

CHAPTER 12

CITIZENS' RIGHTS APPROACH TO THE FIGHT AGAINST KLEPTOCRACY IN NIGERIA: PROSPECTS AND CHALLENGES

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1 Introduction

It is no longer news that kleptocracy is acute, remorseless and implacable in Nigeria.¹ Although a phenomenon common to many countries in Africa, Nigeria leads other African countries in pervasive graft and corruption by public office holders.² According to reports, of the \$60 billion illegally transferred out of Africa annually, Nigeria accounts for \$40,9 billion; she also leads other African countries in the amount of illicit money transferred out of Africa from 1970 to 2008 with \$217,7 billion.³ These sums do not include other huge sums of money implicated in other large-scale corruption scandals over the years.⁴ It is no wonder, therefore, that Nigeria has consistently been rated one of the most corrupt countries in the world.⁵ Nigeria was again recently rated 148 out of 180 countries assessed for corruption perception in 2017 by Transparency International.⁶ This is in spite of the efforts of the present Nigerian administration to fight corruption and graft since May 2015 consequent upon the campaign promise of the present administration on the strength of which it rode to power in the 2015 general elections.⁷ While some strides have been taken in the fight against corruption by the present administration, the perception in some quarters outside of the government is that the fight is weighed against opposition members while graft and kleptocracy continue

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1 See eg DE Agbibo 'Between corruption and development: The political economy of state robbery in Nigeria' (2012) 108 *Journal of Business Ethics* 325.

2 *Punch* 'AU members' failure to ratify anti-graft protocol', <https://punchng.com/au-members-failure-to-ratify-anti-graft-protocol/> (accessed 17 October 2018).

3 As above.

4 As above.

5 *Premium Times* 'Perception of corruption worsens in Nigeria – Transparency International Report', <https://www.premiumtimesng.com/news/top-news/259494-perception-corruption-worsens-nigeria-transparency-international-report.html> (accessed 22 March 2018).

6 As above.

7 *Punch* 'I was elected to fight corruption – Buhari', <https://punchng.com/i-was-elected-to-fight-corruption-buhari/> (accessed 5 October 2018).

unabated among members of the President's inner caucus and relatives.⁸

There is also growing literature to the effect that anti-corruption campaigns are not intended to achieve any laudable objective or benefit society at large but sometimes are strategies of authoritarian regimes to entrench themselves in power and manage regime perception both at home and abroad.⁹ What this indicates is that the fight against graft and kleptocracy cannot be left to the government alone, no matter how well intentioned. I therefore argue in this contribution that for the fight against graft to make headway the generality of the citizens must be involved. There will be significant reduction in the scale and incidence of graft and kleptocracy only when the generality of citizens are able to stand up to say enough is enough. Available studies confirm this position. According to Diamond, '[o]ne of the best ways to fight kleptocracy is to institutionalise a genuine democracy in which the people can throw rotten rulers out of office and the judicial system can act independently to go after public officials who have erased the line between public interest and private greed'.¹⁰ I further argue that a potent tool for empowering Nigerian citizens for action in this regard is a rights-based approach to the fight against kleptocracy.

A rights-based approach to corruption is not a new area of study as such. Scholars are now increasingly shifting their focus to the study of the human rights cost and implications of corruption in order to properly unpack and deal with the knotty problem of corruption in modern times.¹¹ One of the advantages of a rights-based approach to corruption is that 'it provides an existing international procedural framework on which to base action against corruption to achieve minimum standards of protection of rights'.¹² Another advantage is the empowering potentials of the approach which are well detailed in many studies.¹³ Thus, while the citizens' rights approach analysis may be about basic constitutional rights

- 8 *Punch* 'Some of Buhari's poor relatives have become billionaires – Galadima', <https://punchng.com/some-of-buharis-poor-relatives-have-become-billionaires-galadima/> (accessed 1 January 2019).
- 9 CRFuller 'Authoritarian anticorruption campaigns: A tool to consolidate power', https://www.power3point0.org/2018/09/25/authoritarian-anticorruption-campaigns-a-tool-to-consolidate-power/?_cldee=YWtpbmF0MjAwMkBSYWhvby5jb20gandrecipientid=contact-fc45f8b321dce71180e6005056a456ce-8bbd471f1eb44129b635cd4e3312dd00andesid=d6d7e4f9-29d9-e811-80f9-005056a456ce (accessed 26 October 2018); R Goujon 'In a time of anti-corruption campaigns, context matters', <https://worldview.stratfor.com/article/time-anti-corruption-campaigns-context-matters> (accessed 28 October 2018).
- 10 National Endowment for Democracy 'The big question: What is the relationship between kleptocracy and authoritarianism', <https://www.ned.org/the-big-question-what-is-the-relationship-between-kleptocracy-and-authoritarianism/> (accessed 20 April 2018).
- 11 See eg Z Pearson 'An international human rights approach to corruption' in P Lamour & N Wolanin (eds) *Corruption and anti-corruption* (2013) 30.
- 12 Pearson (n 11) 46.
- 13 PJ Hountondji 'The master's voice – Remarks on the problem of human rights in Africa' in *Philosophical foundations of human rights* (1985) 319; E Mureinik 'A bridge to where? Introducing the interim Bill of Rights' (1994) 10 *South African Journal on Human Rights* 31.

granted to citizens under the laws and Constitution of Nigeria and while a rights-based approach may appear not to have achieved much in terms of concrete deliverables in the fight against kleptocracy so far, these are not sufficient reasons to jettison the approach or its articulation altogether. That a rights-based approach to corruption may not have delivered much so far is not as a result of any weakness inherent in the approach. Rather, it is a result of the fact that the approach has so far not been utilised in a sustained manner or in most cases not utilised at all, either as a result of ignorance of its usefulness or the erroneous impression that the approach is useless for that purpose. It will be erroneous therefore to think that the approach does not count in the fight against kleptocracy.

An indication that the citizens' approach to corruption has enormous potentials in stemming the tide of the menace of corruption in Nigeria is provided by the mass mobilisation and action of Nigerian citizens in January 2012 when civil society groups and ordinary citizens shut down some major cities in Nigeria in protest against the massive corruption in the Nigerian oil sector and the incessant increases in the prices of petroleum products. The protests and agitation which lasted for some two weeks occasioned a partial reversal of the price increases and led to some serious anti-corruption probes and prosecutions as well.¹⁴ The anti-corruption gains recorded by the mass action, however, were lost shortly thereafter because the mass action lost momentum and there was no sustained efforts to further the struggle.¹⁵

In light of the above and to complement existing studies in this area, this chapter examines and analyses the opportunities, prospects and challenges of citizens' rights approach to the fight against corruption and kleptocracy in Nigeria. This is done through the examination and analysis of the opportunities and challenges available under the Constitution of Nigeria and the laws. The study also examines and analyses how the courts have interpreted the relevant provisions of the Constitution and the laws in selected cases and the likely impact of the jurisprudence on citizens' rights approach to the fight against kleptocracy in Nigeria. The core objective of this study is to clearly identify the space available for and the challenges of citizens' rights approach to the fight against kleptocracy in order to highlight the gaps that need to be bridged in the laws and institutions for accountable, open and corruption free governance in Nigeria.

