

**CONVICTS OF BREACH OF CODE OF CONDUCT FOR PUBLIC OFFICERS IN NIGERIA
DESERVE EQUAL PROTECTION UNDER THE LAW***

Abstract

The Code of Conduct for Public Officers, Paragraph 18(7) contained in Part I Fifth Schedule of the 1999 Constitution of the Federal Republic of Nigeria as amended and the Code of Conduct Bureau and Tribunal Act, section 23 (7) Laws of the Federation of Nigeria (LFN) 2004 provide that a public officer who is punished for breach of these laws cannot be granted pardon under prerogative of mercy. Most of these prohibited acts under the two laws appear civil in nature or at most quasi-criminal such as failure to declare assets or doing so late, combining public service job with another job save farming, accepting gratification while in office, maintenance of foreign accounts etc. Curiously, under the same constitution, people who are convicted of heinous crimes such as murder, armed robbery, kidnapping, even coup plotting etc. enjoy state pardons on regular basis during national festivities. The same constitution provides against discrimination of any kind in section 42. The author used the doctrinal and analytical methods to gather data and of course NALT guidelines. This paper argues that though this provision of the constitution on pardon is aimed at stopping corruption in the country that time has come for the removal of this discriminatory provision so that all convicts in Nigeria like in most jurisdictions in the world can enjoy presidential or gubernatorial amnesty as the case may be.

Keywords: constitution, convicts, prerogative of mercy, code of conduct, law.

1. Introduction

The Code of Conduct for Public Officers,¹ Paragraph 18 (7) provides as follows: ‘the provision of this constitution relating to prerogative of mercy shall not apply to any punishment imposed in accordance with the provisions of this paragraph’. The same provision is contained in *the* Code of Conduct Bureau and Tribunal Act,² section 23 (7). The prohibited acts under the said Code includes: avoiding conflict of interest with duty; avoidance of combining civil service job with other professions except farming; prohibition of foreign account by a public officer, prevention of retired public officer from taking jobs as chairman or member of a board of a government company in more than one position; prohibition of receiving of gratifications from government contractors, failure to declare assets or declaring assets late, abuse of powers etc. Curiously, the 1999 Constitution, ss. 175 and 212 empower the president of the country and governor of states to grant amnesty to persons convicted of various offences under various federal and state laws. We note that this draconian legislation against convicts of breach of *Code of Conduct* is aimed at fighting corruption but we note too that in a democracy and a state operating under the rule of law, that law should have uniform application without discrimination. In the light of the foregoing, we shall look at who is a public officer in Nigeria, those acts forbidden by the two legislations, the rationale, perspectives on corruption and some comparative reference to other countries and we shall conclude by making case why we feel that this draconian legislation against public officers convicted for breach of code of conduct should be abolished from the country’s Constitution and other laws.

2. Who is a Public Officer and what are the Prohibited Acts?

A public officer has been defined as a person holding any of the offices specified in Part II of the Fifth Schedule of the Constitution of the Federal Republic of Nigeria 1999 as amended.³The Code of Conduct for Public Officers is a set of dos and don’ts contained in the 1999 constitution. The genesis of the Code can be traced to the results of the Panel of Inquiries set up by the Military after its overthrow of the civilian government in 1966. The panel centered on public officers and their activities in government⁴ and after all these, the departing government of General Obasanjo saw its inclusion into the 1979 constitution as means of making the public officer accountable and corruption free. In 1979, the Code was enshrined in the 5thSchedule Part I⁵ and ever since, it has become part of our law. For purpose of emphasis, we shall pick the code one after the other and make comments as we go along.

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¹Part I Fifth schedule, 1999 Constitution as Amended.

²Cap C. 15, LFN, 2010.

³Which is in parimaterial with The Code of Conduct Bureau and Tribunal Act, Section 26, Cap C15, LFN, 2010.

⁴For example such law as Public Officers (Investigation of Assets) Decree No. 5 of 1966; Corrupt Practices Decree, 1975 and etc were all directed at the public officer and his collaborators.

⁵Constitution of the Federal Republic of Nigeria, 1979 reproduced in the 5th Schedule, Part I of the 1999 Constitution as Amended and Code of Conduct Bureau and Tribunal Act.

