poses a*

fundamental threat to our national security and way of life" (emphasis added) ("Public Corruption", 2016) As such, the Bureau's public corruption programme focuses, amongst others, on investigating violations of federal law by public officials at the federal, state and local levels of government. In the US, the FBI website confirms this connection.

5. Concluding Remarks

There is a multi-agency legal framework for investigating economic crimes in Nigeria and these agencies include the Economic and Financial Crimes Commission (EFCC), the Independent Corrupt Practices Commission (ICPC), the SSS, the Nigeria Police Force (NPF) and the Code of Conduct Bureau (CCB). This is also the case in the United States, for instance, where a number of authorities – the Department of Justice, Agency offices of Inspector General, law enforcement agencies' internal affairs divisions, federal, state, local law enforcement and regulatory investigative agencies, state and county prosecutor's offices - have power to investigate public corruption ("Public Corruption", 2016) although the FBI investigation and investigators take precedence. Although the EFCC is the body charged with the responsibility of coordinating the various agencies and institutions with statutory power to combat economic crimes in Nigeria, (EFCC Act, 2004, section 1(2)(c) and 6(c)) the EFCC was neither involved in nor aware of the operations culminating in the arrest of the judges in issue giving the impression that the SSS has the power to act independently. This is a far cry from the apparent intent of section 1(2)(c) of the EFCC Act, which is a later statute than the NSA Act. On the other hand, section 7(2) of the NSA Act, which makes the NSA Act supersede any other law with inconsistent provisions to the extent of its inconsistency appears to have pre-empted sections 1(2)(c) and 6(c) of the EFCC Act in that future provisions to the contrary in any law were rendered a nullity. This appears to give impression that where economic crimes of a national security dimension are involved, the SSS is in a position to act independently. This is the rather convoluted state of law with respect to collaboration amongst agencies in the area of economic crimes. Given the statutory power of the EFCC under sections 1(2)(c) and 6(c) of the EFCC Act (2004) to coordinate the various institutions in the fight against corruption on the one hand, and section 7(b) of the NSA Act, which makes any law inconsistent with the NSA Act a nullity to the extent of the inconsistency on the other hand, there is a need to amend the NSA Act to expressly state that the powers of the SSS are outside the supervision of the EFCC. This is on account of the Supreme Court judgment in *AG, Ondo State v. AG, Federation & Ors. (2002)*, which has clearly held that corruption cases affect the political stability of Nigeria and consequently her internal security.

It appears that the outcry over the source and exercise of the powers of the SSS, given the state of the law, is pretty much much-ado-about-nothing. What can be done now is to make the enabling statute of the SSS clearer and not left to the fickle designs of conjecture.

References

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