To achieve the above objectives, this chapter is divided into five parts. The first part is this introduction. The second part briefly reviews the current efforts to engage kleptocracy in Nigeria, the successes achieved and challenges confronting the efforts. The third part identifies and analyses citizens' rights that can be deployed in aid of the fight against kleptocracy

14 See *Premium Times* '#OccupyNigeria: One year later, the gains, the losses', <https://www.premiumtimesng.com/news/114890-occupynigeria-one-year-later-the-gains-the-losses.html> (accessed 9 January 2019) for a detailed discussion of some of the gains and losses of the mass action.

15 As above.

in Nigeria, the prospects of such deployment and the challenges and drawbacks of such an approach. The fourth part discusses areas of law and institutional reforms necessary to aid citizens' rights approach to graft and kleptocracy in Nigeria. The fifth part concludes the study.

2 Brief overview of the successes and challenges of current efforts to tackle kleptocracy in Nigeria

In a bid to fulfil one its key campaign promises to stamp out corruption upon which the present government came to power, there are visibly bold and vigorous efforts to tackle corruption by the present Nigerian government.¹⁶ Current efforts can be categorised under three headings: the creation and strengthening of anti-corruption institutions and bodies; anti-corruption legislative initiatives; and anti-corruption policy initiatives. Each is discussed in turn below.

At the institutional level there are many initiatives and strategies that have been deployed to engage the scourge of corruption in the country. Only three of these will be discussed here because of the constraints of space. First, there is the establishment of Presidential Advisory Committee against Corruption (PACAC) in August 2015.¹⁷ PACAC is the government's anti-corruption think tank that is supported by a seven-member Technical Committee. The mandate of PACAC is to promote the government's anti-corruption agenda, to advise the government on the anti-corruption war and the required reforms in the criminal justice system that will aid the government's anti-corruption agenda.¹⁸ A review of PACAC activities as contained in its 2016-2017 report revealed that it has fared relatively well in fulfilling the terms of its mandate during the period under review in the report.¹⁹

Second is the establishment of the Special Investigation Panel on the Recovery of Public Property (the Panel) set up in August 2017 pursuant to the Recovery of Public Property (Special Provisions) Act of 2004.²⁰ The Panel has a clear mandate to investigate, trace and recover public assets misappropriated by unscrupulous public officials and their cronies. The legality of the Panel which was initially called into question in some quarters²¹ was partially affirmed recently by the Court of Appeal who restricted the Panel's powers to investigation of suspected looters and submission of reports to appropriate quarters and law enforcement

16 *Punch* (n 7).

17 'Presidential Advisory Committee Against Corruption', <http://statehouse.gov.ng/presidential-advisory-committee-against-corruption/> (accessed 24 March 2018).

18 As above.

19 PACAC Report: August 2016 – July 2017 (2017).

20 Cap R4 LFN 2004.

21 Leadership 'Illegality in investigative panel presidency is overlooking', <https://leadership.ng/2018/11/27/illegality-in-investigative-panel-presidency-is-overlooking/> (accessed 2 January 2019).

agencies for prosecution.²² Available reports indicate that the Panel has also fared relatively well in fulfilling its statutory objectives and mandates.²³

Third is the initiative of the Chief Justice of Nigeria (CJN) to designate some courts in parts of the country as special crimes or anti-corruption courts in order to fast-track the trial of corruption cases.²⁴ In compliance with the CJN's directive to create special anti-corruption courts, heads of courts in the country established special anti-corruption and financial crimes courts to speed up the prosecution and trials of these categories of crimes.²⁵ The foregoing are in addition to the strengthening of the anti-corruption agencies²⁶ through training and re-trainings of personnel, upgrades of facilities and equipment, and so forth.²⁷ It is on record that the special courts deliver judgments in 324 cases within six months of their establishment.²⁸

At the legislative level significant steps have also been taken by the present government since May 2015. Initiative in this regard includes the revision and introduction of several Bills such as the Proceeds of Crime Bill,²⁹ the Whistle Blower Protection Act³⁰ and the Witness Protection Act,³¹ among other legislative initiatives envisaged to assist the government in its fight against corruption. Of the various Bills, the Nigeria Financial Intelligence Unit Act (NFIA) was passed by the National Assembly in July 2018.³² There is also the Preservation of Suspicious Assets Connected with Corruption and Other Relevant Offences Order 6 2018 (Order 6)

22 *Punch* 'We're happy court affirmed our investigative power – FG panel', <https://punchng.com/were-happy-court-affirmed-our-investigative-power-fg-panel/> (accessed 2 January 2019).

23 *Vanguard* 'Presidential panel moves to recover \$20m, landed property for NPA', <https://www.vanguardngr.com/2018/11/presidential-panel-moves-to-recover-20m-landed-property-for-mpa/> (accessed 2 January 2019); *Eagle Online* 'Presidential asset recovery panel spreads dragnet abroad', <https://theeagleonline.com.ng/presidential-asset-recovery-panel-spreads-drag-net-abroad/> (accessed 2 January 2019).

24 *Legit.Ng* 'CJN Onnoghen orders heads of courts to create special courts for corruption cases', <https://www.legit.ng/1125893-cjn-onnoghen-orders-heads-of-courts-to-create-special-courts-corruption-cases.html> (accessed 2 January 2019).

25 *Punch* 'Lagos CJ inaugurates four special courts for corruption cases', <https://punchng.com/lagos-cj-inaugurates-four-special-courts-for-corruption-cases/> (accessed 2 January 2019).

26 These include the Economic and Financial Crimes Commission, the Independent Corrupt Practices Commission, and so forth.

27 *Daily Post* 'Buhari commissions new EFCC headquarters [PHOTOS]', <http://dailypost.ng/2018/05/15/buhari-commissions-new-efcc-headquarters-photos/> (accessed 2 January 2019).

28 *Vanguard* 'Special anti-corruption courts deliver judgments in 324 cases in 6 months – NJC', <https://www.vanguardngr.com/2018/07/special-anti-corruption-courts-deliver-judgments-324-cases-6-months-njc/> (accessed 2 January 2019).

29 *Vanguard* 'AGF seeks passage of proceeds of crime Bill', <https://www.vanguardngr.com/2017/11/agf-seeks-passage-proceeds-crime-bill/> (accessed 26 March 2018).

30 *Punch* 'Senate passes Whistleblower Protection Bill into law', <http://punchng.com/senate-passes-whistleblower-protection-bill-into-law/> (accessed 26 March 2018).

31 *Vanguard* 'Senate passes Witness Protection Bill', <https://www.vanguardngr.com/2017/06/senate-passes-witness-protection-bill/> (accessed 26 March 2018).