3. Conflict of Interest with Duty

‘A public officer shall not put himself in a position where his personal interest conflicts with his duties and responsibilities’.⁶ Implicit in the provision is that a public officer should not allow his personal interest to conflict with his official duties and responsibilities; that at all times, he should place his official job above personal interest or job. Thus, if a public servant has a flat tyre and he is at the verge of going late to an official assignment, this paragraph expects him to abandon his car. Just as he should not because of monetary gain do a shoddy job for his establishment or place of work.

Restriction on Specified Officers⁷

Without prejudice to the generality of the foregoing paragraph, a public officer shall not:

- (a). Receive or be paid the emoluments of any public office at the same time as he receives or is paid the emoluments of any other public office.
- (b). Except where he is not employed on fulltime basis, engage or participate in the management or running of any private business, profession or trade but nothing in this sub-paragraph shall prevent a public officer from engaging in farming.

Implicit in this provision are:

1. That a public officer should not be employed in more than one place at a time where he will be receiving salaries from government.⁸
2. That except where a public officer is on part-time job, he should not engage in private practice of his profession, be he a teacher, lawyer, medical doctor, engineer, computer scientist etc. Hence there is total ban on private practice by a full-time public officer, no matter where he works
3. A full-time public officer is however free to engage in farming to augment his earnings.

Prohibition of Foreign Bank Accounts

By the provisions of 5th Schedule of the 1999 Constitution⁹, Paragraph 3, the President, Vice President; Governor of a State, Deputy Governor, Commissioners, Legislators at National and State Houses of Assembly and such other public officers or persons as the National Assembly may by law prescribe, shall not maintain or operate a bank account in any country outside Nigeria. The above prohibition is alright save that same should have been extended to wives, children, business associates and companies owned or particularly owned by the above officers. This is because monies may still be passed through these sources contrary to this injunction¹⁰.

Prohibition of Double Remunerative Position by Retired Public Officer

Paragraph 4 of the 5th schedule provides that a public officer shall not, after his retirement from public service and while receiving pension from public funds accept more than one remunerative position as chairman, director or employee of: (a) a company owned or controlled by the government; or (b) any public authority. It goes on to state in sub-paragraph (2) that a retired public servant shall not receive any other remuneration from public funds in addition to his pension and the emolument of such one remunerative position. Implicit in paragraph (1) is that a retired public servant while receiving pension shall not be appointed a chairman or member of Board of more than one government owned company or parastatal. In other words, a retired public officer is only entitled to his pension and one appointment into any government enterprise. Paragraph 4(2) makes it clear that only pension of the public officer and one other remunerative position are allowed for such officer and nothing more. Closely aligned to the above is an injunction that former Presidents, Vice Presidents, Governors, Deputy Governors and Chief Justices of the Federation, should not take up appointments with foreign companies or foreign enterprises¹¹

Prohibitions of Receipts of Gifts or Benefits in Kind

A public officer shall not ask for or accept property or benefit of any kind for himself or any other person on account of anything done or omitted to be done by him in the discharge of his duties¹². This provision has all the features of The Criminal Code¹³, section 98A which prohibits official corruption and that it is felt that the Code of Conduct if religiously observed could have sufficed to fight corruption in Nigeria instead of enacting all these

⁶Part 1 of 5th Schedule; Section 5 of Cap C15 ,LFN ,2010

⁷Paragraph 2 of 5th Schedule of the Constitution; Section 6 of Cap C15, LFN, 2010

⁸ For example he should not be a lecturer receiving salaries and at the same time be a Special Adviser to the President or to Government but we have situations where allowances running into millions coming from diverse sources-come to a public officer e.g. the President, Governors, Ministers, Vice Chancellors of Universities

⁹Evidenced also in Section 7 Cap C15, Laws of the Federation Nigeria 2010.

¹⁰ This is evident in the trial and conviction of some top officers such as Mr. D.S.P. Alamiyeseigha of Bayelsu State; Mr. Tafa Balogun and etc for money laundering which went through accounts of companies owned by them.

¹¹Paragraph 5, Part 1 of the 5th Schedule; S. 9 Cap C15, L.F.N. 2010.

¹²Paragraph 6 (1) Part 1 of the 5th Schedule, S.10 Cap C15, L.F.N, 2010.

