

The Role of Law in Tackling Corruption in Education

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ABSTRACT: *Education is a fundamental right of every citizen but corruption impedes the realization of this right because it makes access to education difficult. This paper brings together the roots of corruption in education, examines the underlying effects and showcases the role education itself and the law play in combating this menace. Recommendations are then made. It is noted that strategies to prevent corruption in education should consider strengthening communication, education of civic values, respect for established criteria and rules for all issues in the education sector.*

KEYWORDS: role, law, corruption, education, Nigeria

INTRODUCTION

Education promotes personal and social development. Parents try all means to give the best education for their children while nations disburse large sums of money to the education sector to ensure the best is attained for the sector. Education is generally recognised as a fundamental human right (Gerber & Castan, 2013), but in Nigeria, it does not enjoy this elevated status because the Constitution of this country tags it as a social non-justiceable right.

However, whether it is treated as a fundamental human right or a mere social right, the importance of education to personal and national development remains sacrosanct. When access to education is impeded, the potential of individual and national development is squandered. Corruption in education is a major barrier to the realization of the universal right to education. In fact, corruption violates the right to education. Transparency International's (TI) latest global report reveals that corruption in education is not just a Nigerian problem, but a global one (TI, 2013). The report surveyed twenty-four countries and revealed that Ghana has the highest percentage of people who paid bribe in education (39%) followed by Cameroon with 38%. Nigeria came third with 29% while Hungary is the least with 1%. The table below shows the level of corruption in different countries.

S/N	Country	% of People Who Paid Bribe in Education
1.	Ghana	39
2.	Cameroon	38
3.	Nigeria	29
4.	Turkey	28
5.	Kenya	26
6.	Afghanistan	21
7.	Papau New Guinea	20
8.	Global Average	18
9.	Pakistan	18
10.	Morocco	18
11.	Vietnam	18
12.	Bangladesh	17
13.	Armenia	16
14.	United States	16
15.	Peru	14
16.	Bosnia and Herzegovina	12
17.	United Kingdom	11
18.	Romania	11
19.	Vanuatu	11
20.	Greece	10
21.	Chile	8
22.	Nepal	6
23.	Georgia	4
24.	Rwanda	2
25.	Hungary	1

Source: TI, 2013

Redovic-Markovic (2013) define corruption in education to mean “*the systematic use of public office for private benefit, whose impact is significant on the availability and quality of educational goods and services, and has impact on access, quality or equality in education.*”

From the above definition, it is seen that corruption in education affects the access or availability and quality of education. Corruption in education occurs in many forms. The different strands of corruption are considered below.

Typology of Corruption in Education

Extortion is one major type of corruption in education (Hedge, 2016; Phong, 2010). Extortion takes different forms (Nguyen, 2007). It can arise through levies or contributions (Hallak & Poisson, 2007). This is seen in examination, buildings, sports, acceptance for admission and registration fees in schools (Chinyere & Chukwuma, 2017; Mabuza, 2015). Sexual favour is another type. This occurs when female students are enticed to render sexual services in return for unmerited grades or positions. Although sexual favour is not limited to female students, it is observed that they are the major victims. However, there are cases where male students have been victimized for resisting overtures from female lecturers. Sexual harassment also occurs among academic and non-academic staff of institutions of higher learning.

Another type of corruption in education occurs when teachers and lecturers demand outright bribe from students to save their career. This is known as 'sorting'. Staff who keep academic records collect bribe from students to distort academic records. The admission process is another instance. Parents use their family and political connections to secure undeserved admission spaces for their children especially in competitive professional courses such as engineering, law and medicine. Favouritism and nepotism in hiring and promotion of teachers is a type of corruption in education. Teachers and lecturers may be employed and promoted without merit, while dishonest ones are spared disciplinary measures on clannish consideration. In the area of academic research, lecturers compromise or distort research results to accommodate the interest of their corporate sponsors. This affects the integrity of research findings.

Private tutoring is another type of corruption in education. Teachers charge money for private teaching hours for what they are normally paid to teach. In Nigeria, terminologies that are used to label such practices include: lesson, extra-mural and tutorials. Non-justifiable absenteeism is another source of corruption in education. When teachers absent themselves from duty for political campaigns and other unofficial activities, it corrupts the education system.

Parents and wealthy students often present gifts to lecturers to entice them for academic favours. When this happens, merit is sacrificed, and this amounts to corruption. The award of education contracts to incompetent contractors and the padding of the education budget are also types of corruption in education. What are the factors that give rise to this pervasive issue of corruption in education? These are considered in the next section.