32 *Daily Trust* 'Buhari signs Nigerian Financial Intelligence Unit Bill into law', <http://www.dailytrust.com.ng/buhari-signs-nigerian-financial-intelligence-unit-bill-into-law-260639.html> (accessed 25 November 2018).

promulgated and signed into law by the President on 5 July 2018.³³ The purpose of Order 6 is to preserve assets or funds linked to suspected acts of corruption and related offences from being dissipated while investigations into the cases are ongoing.³⁴

At the policy level, there is the National Anti-Corruption Strategy (2017-2021) (NACS) approved by the Federal Executive Council on 5 July 2017.³⁵ The principal objective of the NACS is the identification and closure of gaps in the existing anti-corruption initiatives for a more effective anti-corruption strategy.³⁶ NACS has three levels of implementation: to strengthen the legal and institutional framework put in place to prevent and combat corruption; to mainstream anti-corruption ethos and norms into governance and service delivery; and to mainstream anti-corruption norms into sub-national governance system and the society at large.³⁷ The strategy has the following five policy thrusts or pillars: to prevent corruption by reducing vulnerabilities to the scourge; to ensure due enforcement of anti-corruption regime; to educate citizens on identification of signs of corruption as well as providing avenues to report corruption cases safely; to promote ethical reorientation in public service; and to focus on the recovery and management of proceeds of corruption as a corruption control and deterrent strategy.³⁸

Still at the policy level, Nigeria joined the Open Government Partnership (OGP), an international partnership of government reformers and civil society leaderships committed to the principles of open and accountable governance in July 2016.³⁹ The OGP itself was formed in September 2011 by the eight founding governments of Brazil, Indonesia, Mexico, Norway, the Philippines, South Africa, the United Kingdom and the United States who endorsed the Open Government Declaration which is a set of open and inclusive governance principles.⁴⁰ The main objective of the OGP is to enable a platform where government reformers and civil society leadership will be able to 'create action plans that make governments more inclusive, responsive and accountable'.⁴¹ Nigeria's national action plan for the OGP which is billed to run from 2017-2019 has four thematic focuses: fiscal transparency, anti-corruption, access to

33 *Punch* 'Executive Order 6 not a political weapon – Presidency', <https://punchng.com/executive-order-6-not-a-political-weapon-presidency/> (accessed 25 November 2018).

34 *Vanguard* 'Executive Order 6: We want to attack economic base of corrupt persons — AGF', <https://www.vanguardngr.com/2018/10/executive-order-6-we-want-to-attack-economic-base-of-corrupt-persons-agf/> (accessed 2 January 2019).

35 NIALS 'A highlight of the National Anti-Corruption Strategy (NACS) for Nigeria', <http://nials.edu.ng/index.php/2015-12-10-16-05-04/seminar/282-a-highlight-of-the-national-anti-corruption-strategy-nacs-for-nigeria> (accessed 3 January 2018).

36 As above.

37 As above.

38 As above.

39 OGP 'Nigeria', <https://www.opengovpartnership.org/countries/nigeria> (accessed 3 January 2019).

40 OGP 'About OGP', <https://www.opengovpartnership.org/about/about-ogp> (accessed 3 January 2019).

41 As above.

information and citizens' engagement.⁴² The implementation of national action plans are subject to independent reporting mechanisms, monitoring and review by relevant OGP organs.⁴³ Sadly, however, most of Nigeria's component states are yet to buy-in into the OGP idea.⁴⁴

In addition to the successes mentioned above, reports indicate that 703 persons accused of corruption have been successfully prosecuted and convicted since May 2015.⁴⁵ Included in this number are a number of former state governors.⁴⁶ This is an unprecedented event in Nigeria as no such high-profile personalities have been successfully prosecuted for corruption in the country. In addition to the convictions, a whopping sum of N769 billion in stolen assets is reported to have also been recovered as at September 2018.⁴⁷

Despite the successes, however, the challenges confronting the anti-corruption war in Nigeria is diverse and multi-faceted. Apart from the usual challenges of capacity, funding, poor remuneration of law enforcement personnel and outdated tools, among others; there are other major challenges which make the ones referred to earlier pale into insignificance. If these major challenges are not addressed, the anti-corruption war is not likely to go anywhere.

One of these major challenges is the fact that the anti-corruption war is mainly President Buhari's war waged only at the centre. Many of Nigeria's component states have not bought into the anti-corruption fight. To them it is still business as usual. An illustration of this is the meagre number of the component states that have signed on to the OGP initiative of the federal government, as mentioned above. Another of these major challenges is the perception that the anti-corruption war is selective. Thus, the narrative outside immediate government circle is that the fight against corruption is weighed against only the opposition while members of the President's inner caucus and relatives continue to engage in corruption without consequences.⁴⁸ As an adage says: 'Perception is everything'. Additionally, available evidence suggests that the perception may not be without basis as recent reports suggests that impunity, massive corruption

42 OGP (n 39).

43 OGP 'Independent Reporting Mechanism', <https://www.opengovpartnership.org/about/independent-reporting-mechanism> (accessed 3 January 2019).

44 As at August 2018; reports indicate that 29 of Nigeria's 36 component states are yet to sign the OGP initiative: *Daily Trust* '29 states yet to sign in to open government partnership in Nigeria', <https://www.dailytrust.com.ng/29-states-yet-to-sign-in-to-open-government-partnership-in-nigeria-266278.html> (accessed 3 January 2019).

45 *Vanguard* 'We secured 703 convictions in 3 years – Magu', <https://www.vanguardngr.com/2018/11/we-secured-703-convictions-in-3-years-magu/> (accessed 13 November 2018).

46 *Premium Times* 'Another ex-Nigerian governor convicted of fraud', <https://www.premiumtimesng.com/news/headlines/272050-breaking-another-ex-nigerian-governor-convicted-of-fraud.html> (accessed 4 January 2019).

47 *ThisDay* 'Presidential committee recovers N769bn stolen assets', <https://www.thisdaylive.com/index.php/2018/09/12/presidential-committee-recovers-n769bn-stolen-assets/> (accessed 3 January 2019).

48 See eg *Punch* (n 8).

and graft is continuing without let or hindrance by members of the present government despite the much-touted anti-corruption fight.⁴⁹

Furthermore, studies show that achieving sustainable anti-corruption progress has been difficult in the country because Nigeria has so far focused on vertical enforcement of rules at the highest levels of governmental and agencies to the detriment of effective horizontal enforcement of norms among actors in specific industries and sectors of the society.⁵⁰ However, studies show that both levels of enforcements are essential for a sustainable anti-corruption thrusts and engagements.⁵¹ Sadly, too, studies show that even the vertical enforcement towards which the present anti-corruption efforts are geared is also ineffective because of the vested interests, interference and rent seeking activities of Nigeria's politically-exposed persons.⁵² The corrupt political elites and their cronies in the country have been known not to allow the rules to work. This shows clearly that the anti-corruption fight cannot be left to the government alone and as stated in the introduction of this chapter, there is therefore a need to enable the critical mass of the citizens for action. Thus, in addition to empowering the critical mass of the people to call corrupt political elites to account, the citizens' rights approach is particularly useful here because it is capable of fostering a rule following majority at the horizontal level of the society through the holding of kleptocrats at the vertical governmental level to account. In this way the vertical focus of present anti-corruption efforts will be complemented by the horizontal enforcement for a more comprehensive and broader anti-corruption thrust through the citizens' rights approach. The identification and articulation of the components and contents of the citizens' rights approach as can be found in Nigeria's laws and the 1999 Constitution is the focus of subsequent parts of this contribution.