¹³Cap C. 38 LFN 2010

laws on corruption¹⁴. After all, constitutional provision is by virtue of section 1 (3) superior to all other laws of the land. It is also under this paragraph that for the purposes of sub-paragraph (1), the receipt by a public officer of any gifts or benefit from commercial firms, business enterprises or persons who have contracts with the government shall be presumed to have been received in contravention of the said sub-paragraph (1) unless the contrary is proved¹⁵. The implication of this provision is that once there is evidence of receipt of gifts or benefits by an officer from a firm or person having a government contract, there is presumption of corrupt receipt and the onus will be on the particular officer to establish that the gift is not corruptly given or received. This burden however has to be on civil standard and not the normal criminal standard which is beyond all reasonable doubt. This paragraph goes on to state that a public officer shall only accept personal gifts from relatives or personal friends to such extent and on such occasions as are recognized by custom¹⁶ provided that any gift or donation to a public officer on any public or ceremonial occasion shall be treated as a gift to the appropriate institution represented by the public officer and accordingly, the mere acceptance or receipt of any such gift shall not be treated as a contravention of this provision. Herein, a public officer can receive customary gifts from relatives and personal friends but where such gifts are outside the above persons, such gifts become institutional property, that is, such gifts are deemed to have been made to the institution where the officer works and will not be a corrupt transaction.

Restriction on Loans

By the provisions of the 5th schedule, Paragraph 7, the President or Vice President, Governor or Deputy Governor, Minister, Commissioner, Permanent Secretary or head of any public corporation, university or other organization shall not accept:

- (a) A loan, except from government or its agencies, a bank, building society, mortgage institution or other financial institution recognized by law; and
- (b) Any benefit of whatever nature from any company, contractor, or business man or the nominee or agent of such person, provided that the head of a public corporation or a university or other parastatal organization may, subject to the rules and regulations of the body, accept a loan from such body¹⁷.

Herein, the above public officers can only accept loans from government agencies, banks and other financial institutions recognized by law. Where such loans are to come outside the mentioned institutions, there must be rules and regulations guiding such loans before they will be received.

Ban on Bribery

Paragraph 8 provides that no person shall offer a public officer any property, gift or benefit of any kind as an inducement or bribe for the granting of any favour or the discharge in his favour of the public officer's duties¹⁸. Herein, the offer or of gratification is rather prohibited from doing so but a public officer who accepts any property, bribe or gift or benefit of any kind is guilty of breach of the Code of Conduct with the attendant punishment.

Prohibition of Abuse of Office

It is a breach of Code of Conduct for a public officer to do or direct to be done, in abuse of his office, any arbitrary act prejudicial to the right of any other person knowing that such act is unlawful or contrary to any government policy.¹⁹ Implicit in this provision is that it is an abuse of one's office to use such position to do what is unlawful whether against an individual's interest or that of the government. This is most evident where such unlawful act will generate some benefits for the officer or for another person he has relationship with.

Prohibition of Membership of Secret Societies

A public officer shall not be a member of, belong to, or take part in any society the membership of which is incompatible with the functions or dignity of his office²⁰. A secret society includes: 'Any society, association, group or body of persons (whether registered or not), that uses secret signs) oaths, rites or symbols and which is

¹⁴ B.O. Igwenyi, A Critical Appraisal of Anti-Corruption Laws in Nigeria, (unpublished) (Ph.D Thesis, Presented to Dept. of Public & Private Law, UNN, July, 2008, Chapters 1,6 & 8; I.A Ayua & B. Owasanoye, Problems of Corruption in Nigeria, (Lagos: NIALS, 2002)

¹⁵ Paragraph 6(2), Part I of the 5th Schedule; Section 10 (2) Cap C15 LFN, 2010.

¹⁶ Paragraph 6 (3), Part I of the 5th Schedule. But See Section 60 of the ICPC Act, 2010 which bars the plea of custom in cases of receipt of gifts by public servants. However, since this is a constitutional provision the ICPC Act cannot operate to override sub-paragraph (3) of paragraph 6 which allows the plea of custom. In other words, gifts which are customarily given to an officer are lawful. See also Section 10(3) Cap C15, LFN, 2010

¹⁷ Section 11 Cap C15, LRN, 2010

¹⁸ This provision is similar to section 98B of the Criminal Code which is targeted at the offeror of bribe rather than the offeree-public officer. See also Section 12 Cap C15, LFN, 2010

¹⁹ Paragraph 9 of the 5th Schedule, Part 1. See also Section 13 of Cap C15, LFN, 2010

²⁰ Paragraph 10 of 5th Schedule, Part 1. See also Section 14 of Cap C15, LFN, 2010

formed to promote a cause, the purpose of which is to foster the interest of its members... to the detriment of the legitimate interest of those who are not members.’²¹.