Factors That Give Rise to Corruption

Education is vulnerable to corruption by two main factors: (a) The high privilege of education opportunities and the large sums allocated to fund it (Heyneman, Anderson & Nuraliyeva, 2008); (b) Desire of parents to ensure advantage of their children.

- a) ***The High Privilege of Educational Opportunities and the Large sums Allocate to Fund it:-*** Education is a key factor for human development. It is a recognized fact that the

outcome of schooling determines the future of individuals and nations. Formal education is a tool for selecting people for appropriate roles in society. The absence or inadequacy of education deprives young people of the tools needed to achieve prosperity (Feinberg & Soltis, 1985).

In Nigeria, a person must have a minimum of school certificate for eligibility to contest parliamentary, governorship or presidential election. Because of this, some political appointees use their position and resources to register for West African School Certificate (WASSCE) or the National Examination Council. They, thereafter, pay people to write the examinations, so the certificates some people present were not properly earned.

Because of the perceived high stakes of education, it is an attractive target for political manipulation (Chapman, 2002). The high privileges for educational opportunities give those who provide educational services a strong position to extort favours or funds.

b) *Desire of Parents to ensure Advantage of Their Children*

There is also a tension between the general notion that merit should be the basis of educational success and the particular desire of parents to ensure the advantage of their children (Heyneman, 2009). Those who possess power and resources will strive to capture the benefits of education for themselves and their families.

Elites tend to reproduce existing power relations through schooling, often resorting to corrupt behaviours because they see such behaviours as widespread, and feel that they cannot afford to be honest (Fehr & Fischbacher, 2005). When schooling accustoms youths to corruption as a social norm, its cycle begins anew in each generation. Corruption thus represents the failure of a society to manage the competing interests of different groups in a fair and meritocratic way.

The risk of corruption in education is magnified by the sheer scale of educational expenditures, both private and public. In most countries, education is the first or second largest recipient of public funds. Education is frequently the sector that has the greatest funds being disbursed to the greatest number of recipients at multiple levels and therefore, it is at great risk of leakage. Corruption risks are particularly dire when public funds are filtered through multiple administrative layers, and pass through the hands of a series of actors with little accountability.

The costs of education are not simply those carried by the public but also those incurred by families and individuals who choose to enroll their children in tutoring, private schools or other forms of instruction outside the public system. When private expenditures on supplementary education are essential for success in schooling, there is an increased risk of perpetuating social disparities and corrupt practices.

Additionally, in the last decade, Education for All (EFA) framework has directed significant development aid to provision of universal primary education, increasing the scale of the funds subject to the risk of funds being diverted for private gain at its multiple levels. By 2009, aid to basic ed

education alone exceeded US\$5.5 billion world wide (UNESCO, 2012). Those receiving the most aid are often the least equipped to make sure it meets its intended target.

Scaling up to universal access requires a steady supply of well-trained teachers and educational professionals, as well as logistical networks, capable of ensuring that educational delivery is supported and appropriately supervised. Over a decade after the adoption of the Millennium Development Goals (MDGs, corruption has been identified as a key impediment responsible for the fact that there has been insignificant progress towards achieving education for all (TI, 2010).

The next section examines the impact or effect of corruption in education.

Impact of Corruption in Education

Corruption in education allows people to succeed without merit. This leads to swelling the ranks of incompetent leaders and professionals. People with intellectual capability will not realize their potential to learn not because they cannot master the curriculum but because they cannot obtain their fundamental rights or will not play by the corrupt rules. Corruption in education does lasting harm to all members of society, especially those who are vulnerable success or disadvantaged (Aziz & Gurgur, 2013). Unable to play by the rules that determine success or bear the financial cost of corruption, poor and marginalised groups find themselves cheated out of the promise of educational opportunity. Whether by leaving education altogether or by curbing ambition in response to the contradictions of a corrupt classroom, vulnerable members of society lose opportunity to realize their potential for common benefit. When this is the case, the equalizing function of education is undermined or utterly lost, to no one's long-term benefit. In the long term, corruption in education has adverse implications for education equality and learning outcomes.

The longest shadow of corruption in education is cast by its place in the norms and values imparted to young people in the course of schooling. The spoken and unspoken rules taught in schools are known to play an equally significant role in the student's formation as the official criteria of academic success. (Meighan & Herber: 2007). If young people see corruption as an indispensable means for getting ahead in education, they are more likely to engage in corrupt behaviours well into adulthood.