3 Citizens' rights deployable in aid of good governance and accountability

Constitutional rights generally are meant to foster a culture of justification and accountability.⁵³ As stated by Mureinik, one of the principal benefits of a bill of rights is the enablement and power that it gives the citizens and the courts to call the government to account by asking it to explain and justify its actions and policies.⁵⁴ Thus, just about any right in a bill of rights can be deployed to call government to account. In the context

49 US Department of State 'Country Report on Human Rights Practices for 2017', <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2017&ddlid=277331#wrapper> (accessed 24 April 2018).

50 J Ibrahim 'Combatting corruption: A case of Nigeria's power sector' (2019) 1 *Insights* 1.

51 Ibrahim (n 50) 2-3.

52 As above.

53 Mureinik (n 13) 31.

54 E Mureinik 'Beyond a charter of luxuries: Economic rights in the constitution' (1992) 8 *South African Journal on Human Rights* 469-474.

of the present discourse, however, the focus of this study is on the rights of participation recognised as the 'rights of rights' and classically acknowledged as belonging to citizens.⁵⁵ In this regard a distinction is drawn between the rights of man and the rights of citizens. The rights of man, which include rights such as property, security of the person and freedom of religion exercisable by man in isolation are distinguished from the rights of citizens such as the right to vote and the right to freedom of expression and criticism of government actions and policies which are exercisable by man in community with other persons.⁵⁶ Thus, the rights of the citizens to participate and share in the decision-making processes of the government considered fundamental to political participation and democratic politics as can be found under the laws and the Constitution of the Federal Republic of Nigeria 1999 (as amended) (Nigerian Constitution) and the potentials and challenges of these rights to tame the onslaught of kleptocracy in Nigeria is the focus of this part of the chapter. The rights identified to fall into this category under the laws and the 1999 Constitution and which will be discussed here are the right to vote, the right to protest and freedom of expression and the press. These rights are discussed and analysed in turn below.

3.1 The right to vote

The right to vote is a fundamental political right through which the citizens pass verdicts on the performance of those who govern them.⁵⁷ It therefore is one right that is regarded as preserving other civil and political rights and forms the bedrock of liberal democratic societies.⁵⁸ A participatory electoral process is in fact touted as one of the normative entitlement of the emerging right to democratic governance.⁵⁹

The impact of the right to vote on good governance and transparency is undeniable. As noted by Kwaghga, credible elections are a determining factor of good governance in any society because a malfunctioning electoral system has the tendency to produce a malfunctioning governance system.⁶⁰ The potential of the right to vote to combat graft and kleptocracy has been confirmed in a study by Ferraz and Finan which demonstrates through a study and analysis of Brazil's municipal elections that when empowered with requisite information about the corruption of public office holders, voters react to such information to vote out and punish

55 J Waldron 'Participation: The right of rights' (1998) 98 *Proceedings of the Aristotelian Society*, New Series 307-308.

56 As above.

57 E Azinge 'The right to vote in Nigeria: A critical commentary on the open ballot system' (1994) 38 *Journal of African Law* 173.

58 B Ugochukwu 'Ballot or bullet: Protecting the right to vote in Nigeria' (2012) 12 *African Human Rights Law Journal* 539.

59 TM Franck 'The emerging right to democratic governance' (1992) 86 *American Journal of International Law* 90.

60 B Kwaghga 'Good governance and credible elections in Nigeria' (2013) 2 *International Journal of African and Asian Studies* 45.

politicians perceived to be corrupt.⁶¹ This potential usefulness of the right is also confirmed in the 2015 general elections in Nigeria when the electorates reacted against the rot, corruption and misgovernance of the then ruling party and massively voted out the incumbent President, Goodluck Ebele Jonathan, an event that was unprecedented in the annals of Nigerian elections.⁶²

Although there is controversy regarding the nature of the right to vote in Nigeria,⁶³ what is clear from the examination of the relevant constitutional provisions and their comparisons with similar provisions from other jurisdictions is that there is no direct right to vote in Nigeria.⁶⁴ There is only the right of every citizen of Nigeria who is above 18 years of age to be registered to vote in any election in Nigeria.⁶⁵ This is the combined effect of sections 77(2), 117(2), 132(5) and 178(5) of the Nigerian Constitution and section 12(1) of the Nigerian Electoral Act, 2010, all of which provide only for the right of a Nigerian citizen who has attained the age of 18 years and above to be registered as a voter. The provisions above cited contrasted sharply, for instance, with relevant provisions of the Kenyan and the Ethiopian Constitutions which guarantee not only the right to be registered as a voter but the right to vote as well.⁶⁶ I therefore agree with Ugochukwu on this score.⁶⁷

Rather, the right to vote in Nigeria is subsumed under and derived from the right to political participation and freedom of association and assembly

61 C Ferraz & F Finan 'Exposing corrupt politicians: The effects of Brazil's publicly released audits on electoral outcomes' (2008) 123 *Quarterly Journal of Economics* 703.

62 See O Olowojolu & M Ake 'An overview of 2015 general elections in Nigeria' (2015) 5 *Arabian Journal of Business and Management Review* 13 for a detailed analysis of how Nigerians voted in the elections.

63 Contrast Azinge (n 57) with Ugochukwu (n 58).

64 Direct right to vote here means an express provision for the right in a constitution. The absence of such express provision for the right to vote in the Nigerian Constitution makes the availability of the right in Nigeria speculative and its applicability indirect.

65 Sec 77(2) of the Nigerian Constitution provides that '[e]very citizen of Nigeria, who has attained the age of eighteen years residing in Nigeria at the time of the registration of voters for purposes of election to a legislative house, shall be entitled to be registered as a voter for that election'. Other sections of the laws cited above have similar provisions.

66 Secs 38(3)(a) and (b) of the Constitution of Kenya, 2010 provides: 'Every adult citizen has the right, without unreasonable restrictions (a) to be registered as a voter; (b) to vote by secret ballot in any election or referendum.' Secs 38(1)(b) and (c) of the 1995 Ethiopian Constitution also provides: 'Every Ethiopian national, without discrimination based on colour, race, nation, nationality, sex, language, religion, political or other opinion or other status, has the following rights ... (b) on the attainment of 18 years of age, to vote in accordance with law; (c) to vote and to be elected at periodic elections to any office at any level of government; elections shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of electors.'