Compulsory Declaration of Assets

Subject to the provisions of the constitution, every public officer shall within three months after the coming into force of this Code of Conduct or immediately after taking office and thereafter at the end of every four (4) years; and at the end of his term of office, submit to the Code of Conduct Bureau a written declaration of all his properties, assets and liabilities and those of his unmarried children under the age of eighteen years²². Herein, every public officer is mandatorily expected to declare his assets on the assumption of his office whether declared elected or appointed. But experience has shown that this exercise is just a mere formality as officers declare what they expect while in office and not what they already have either as assets or liabilities. Again, it would appear that the Code of Conduct Bureau does not do a thorough job of properly verifying these ‘declarations’ as there have been no incidence of punishing or indicting some public officers of this widespread breach. Consequently, we propose that the assets declaration forms should be part of documents to be filed with Independent National Electoral Commission (INEC) before elections or to be attached to curricular vitae in the case of those seeking appointments. This will make the declarants to be cautious of making false claims. It will also afford the security agents the opportunity of investigating the authenticity of such claims. It is a breach of the Code of Conduct for any officer to make false declarations in the prescribed form.²³In the same vein, any property or assets acquired by a public officer after the declaration which is not fairly attributable to his income, gift or loan approved by the Code shall be deemed to have been acquired in breach of this Code unless the contrary is proved.²⁴ This is another presumption, this time around, of corrupt enrichment which the officer has similar onus of disproving. Again, a public officer is not absolved of breach of the Code simply because a breach occurred through an agent, nominee or trustee as the case may be.²⁵

4. Enforcement of the Code of Conduct

Any allegation of the breach of the Code shall be made to the Code of Conduct Bureau²⁶. The duties of the Bureau which are itemized in Paragraph 3 (a-f) of the 3rd Schedule include: receiving declared assets form; investigating compliance with the provisions of the Code and receiving complaints of any violation of same or any other law in relation thereto and referring such to the Code of Conduct Tribunal. During the reign of Chief Olusegun Obasanjo, the legendary Chief Gani Fawehinmi wrote this body to investigate the involvement of Obasanjo in the purchase of shares in Trans-National Corporation (Trans-Corp PLC)²⁷. Though nothing positive came out of the epistle because Obasanjo was on seat, it however awakened the people’s consciousness of the ills of the President and of his administration. The Code of Conduct Tribunal is established by Paragraph 15 (I) of the 5th Schedule²⁸ and is empowered under paragraph 18 to carry out the following functions amongst others: to try public officer who are alleged to have contravened any of the provisions of the Code of Conduct and impose any of the punishments stipulated in Paragraph 18 (2) (a-c)²⁹. And they include vacation of office or seat in any legislative house, as the case may be; disqualification from membership of legislative house and from the holding of any public office for a period not exceeding ten (10) years, and seizure and forfeiture to the state of any property acquired in abuse or corruption of office. These punishments are without prejudice to any formal trial before a court of law if the breach also constitutes criminal offence³⁰. There is right of appeal to the Court of Appeal³¹ but a convict is not entitled to prerogative of money under this Constitution³². The implication of Paragraph 18 is that a person can be tried by the Tribunal and still be subject to trial by the regular High Courts for the same offence or another arising from the same act. This appears to be against the rule against double jeopardy which is unconstitutional³³ and it is our view that a public officer who has been tried and punished by the Code of Conduct Tribunal can raise this defence if arraigned in another regular court. However, since *Paragraph 18* does not make provision for imposition of prison terms or for outright payment of fines on conviction (even though the Tribunal

²¹Section 318 CFRN 1999 for full explanation of the term.

²²Paragraph 11(1) (a) and (b) of the 5th Schedule, Part 1. See also Section 15 Cap C15, LFN, 2010

²³Paragraph 11(2) of the 5th Schedule, Part 1 and Section 15 (2) Cap C15, LFN, 2010

²⁴Paragraph 11(3) of the 5th Schedule, Part 1 and Section 15 (3) Cap C15, LFN, 2010

²⁵Paragraph 13 of the 5th Schedule, Part 1, and Section 17 Cap C15, LFN, 2010

²⁶Paragraph 12 which is established pursuant to paragraphs 1 and 3, Part 1, Third Schedule. See also Section 16 Cap C15, LFN, 2010

²⁷See Y. Fabowale, ‘Gani Drags Obasanjo to Code of Conduct Bureau’, Daily Sun, Friday, October 6, 2006, p.4.

²⁸See also Section 20 Cap C15 LFN, 2010

²⁹See also Section 23 Cap C. 15 LFN, 2010

³⁰Paragraph 18(3) and (6) of the 5th Schedule. See also S. 23 Cap C15 LFN, 2010

³¹Paragraph 18(5) of the 5th Schedule. See also S. 23(4) Cap C. 15 LFN, 2010

³²Paragraph 18 (7) of the 5th Schedule. See also S. 23 (7) Cap C.15 LFN, 2010

³³Section 36(9) Constitution of the Federal Republic of Nigeria (CFRN) which bars double punishment for the same offence.

these days impose fines of ₦10, 000(Ten thousand Naira) for late declaration of assets),³⁴ a formal trial before regular courts for the later types of punishment may not be unconstitutional.

5. Some Perspectives on Corruption in Nigeria

It is not in doubt that the purport of Code of Conduct for Public Officers is captured by the Code of Conduct Bureau and Tribunal Act³⁵, S.2, which states as follows: ‘The aims and objectives of the Bureau shall be to establish and maintain a high 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’. In the light of this, it is apposite that we say one or two things on corruption.

What is Corruption?

The crime of corruption is a difficult concept to define, because it concerns many aspects of life such as law, economics, politics, religion and etc. It is also because emphasis on it varies from place to place and culture to culture depending on some social factors within a particular political system. That is why we cannot agree less with R. Seidman, that: ‘corruption like law, truth and beauty has no agreed definition’³⁶. These notwithstanding, we shall make attempt to have a working definition to enable us make progress in this work. The word corruption is derived from the verb ‘corrupt’ which is defined as: ‘of people willing to use their power to do dishonest or illegal things in return for money or to get an advantage’³⁷. The same dictionary defines corruption simply as ‘dishonest or illegal behaviour; especially of people in authority, the act or effect of making somebody change from moral to immoral standards of behaviour’³⁸. The emphasis here is on people holding position of authority but this is a very narrow definition of the concept because people in the private sector appear to have been excluded and they normally use their positions to gain benefits inconsistent with their positions too. Perhaps, in order to go further in the understanding of the concept, the *Black’s Law Dictionary* is relevant here. According to the dictionary, corruption is: ‘depravity, pervasion or taint; and impairment of integrity, virtue or moral principle’. It gives second definition of the concept as follows: ‘The act of doing something with an intent to give some advantage inconsistent with official duty and the rights of others; a fiduciary’s or official’s use of a station or office to procure some benefits, either personally or for someone else contrary to the rights of others’³⁹. This definition is in agreement with our introductory explanation that corruption is the use of one’s position to gain some benefits that he ought not to get, save that it does not cover private positions.

Perhaps, it is also good to go beyond the dictionaries to look at the opinion of some scholars. According to Gunar Mydral: ‘the term corruption will be used to include all forms of improper or selfish exercise of power and influence, attached to the public as well as private office’⁴⁰. The definition captures our earlier expression that corruption occurs in the private and public sector and should be seen as such because when traders in the market use their magic cups to cheat citizens, they are operating from the private realm. Just like when petrol-filling station attendants manipulate fuel-pumps, that is corrupt acts. Before concluding on this, it is perhaps pertinent to hear the view of our very own C.O. Okonkwo. According to him:

Corruption is an amorphous expression and I do not intend to get into controversy about its definition because it can be used to embrace a wide range of misdeeds. Strictly legally, however, to corrupt in the present context is to deflect, to sway someone from a proper performance of his duty... section 2 of the Act (i.e. the ICPC Act, 2000) merely provides that ‘corruption’ includes bribery, fraud and other offences⁴¹.

Thus, we can go on and on to look at the meaning of corruption either as an English word or as a statutory term or as opinion of seasoned writers or even the World Bank, but we end up with such terms as bribery and corruption, gratification, depravity, fraud, nepotism, armed robbery, kidnapping, with the result that this confirms our earlier observation that the word is an amorphous term which lends itself to so many meanings. It should be noted however that the word ‘corrupt’ may just mean that the thing is not original e.g. a corrupt version of a document.