67 Ugochukwu (n 58) 547-551.

in sections 14(2)(c)⁶⁸ and 40⁶⁹ of the 1999 Constitution. Sections 14(2)(c) and 40 of the Constitution arose for consideration in the locus classicus case of *INEC v Musa*⁷⁰ where the Supreme Court of Nigeria recognised political participation of Nigerians through the prism of political parties and struck down offending provisions of the Nigerian Electoral Act 2001 and the regulation made thereunder which unduly restricted political parties' formation and the participation of civil servants in politics.

However, as a result of the absence of an express right to vote in the 1999 Constitution and laws, there is a paucity of cases dealing directly with the right to vote in Nigeria. Many of the cases in this area of the law deal rather with the judicial resolution of electoral disputes initiated by candidates and politicians, which have no direct bearings to the present discourse. Notwithstanding the foregoing, the courts seem to see the right to vote as a manifestation of the right to associate and assemble under section 40 of the Nigerian Constitution.

For the right to vote to be able to foster good governance and accountability, however, accompanying elections must be free, fair and credible. However, there are huge obstacles militating against the freeness, fairness and credibility of elections in Nigeria. Obstacles militating against the credibility of Nigerian elections include violent electioneering, vote-buying and election-rigging, the snatching of ballot boxes, intimidation and harassment of voters, post-election violence,⁷¹ among others. Many observers, therefore, have rightly noted that electoral violence is the bane of Nigeria's democratic process.⁷² According to Ologbenla, the many problems bedevilling Nigeria's democracy is directly traceable to the country's flawed electoral system and the attitudes and activities of Nigeria's political elites who see power as a do-or-die affair.⁷³ Fagbule has also rightly identified vote buying as another major problem of Nigeria's

68 Sec 14(2)(c) of the Constitution provides: 'It is hereby, accordingly, declared that: the participation by the people in their government shall be ensured in accordance with the provisions of this Constitution.'

69 Sec 40 of the Nigerian Constitution provides: 'Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests: Provided that the provisions of this section shall not derogate from the powers conferred by this Constitution on the Independent National Electoral Commission with respect to political parties to which that Commission does not accord recognition.'

70 (2003) 3 NWLR (Pt. 806) 72.

71 Human Rights Watch 'Nigeria: Post-election violence killed 800' (2011), <https://www.hrw.org/news/2011/05/16/nigeria-post-election-violence-killed-800> (accessed 10 January 2019).

72 B Dudley 'Violence in Nigerian politics' (1965) 21 *Transition* 21-23; D Ologbenla 'Evaluation of election violence in Nigeria: The involvement of the youth' (2011) 5 *Communication Review* 1; M Bratton 'Vote buying and violence in Nigerian election campaign' (2008) 27 *Electoral Studies* 621.

73 D Ologbenla 'Political instability, conflict and the 2003 general elections' in R Anifowose & T Babawale (eds) 2003 *General elections and democratic consolidation in Nigeria* (2003) 70.

elections.⁷⁴ According to him, vote buying and violence are epiphenomenal features of Nigeria's electoral system.⁷⁵ He surmises that vote buying and political violence operate simultaneously in Nigeria's elections because a strong incumbent is likely to buy votes while a weak opposition resorts to violence and, when the tide turns, a strong opposition will buy votes while a weak incumbent resorts to violence.⁷⁶ Sadly, these epiphenomenal features continue to trail Nigeria's elections and practice of democracy. In the just concluded Ekiti and Osun states governorship elections held on 14 July 2018 and 22-27 September 2018, for instance; there were widespread reports of vote buying, ballot box snatching, harassment and intimidation of voters and other forms of violent electioneering strategies.⁷⁷ Thus, Nigerian political elites continue to exploit the socio-economic vulnerabilities of the poor by thwarting the will of the poor electorates through vote buying, vote rigging and electoral violence. This scenario continues to denude and empty the right to vote of its promises and prospects to foster good governance and accountability in Nigeria.

3.2 The right to protest

The right to protest is another important right deployable to engage graft and kleptocracy. The right provides space for a more direct form of democracy and enables popular participation in a relatively unmediated fashion.⁷⁸ Public protests provide the much-needed avenues for disadvantaged and marginalised groups who ordinarily will lack access to formal structures of government to challenge power and bring their views and perspectives to bear on public decision-making processes.⁷⁹ The potential and value of the right to protest to trigger social change is aptly captured by Duncan as follows:⁸⁰

Protests, or expressive acts that communicate grievances through disruption of existing societal arrangements, bring problems in society to public attention in direct, at times dramatic, ways. Because they are inherently disruptive, protests can wake society up out of its complacent slumber, make it realise that there are problems that need to be addressed urgently, and so hasten

74 T Fagbule 'Rice, votes and violence: Democracy in Nigeria' *Business Day* 23 July 2014, <https://www.businessdayonline.com/columnist/article/rice-votes-and-violence-democracy-in-nigeria/> (accessed 2 October 2018).

75 As above.

76 As above.

77 *Punch* 'Ekiti poll: TMG, TI, SERAP condemn vote-buying by parties', <https://punchng.com/ekiti-poll-tmg-ti-serap-condemn-vote-buying-by-parties/> (accessed 2 October 2018); The Guardian 'Osun re-run: Voters asked to swear before being paid to vote, TMG alleges', <https://guardian.ng/news/osun-re-run-voters-asked-to-swear-before-being-paid-to-vote-tmg-alleges/> (accessed 30 September 2018); *Punch* 'Osun rerun: NBA accuses police of compromising exercise', <https://punchng.com/osun-rerun-nba-accuses-police-of-compromising-exercise/> (accessed 2 October 2018).

78 J Duncan *Protest nation: The right to protest in South Africa* (2016) 5.

79 H Fenwick 'The right to protest, the Human Rights Act and the margin of appreciation' (1999) 62 *Modern Law Review* 492-493.

80 Duncan (n 78) 1.

social change.

These features of the right to protest make it very attractive for deployment against kleptocracy and graft in Nigeria.

The right to protest is also a manifestation of the rights to freedom of assembly, association and freedom of expression. The right in Nigeria is derived from the rights to freedom of expression⁸¹ and freedom of association and assembly⁸² in the 1999 Constitution. The right to protest as a manifestation of the right to freedom of assembly and association under the Nigerian Constitution was expressly recognised by the High Court of the Federal Capital Territory, Abuja in *FGN v Oshiomole*.⁸³ The Court in interpreting the freedom of association and assembly provision of the Constitution held that '[i]f the Nigerian workers through the Nigerian Labour Congress consider the imposition of the N1.50k fuel sales tax inimical to their interest, they have a fundamental right to assemble or mass protest in opposition to such imposition'.⁸⁴

A similar progressive reading of section 40 of the Nigerian Constitution is found in *IGP v ANPP & Others*⁸⁵ where the Nigerian Court of Appeal, Abuja Division declared section 1 of the Public Order Act⁸⁶ that requires a police permit for public gathering and procession unconstitutional. The Court held in this case that that the Act ought to complement and not inhibit sections 39 and 40 of the Nigerian Constitution. The Court pronounced the following:⁸⁷

81 Sec 39 of the Nigerian Constitution which provides: '(1) Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference. (2) Without prejudice to the generality of subsection (1) of this section, every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions: Provided that no person, other than the Government of the Federation or of a State or any other person or body authorised by the President on the fulfilment of conditions laid down by an Act of the National Assembly, shall own, establish or operate a television or wireless broadcasting station for, any purpose whatsoever. (3) Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society (a) for the purpose of preventing the disclosure, of information received in confidence, maintaining the authority and independence of courts or regulating telephony, wireless broadcasting, television or the exhibition of cinematograph films; or (b) imposing restrictions upon persons holding office under the Government of the Federation or of a State, members of the armed forces of the Federation or members of the Nigeria Police Force or other Government security services or agencies established by law.'