³⁴ The most frequently committed by public servants

³⁵ *Op Cit*

³⁶ R. Seidman, ‘Corruption: A Case Study in Deviance’ in Paul Brietzke, *Source Book of Ethiopian Law and Development*, 1974 p. 262 cited by I.A. Ayua: ‘Overview of Corruption in Nigeria’ in I.A. Ayua and B. Owasanoye (eds), *Problems of Corruption in Nigeria* (Lagos: NIALS, 2002), p.4

³⁷ A.S. Hornby, - *Oxford Advanced Learner’s Dictionary of Current English*, 9th Edition (Oxford: Oxford University Press, 2015). P.344.

³⁸ *Ibid*

³⁹ B.A. Garner –*Black’s Law Dictionary*, 9th Edition (Dallas: West Publishing Company, 2004). p.397.

⁴⁰ G. Mydral ‘Corruption as Hindrance to Modernization in South Asia’ in Heidenheimer, *etal*, (eds) *Political Corruption*, (New Brunswick: Transaction Publishers, 1997), p.405. G. Mydral is a Professor of Law

⁴¹ C. O. Okonkwo ‘Legal and Institutional Mechanisms against Corruption in Nigeria’, in I.A. Ayua & B. Owasanoye (eds), *Problems of Corruption in Nigeria, op.cit*, pp. 274-275. C.O. Okonkwo was a Professor of Law, University of Nigeria.

In the light of the above, we can see there is nothing good about corruption as it is seen in the Bible as decay which is also a negative term.

Consequences of Corruption on a Nation

We are aware that there are different classes of corruption such as political corruption, bureaucratic corruption, economic corruption, judicial corruption and other smaller classes of the same. But we will like to mention some harmful effects of corruption in a nation particularly in our nation Nigeria. Speaking recently in a work-shop, the President of Nigeria, Muhammadu Buhari through the Secretary to the Federal Government, Boss Mustapha lamented that corruption had retarded development in Nigeria and brought embarrassment to Nigeria in the international community⁴².

In summary we see the following as the effects of corruption in our country. First is that it leads to poverty on the part of individuals and the government. This is because resources that would have been used to ensure even development of the country are divested into private pockets and only those who are privileged in taking part in the stealing get benefits. The result is that everything is in short supply as the roads are bad, hospitals not functioning and education in comatose to the detriment of the ordinary citizens. This leads to mass exodus of Nigerians, thereby exposing themselves to the dangers of crossing the Sahara Desert and the Mediterranean Sea⁴³. Corruption in Nigeria has led to political instability. Thus, the first military coup in Nigeria on January 15, 1966 was hinged on attempt to clear the country of corrupt politicians and business men. Subsequent coups in Nigeria in 1975, 1983, 1985 and 1993 were all as a result of political corruption.⁴⁴ Even under the present civilian administration, corruption has made a mess of the electoral process as the 23rd February, 2019 general elections were marred by irregularities.⁴⁵ Thirdly, corruption has created bad image for Nigeria and its citizens as an average Nigerian is regarded as a drug peddler and subjected to all manner of indignities at foreign airports while travelling. The result is that all manner of Nigerians are embarrassed irrespective of their status as a result of what is done by less than 1% of the population. Finally, we contend that corruption leads to death for the victim or the perpetrator. This is true because when Adam and Eve corruptly ate of the forbidden fruit at the Garden of Eden, God pronounced death on man contrary to the original plan of God that man should live forever⁴⁶. Cases of the children of Eli in the *Bible* who were corrupt .i.e. Hophini and Phinehas and whom God condemned to death, is also a case in point⁴⁷. This is just as the case of Judas Iscariot who committed suicide after betraying his master our Lord Jesus Christ⁴⁸ cannot be left out. Under the current situation world over, where people are executed for armed robbery or drug peddling and other capital offences, same could be traced to corruption. Conclusively, it can be seen and said that corruption is an ill-wind that blows no country or person any good air. It is therefore not surprising why the Code of Conduct for Public Officers in Nigeria and Code of Conduct Bureau and Tribunal Act have taken tough stands against corruption. At this juncture, it is pertinent for us to look at how some other democracies treat felons of criminal acts with regards to amnesty or pardon.