82 Sec 40 of the Nigerian Constitution which provides: 'Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests: Provided that the provisions of this section shall not derogate from the powers conferred by this Constitution on the Independent National Electoral Commission with respect to political parties to which that Commission does not accord recognition.'

83 (2004) 9 WRN 129.

84 As above.

85 (2007) 18 NWLR (Pt 1066) 457.

86 Cap P42 Laws of the Federation of Nigeria, 2004.

87 *IGP v ANPP & Others* (n 85) 500.

A rally or placard carrying demonstration has become a form of expression of views on current issues affecting government and the governed in a sovereign state. It is a tread recognised and deeply entrenched in the system of governance in civilised countries – it will not only be primitive but also retrogressive if Nigeria continues to require a pass to hold a rally.

The courts by the above pronouncements expressly recognised the right to protest in Nigeria. This progressive reading of the right to protest is also implicit in the later decision of the High Court of the Federal Capital Territory, Abuja in *Hadiza Bala Usman & Others v Commissioner of Police & Another*⁸⁸ where the Court overturned an illegal ban on public protests in the Federal Capital Territory, Abuja.

This progressive reading of sections 39 and 40 of the Nigerian Constitution, however, has not been followed in all the cases. In *Chukwuma v COP*,⁸⁹ for instance, the Court of Appeal, Ilorin Division upheld the constitutional validity of the provisions of the Public Order Act requiring police permit for public gatherings and processions. This of course has grave implications for the right to protest and has been rightly criticised by scholars.⁹⁰ In *FGN & Another v Adams Oshiomhole & Another*⁹¹ the Federal Government of Nigeria (FGN), in the process of forum shopping after having failed before the High Court of the Federal Capital Territory, Abuja in *FGN v Oshiomole* examined above, had approached the Federal High Court of Abuja to ask that the mass strikes and protests called by the Nigerian Labour Congress (NLC) be declared illegal and had asked for restraining order against the NLC from embarking on mass protests in opposition to the incessant increases in the price of petroleum products which was impacting negatively on the well-being of the poor people of Nigeria. Unlike the High Court of the Federal Capital Territory, Abuja, however, the Federal High Court in the case held that the government policy of deregulating the downstream sector of the Nigerian oil industry is not a trade dispute within the meaning of the relevant statutes against which the NLC can embark on strikes or mass protests in furtherance of their rights to peaceful assembly and association in section 40 of the Nigerian Constitution. This decision of the Federal High Court was upheld on appeal by the Nigerian Court of Appeal in *Oshiomole & Another v FGN & Another*.⁹²

The *Oshiomole* decisions of the Federal High Court and the Court of Appeal above have been criticised by Okafor.⁹³ As the scholar pointed out, both cases conflated trade union rights and the right to protest guaranteed in section 40 of the Nigeria Constitution. He also argued that both are

88 Suit FCT/HC/CV/1693/2014 of 30 October.

89 (2005) 8 NWLR (Pt 927) 278.

90 See eg CC Ani 'Public order versus the right to peaceful assembly in Nigeria' (1998-2006) *Nigerian Current Law Review* 166, 173.

91 Suit FHC/ABJ/CS/52/2004 (21 September 2004).

92 [2007] 8 NWLR (Pt 1035) 68-70.

93 OC Okafor 'Between elite interests and pro-poor resistance: The Nigerian courts and labour-led anti-fuel price hike struggles (1999–2007)' (2010) 54 *Journal of African Law* 95.

wrong in law and unduly circumscribed the agency and ability of the populace to effectively resist unpopular and pejorative governmental policies.⁹⁴

Although counteracted by some adverse judicial decisions, Nigerian courts have given robust recognition to the right to protest in Nigeria as can be gathered from the above analysis. As a result of the unsettled nature of the law in this regard, however, the executive arm of government and the law enforcement agencies continue to harass and intimidate Nigerians desirous of protesting against the government with criminal prohibitions.⁹⁵ Due to the unrelenting stance and defiance of illegal bans of public protests by some Nigerian civil societies, however, there is now some kind of broadening of the right to protest in Nigeria.⁹⁶

In 2015 the Electoral Act 2010 was amended by the Electoral Amendment Act, 2015 which added two sub-sections (sub-sections (4) and (5)) to section 94 of the Electoral Act, 2010. By the newly-inserted provisions of section 94(4) of the Electoral Act 2010,⁹⁷ the role of the Nigerian police force in political rallies, processions and meetings now is limited to the provision of adequate security. This is notwithstanding any contrary provisions in any other law, the Public Order Act inclusive. By the provisions of the newly-inserted section 94(5) of the Act, no registered political party or aspirant or candidate(s) shall be prevented from holding political rallies, processions or meetings for their constitutional purpose(s).⁹⁸

What the above analysis indicates is that there is ample and robust space for the exercise of the right to protest in Nigeria. Electoral Amendment Act, 2015, however, suggests that the focus of the amendments is the broadening of the space for political rallies, processions and meetings. Whether this will be extended to cover rallies, processions and public protests generally by the courts remains to be seen.

3.3 Freedom of expression

Freedom of expression is generally acknowledged as one of the essential foundations of a democratic society and a basic condition for its progress and development.⁹⁹ The importance of the right to foster accountability and good governance has been duly noted.¹⁰⁰ In a recent publication

94 Okafor (n 93) 101-112.

95 F Falana 'The legal right of Nigerians to protest against government', <https://www.vanguardngr.com/2017/02/the-legal-right-of-nigerians-to-protest-against-government/> (accessed 9 October 2018).

96 As above.

97 Sec 12 Electoral Amendment Act, 2015.

98 As above.

99 *Handyside v United Kingdom* (Application 5493/72) ECHR 1976 para 49.

100 A Callamard 'Accountability, transparency, and freedom of expression in Africa' (2010) 77 *Social Research* 1211.

by Socio-Economic Rights and Accountability Project (SERAP), four different ways that access to information is useful in furthering the advocacy for good governance and accountability were identified.¹⁰¹ It helps to expose and fight corruption through empowering citizens to request for and track information relating to budgets, allocation and other government finances; it helps to promote and ensure accountability in governance by making it compulsory for public institutions to keep and maintain records, disseminate information and allow citizens' access to information upon request; it helps to prevent wastage of public resources through enabling citizens to track public spending and expenditure to expose waste and ineptitude; and it enables the participation of citizens in governance through keeping the citizens well informed and involved in governmental decision-making processes.

Freedom of expression is protected through the combined provisions of sections 22 and 39 of the 1999 Constitution. Section 22 empowers the press, radio, television and other agencies of the mass media to uphold the fundamental objectives in Chapter II of the Constitution and mandates the mass media to uphold the responsibility and accountability of the government to the Nigerian people. Section 39 guarantees to every person the broad freedom to impart or communicate information, ideas and opinions of all kinds and the liberty to seek and receive information and ideas through any medium whatsoever without interference. The guarantee of freedom of expression in section 39 of the Nigerian Constitution is generally acknowledged to include the guarantee of the freedom of the press.¹⁰² This position is strengthened by section 22 of the Constitution which expressly mentions the press and imposes obligations upon it as stated above.

The potential of section 39 of the Nigerian Constitution to tackle corruption was implicitly recognised by the courts in the earlier cases of *Tony Momoh v Senate of the National Assembly*¹⁰³ and *Innocent Adikwu & Others v Federal House of Representatives & Others*.¹⁰⁴ In *Tony Momoh* the applicant had published a story that indicted some members of the Nigerian Senate for corruption and abuse of office. He was invited by the Senate, who were unhappy with the indictments, to appear before it to substantiate the allegations pursuant to the Senate's powers of investigation under the Constitution. The plaintiff approached the High Court of Lagos State to challenge and quash the invitation on the ground that it contravened his right to gather and disseminate information protected under section 36 of the then 1979 Constitution (*in pari materia* with section 39 of the present Constitution). The High Court found in his favour and voided the invitation. This holding of the High Court was upheld on appeal by the

101 SERAP Using your right to information to challenge corruption in the health, education and water sectors (2018) 13-15.

102 See eg KM Mowoe *Constitutional law in Nigeria* (2008) 445-446.

103 (1981) 1 NCLR 105.

104 (1982) 3 NCLR 394.

Nigerian Court of Appeal.¹⁰⁵

In *Innocent Adikwu & Others* the applicants, who were also journalists, had published a report in a national daily about fraudulent claims of salaries and allowances by some members of the Nigerian House of Representatives. They also were invited by the House to appear before it to furnish particulars of the allegation. The applicants also approached the High Court of Lagos State to challenge the invitation as an unconstitutional interference with their right to gather and disseminate information guaranteed under section 36 of the 1979 Constitution. The Court also upheld the applicants' contention.

Sadly, however, the progressive interpretation and application of section 39 implicit in the above cases have not been carried forward in later cases; even under the relatively new innovations of the Freedom of Information Act, 2011 (FOI Act) enacted to enhance freedom of expression in Nigeria. The FOI Act was enacted in 2011 to enhance access of the citizens to information in the custody of public institutions and authorities which includes private companies utilising public funds, or engaged in the provision of public services or performing public functions in order to foster an open and accountable governance. An examination of some of the cases decided under the Act suggests that Nigerian courts are yet to fully seize the opportunity provided by the Act to promote openness and accountability in the Nigerian governance system.

Apart from the earlier decision of the Federal High Court of the Federal Capital Territory, Abuja, in *In Re: Legal Defence and Assistance Project (Gte) Ltd v Clerk of the National Assembly of Nigeria*¹⁰⁶ which vindicated the applicant's right under the FOI Act to access the details of the salary and allowances of members of the Nigerian Senate and House of Representatives of the sixth Assembly, that is, from 2007 to 2011, most cases that came thereafter have declined to follow that progressive path.

In *Incorporated Trustees of the Citizens Assistance Centre v Hon S Adeyemi Ikuforiji*,¹⁰⁷ for instance, the High Court of Lagos State declined to vindicate applicant's right to be supplied with the information regarding the cost of the overheads of the Lagos State House of Assembly between May 1999 and September 2011 under the FOI Act on the ground that the information is not within the ambit of the Act as it relates to personal information of elected officials and employees of a public institution. If the overhead and finances of a legislative arm of government is not up for scrutiny under the FOI Act, one wonders what is.

In *the Reg Trustees of the Socio-Economic Rights and Accountability Project and Others v Attorney-General of the Federation & Another*,¹⁰⁸ an application

105 *Senate of the National Assembly & Others v Tony Momoh* (1983) 4 NCLR 269.

106 Suit FHC/ABJ/CS/805/2011, delivered on 25 June 2012.

107 Suit ID/769M/2011, delivered on 14 March 2012.

108 Suit FHC/ABJ/CS/640/2010, delivered on 29 November 2012.

that the government publish the statement of account of expenditure of 12,4 billion dollars Nigerian oil windfall between 1988 and 1994 was dismissed by the Court. In addition, a more recent application under the FOI Act seeking the disclosure of the medical bills of President Muhamudu Buhari was also dismissed by the Court.¹⁰⁹ The above cases show that the courts have not taken the initiative provided by the FOI Act to foster probity, openness and accountability in Nigeria. This posture of the courts if it continues will seriously inhibit and undermine citizens' efforts to use freedom of expression to fight corruption in Nigeria.

4 Law and institutional reforms to fight graft and kleptocracy in Nigeria

The rights deployable for the fight against kleptocracy in Nigeria have been examined and analysed above. This part briefly restates the challenges and problems pertaining to the utilisation of those rights and discusses the strategies and reforms necessary for a more effective utilisation of these rights going forward.

4.1 Suggested reforms on the right to vote

The key challenges to the right to vote in Nigeria as deduced from analysis above are the absence of the right to vote, election rigging and the twin phenomenon of vote buying and electoral violence, among others. The first reform therefore will be to constitutionalise the right to vote. This will have the advantage of empowering the citizens to directly question election results where they perceive that declared results are not the due reflection of the will of the electorates at the elections. In other words, this will liberalise and further strengthen electoral accountability by placing the power to legally question such issues within the competence of every aggrieved citizen and not only within the province of political parties and candidates at elections as required by the current law. Again, in the cases of disfranchisement arising from electoral violence and intimidation of political parties and/or their candidates, electorates will be able to sue the protagonist for violations of rights. This, again, will foster electoral accountability and prevents resort to self-help and violence by aggrieved contestants.¹¹⁰

The second reform will be to deploy technology to ensure that votes count. In order to appreciate and properly apprehend the reform suggested here, a brief explanation of the dimensions and nuances of election rigging in Nigeria is desirable. Election rigging as explained by the protagonists

109 Channels Television 'Court strikes out suit seeking disclosure of Buhari's Medical Bill', <https://www.channelstv.com/2018/06/06/court-strikes-out-suit-seeking-disclosure-of-buharis-medical-bill/> (accessed 6 June 2018).