6. Some Practices on Grant of Pardon

The first elementary question we have to answer is what Pardon is. Pardon has been described as a government decision to allow a person to be absolved of guilt for an alleged crime or other legal offence as if the act never occurred. The pardon may be granted before or after the conviction for the crime, depending on the laws of the jurisdiction.⁴⁹ That is to say that when pardon or amnesty is granted, all the guilt attendant on such act is deemed to have been cleared but that does not prevent the person from being regarded as an ex-convict and that was the purport of the Nigerian Supreme Court case of *Falaye v. Obasanjo*⁵⁰. A brief look at some countries practices on prerogative of mercy, pardon or clemency is necessary here.

United States of America

Under the Constitution of the U.S.A, the President has power to grant amnesty in respect of criminal convictions in the District Courts. The President however cannot grant pardon in respect of state criminal offences, only state governors can do that. An applicant for presidential pardon must have spent five years after conviction, before he can apply for pardon and if the conviction involves imprisonment, he must have served the sentence. The only

⁴²Noah Ebije, 'Buhari to EFCC: Don't Spare Any Corrupt Person', *Sunday Sun*, September 1, 2019. p.38.

⁴³G.N. Chapp- Jumbo, 'Illegal Migration across the Mediterranean Sea' *Daily Sun*, Thursday, September 5, 2019. p.16

⁴⁴See B.O. Igwenyi-'*The Crime of Corruption in Nigeria: Laws, Issues and Solution*'(Enugu: Snapp Press, 2010) p.214

⁴⁵See, Elections in Nigeria -Wikipedia <<https://en.wikipedia.org/wiki/Elections-in-Nigeria>> accessed on 16th September. 2019 by 1.10pm.

⁴⁶Genesis 3:19

⁴⁷1 Samuel 2:16-17

⁴⁸Mathew 26:14-16, 48-50

⁴⁹<<https://en.wikipedia.org/wiki/pardon#Canada>> accessed on 6/8/2019 by 3:20pm.

⁵⁰(1999) 4 NWLR pt.599 p. 476

offence the president cannot grant pardon is that of impeachment⁵¹. That is to say when someone is impeached, he is not entitled to pardon or clemency in America.

Australia

In Australia, it is called Royal Prerogative of Mercy. It is an Executive power vested in the Queen and may be exercised by the Governor General⁵².

Canada

In Canada, the Parole Board of Canada (PBC) is the Federal Agency Responsible for making pardon decision under the *Criminal Records Act (CRA)*. Under the *CRA*, the Parole Board of Canada can issue, grant, deny and revoke pardons in respect of any crime. Clemency in Canada is also granted by the Governor General in Canada or the Governor General in Council (Federal Cabinet) under the Royal Prerogative of Mercy. Application is made to the National Parole Board as in the case of Pardon.⁵³

United Kingdom

In the United Kingdom, the power used to be exercised by the Queen but now exercised by the judiciary and the Sovereign Ministers. However, since the creation of the Legal Rights of Appeal, the prerogative of mercy is now only exercised by the government of the United Kingdom.⁵⁴ That is to say that in Britain, the government can grant any person pardon for any crime committed.

Peoples Republic of China

In China, parole shall not be granted to recidivists or criminals who are sentenced to more than 10 years of imprisonment or life imprisonment for crimes of violence such as homicide, explosion, robbery, rape and kidnap. Under Article 82 of the Parole Act, pardon is granted as prescribed in Article 79.⁵⁵

Israel

In Israel, the President has power to pardon criminals or give them clemency. The pardon is given following recommendation by the Ministry of Justice⁵⁶.

Other Countries

In other countries which we studied such as India, South Africa, France, the information is the same that pardon can be granted in respect to any criminal offence.⁵⁷

7. A Case for Change of Nigerian Position on Prerogative of Mercy.

The Constitution of the Federal Republic of Nigeria in Section 42 (1) (a) and (b) provides as follows:

1. A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person.
 - (a) Be subjected either expressly by, or in the practical application of , any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which a citizen of Nigeria of other communities, ethnic groups places of origin, sex, religious or political opinions are not made subject; or
 - (b) Be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizen of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions.
2. No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstance of his birth.