110 Ugochukwu (n 58) 554.

has many dimensions in Nigeria and ranges from thumb printing of excess and unused ballot papers to bribery of electoral and security officers, falsification of election results, snatching of ballot boxes, intimidation and harassment of voters, among others.¹¹¹ The objective of rigging is to ensure that votes do not count. One way to make the votes count is to de-personalise the result collation system and ensure real-time receipt and tracking of results through the deployment of technology. One method adopted and that appear to have worked well to reduce the incidence of rigging in the last general elections (2015) was the deployment of smart card readers. Efforts are ongoing to give the card reader statutory backing and improve on its capability and functionality.¹¹² Another suggestion that has been made to improve the accountability and transparency of Nigeria's electoral process is that the INEC should publish results of individual polling units on its website.¹¹³ This will liberalise the result collation system and improve citizens' oversight over results declared at the centre.

Other key reforms that will promote electoral transparency and accountability will be to improve the welfare and social economic fortunes of Nigerians as well as to prosecute and punish electoral offenders. These, however, are not new recommendations. Poverty and impunity are issues generally acknowledged as key to Nigeria's electoral reforms.¹¹⁴ When the economic fortunes of the generality of Nigerians improve, they will be less amenable to the vote-buying and other illicit inducements of the political class. The prosecution and punishment of electoral offenders will also serve as deterrent to like-minded violators of electoral laws.

4.2 Suggested reform on the right to protest

As stated in part 3.2 of this chapter, there is a robust space for the right to protest in Nigeria. The full exercise of this right is however inhibited by penal laws like the Public Order Act. The conflicting decisions of Nigerian courts regarding the constitutionality of the Act in *Chukwuma* and *IGP v ANPP* also do not help matters. The attempt to broaden the scope of the right to protest via the amendments in the Electoral Amendment Act,

111 Sahara Reporters 'How governors rig elections, by Donald Duke-Guardian', <http://saharareporters.com/2010/07/18/must-read-how-governors-rig-elections-donald-duke-guardian> (accessed 25 February 2018); Channels Television 'I helped rig elections, Senator Mantu confesses', <https://www.channelstv.com/2018/03/30/how-i-helped-to-rig-elections-senator-mantu-confesses/> (accessed 31 March 2018).

112 See PLAC 'Factsheet on the Electoral Amendment Bill, 2018 as passed by the National Assembly', <http://placng.org/wp/wp-content/uploads/2018/02/FACTSHEET-ON-THE-ELECTORAL-ACT-AMENDMENT-BILL-2018-AS-PASSED-BY-THE-NATIONAL-ASSEMBLY.pdf> (accessed 21 October 2018).

113 This is one of the recommendations made to INEC by participants at the Nigerian Civil Society Situation Room Dialogue with INEC held at the Transcorp Hilton Hotel, Abuja, Nigeria on 17 October 2018 which the author attended.

114 See eg the 'Report of the Electoral Reform Committee (Vol 1)' popularly known as the 'Uwais Committee Report', <http://eic.ng/wp-content/uploads/2014/03/JusticeMohammedUwaisReport.pdf> (accessed 20 October 2018).

2015 may also not help much as it appears the broadening is only with respect to political rallies, meetings and gatherings. There therefore is a need to amend the Public Order Act to bring it in line with the decision of the Court of Appeal in *IGP v ANPP*.

Nigerian courts can also take the initiative and hold that the amendments in Electoral Amendment Act, 2015 apply to all procession and gatherings and not only political meetings and gatherings alone. This will mandate the neutrality of law enforcement agents in public protests and circumscribe the incessant interference and violation of this right by law enforcement agents as well as further enlarge the scope of the right to protest to challenge kleptocracy and graft in Nigeria.

4.3 Suggested reform on the right to freedom of expression

The analysis under part 3.3 above shows that in terms of norms, there is a robust normative framework for freedom of expression that can be operationalised by citizens to foster probity and accountability in Nigeria's governance system. What appears to be the challenge is the state-centric and pro-government stance of Nigerian courts. The judiciary, however, is missing the point here. As has been noted by Uprimmy and Garcia-Villegas, whenever there is a crisis of representation in a democracy and problem(s) arise that cannot be resolved by or within the political sphere by requisite political institutions, it is the duty of the courts to rise to the occasion and fill the vacuum left by law and exclusionary practices of political actors.¹¹⁵ The courts will not be assuming or exercising any new power in this regard; they will be performing the oversight and policing roles assigned them by the norms of human rights in a democracy. Entrenched and pervasive kleptocratic practices by the Nigerian political class is a crisis of representation in the country's democratic practice and amounts to egregious violations of the human rights of the Nigerian people. It therefore behoves the Nigerian judiciary to wake up to its responsibility to arrest the scourge of kleptocracy in Nigeria through a pro-active and activist interpretation of relevant laws, especially the access to information regime, to assist citizens and civil society organisations that have indicated the intention to challenge kleptocracy in the courts through numerous *actio popularis* actions. Judicial support of citizens' efforts to root out corruption from Nigeria will be a boost to the fight against kleptocracy in the country.

5 Conclusion

The massive haemorrhage and looting of Nigerian resources by the

115 R Uprimmy & M Garcia-Villegas 'The Constitutional Court and social emancipation in Colombia' in B De Sousa Santos (ed) *Democratising democracy: Beyond the liberal democratic cannon* (2005) 71-72.

political class as highlighted in several studies and reports is not sustainable and cannot go on forever. The country is bound to go under somewhere along the line. Two, there is need for radical and innovative ways to fight kleptocracy in Nigeria because the complicit political class and their cronies are not likely to stop on their own any time soon. Three, the fight against kleptocracy in Nigeria cannot be left to the Nigerian government alone. Available evidence suggest that the government is either unwilling or lack the capacity or is both unwilling and without capacity to prosecute the fight to a conclusive end. Four, emerging studies suggest that anti-corruption campaigns are sometimes a cloak for political power consolidation and perception management and not meant to achieve any concrete results. For the fight to be effective and all-encompassing, therefore, governmental efforts and initiatives have to be completed by citizens' efforts and initiatives. Finally, Nigerian citizens must be enabled to participate in the fight. One of the fruitful ways to do this is through the instrumentality of citizens' rights, the potentials and challenges, which have been well articulated in this chapter. It therefore is not correct to say that the citizens' rights approach to the fight against kleptocracy does not count because of its lack-lustre performance thus far. The minimal effects of citizens' approach to corruption in Nigeria are not at all due to any defects in the approach but due rather to the lack of sustained struggle and utilisation of the approach as have been pointed out in the chapter. It is in light of these that this contribution has identified and analysed the different rights deployable in aid of the fight against kleptocracy in Nigeria. The challenges and problems bedeviling such deployment and what can be done to surmount those challenges have also been articulated.

Finally, it is worth repeating to state here that there will be an end to kleptocracy and appropriation of the common wealth of Nigerians by the Nigerian political class and their cronies only when the Nigerian people are enabled and able to stand up to say enough is enough. Anything to the contrary will continue to be mere window dressing. There is a need therefore to continue to explore ways and strategies to empower the generality of Nigerians for the fight. This is the end to which this study is geared.