The same Constitution in section 175 (1) provides as follows:

1. The President may;
 - (a) Grant any person concerned with or convicted of any offence created by an Act of the National Assembly a pardon, either free or subject to lawful conditions;

⁵¹<https://en.wikipedia.org/wiki/Federal_pardon_in_the_United_States> accessed on 6/8/2019 by 2: 30pm.

⁵² *Ibid*

⁵³<<https://en.wikipedia.org/wiki/pardon#Canada>> accessed on 6/8/2019 by 3:20pm.

⁵⁴*Ibid*

⁵⁵<<https://www.google.com/search?client=firefox-b-d&cq=article+357>> accessed on 10/8/19 by 9:54pm

⁵⁶<<https://en.wikipedia.org/wiki/pardon#India>> accessed on 9/8/2019 by 08:43pm

⁵⁷*Ibid*.

- (b) Grant to any person a respite, either for an indefinite or for a specified period, of the execution of any punishment imposed on that person for such an offence;
- (c) Substitute a less severe form of punishment for any punishment imposed on that person for such an offence; or
- (d) Remit the whole or any part of any punishment imposed on that person for such an offence or of any penalty or forfeiture otherwise due to the state on account of such an offence.⁵⁸

Implicit in the above provisions is that the government shall not discriminate against any persons in respect of any benefit or punishment just as government can grant pardon in respect of any crime committed either against federal or state law. But the Code of Conduct for Public Officers, Paragraph 18(7) and the Code of Conduct Bureau and Tribunal Act, section 23 (7) state that those convicted under the two laws are not entitled to prerogative of mercy simply because corruption is a special crime. But from the wordings of the Code of Conduct Bureau and Tribunal Act, section 2 which is the aims and objectives of that law, that Act is aimed at introducing moral rectitude and not really a law to punish crime and that is why a person convicted under the Code of Conduct for Public Officers is only expected to vacate his office and forfeit illegally acquired property to government. There is no provision for imprisonment or payment of fine for breach of Code of Conduct.

8. Conclusion and Recommendations

In the light of the foregoing, it is our candid opinion that the following be done in Nigeria.

First, the constitution should be amended to allow those who are convicted of breach of *Code of Conduct for Public Officers* and *Code of Conduct Bureau and Tribunal Act* to enjoy prerogative of mercy or pardon, just as other convicts of greater crimes in Nigeria such as armed robbery, murder, treason and treasonable felony and kidnapping and etc. If those who are convicted of capital offences can be granted pardon somebody convicted of unlawful enrichment should also enjoy pardon. If Nigeria is to answer a modern and progressive democracy, it is unreasonable to keep on taking the position that because corruption is destructive to the economy and country that convicts of the crime should not enjoy pardon or clemency as the case may be. Secondly, from the aims and objectives of the two laws, corruption as conceptualized in the Code of Conduct for Public Officers in particular are quasi-criminal offences because engaging in more than one job; not declaring assets early enough or not at all, keeping of foreign accounts, belonging to secret society etc are not such serious acts that should deprive a person from enjoying reprieve granted to all citizens in the constitution. If convicts of armed robbery, murder, kidnapping, treason etc. can be granted pardon by the President or Governor, why would ordinary breach of code of conduct be unpardonable? Thirdly, from the practice of other countries, virtually all crimes enjoy amnesty. In the United States of America, only the political offence of impeachment cannot attract pardon just as in China only recidivists of crimes carrying ten years and above cannot be granted pardon. Recidivists are those who commit crime on and on, and one can see the rationale for preventing such people from enjoying pardon. Fourthly, since those who are convicted under Code of Conduct suffer such punishment as vacating their public office on conviction and relinquishing all the property involved, we think that is enough punishment for someone who is in contravention of the two laws and not for the same person who has been punished by tribunal to be charged to regular court because crime is disclosed at the tribunal sitting. Again, it is against natural justice for the laws of a state to wear two faces. One face for heinous crimes which are pardonable and one face for minor crimes which are not pardonable because some people feel that minor crimes cause more injury to the polity. This is bad in all ramifications. Finally, Nigeria can only be a modern state operating under the rule of law if her laws do not conflict with practices of other nations. One may argue that in China, convicts of corruption are sometimes executed, but that is a different aspect because somebody convicted of corruption could be granted pardon by the state in China notwithstanding that a person convicted of corruption in that country may be executed.

⁵⁸See also section 212 of the same Constitution on Powers of State Governors to Grant Pardon in respect to State Offences.