Whether in the developed or developing world, corruption in the education sector sometimes becomes a matter of life and death. When corrupt teachers demand sexual favours in return for grades, students find themselves caught in a bind: the only path towards a better life in the future requires risking it in the present (Leach, 2013). People's lives are put in danger by poorly trained but well-credentialed doctors and engineers, as well as researchers at academic institutions who introduce bias or fraudulent outcomes into scientific record (Robinson, 2013).

Preventing and prosecuting corruption in the education sector is, therefore, not just a matter of fairness but a fundamental safeguard of human lives as well. How can the menace of corruption in

education be tackled? This can be achieved through education and research as well as through the law.

The Role of Education and Research in Tackling Corruption

We need more and better education and research in order to eliminate corruption in education and research. Education is a powerful tool in dismantling the structures and cultures of corruption. Investment in education correlates to decrease in corruption over time, and decreases in corruption further increases in investment and the resultant improved quality of education.

Three factors are known to play roles in curbing corruption. By giving citizens the tools and motivation to keep themselves informed, education creates a wider market for a free press, which is a vital tool for keeping corruption in check. Better educated people are more likely to know their rights and enquire into government misconduct (Botero, Ponce & Shleifer, 2012).

Secondly, education also curbs corruption when it leads to the reduction of economic inequality. Economic inequality increases corruption (Uslaner, 2008), while education tends to equalise access to economic opportunities. The expansion of free public schooling decreases overall levels of disparity (Morrison & Murtin, 2009).

Thirdly, education builds self-reinforcing social trust (Hellmell & Putnam, 1999), which is in turn known to play an important role in curbing corruption. If people believe that education makes others more trustworthy, they are more likely to mirror their expected behavior and act more honestly (Rothstein 2011). For these reasons, the expansion of high-quality public education is a superior investment in the long-term integrity of a nation. When such expansion is implemented in corrupt ways, the vital benefits of education as an equaliser and generator of public trust are undermined at the most basic level.

Using Law to Tackle Corruption in Education

Corruption is a crime so criminal law is used to tackle it. The battle against corruption has generally been framed in terms of using and strengthening criminal justice system. Controlling corruption has been accomplished by enhancing the State's capacity to prevent, detect, investigate and prosecute violators, and by improving anti-corruption laws and regulations. The most robust rule-of-law approaches, whether strengthening whistle blower protection, improving access to justice or establishing investigative bodies, are designed to reinforce the prospects of criminal prosecution. A notable weakness of the focus on criminal justice in the fight against corruption is that, ultimately, success in reducing corruption is dependent upon vigorous enforcement of the criminal law by state authorities through investigation and successful prosecution. If the required level of investigative and prosecutorial vigour is not present, corruption will continue. Even when prosecution is attempted, its success depends upon overcoming the high standard required in criminal proceedings.

One other obstacle is when the investigator or investigating authority is corrupt. Where the law enforcement officers in charge of criminal investigation are corrupt, nothing positive can come out of the investigation.

While criminal prosecution should remain the centerpiece of anti-corruption efforts, there is a growing interest in the use of private civil actions to fight corruption. There may be particularly relevant fight against corruption in education, which in turn may be a good testing ground for the civil actions approach, in which such remedies as injunction against the barring of a student from admission to a school, the recovery of an illegal fee extorted from parents under duress, or the disciplinary sanctions of school official for failing to register a child in school are clearly more valuable to a victim and society in general than ensuring that the perpetrator is convicted of a criminal offence.

In situations where the prosecutor is inactive, civil suits may be an alternative. Instances when civil suits may be used in cases of corruption in education include examples where a school teacher abuses his or her position of trust for personal gain, the parents may initiate civil action against the violator and the school for damages, and restraining order in cases of harassment. If a child is refused admission to a school because the parents did not pay a requested bribe to a school administrator, the parents could initiate a suit to compel admission of the child. If the parents are forced to pay an unofficial fee to a school administrator to secure admission of a child, the parents could initiate an action for the refund of the unlawful fee.

Legal Basis for Criminal and Civil Actions

The legal basis for criminal actions in Nigeria is the Constitution, Criminal Code, Penal Code, Administration of Criminal Justice Act, the Economic and Financial Crimes Commission (EFCC) Act, Independent Corrupt Practices and other Related Offences Commission (ICPC) Act.

The legal framework needed to support private civil actions is well established in the Constitution of the Federal Republic of Nigeria, 1999 as amended. Most civil and common law jurisdictions recognize the right of private individuals and entities to initiate legal proceedings to recover damages or other remedies for harm suffered as a result of intentional acts.

It is perhaps of greatest significance that the right of private parties to instigate civil proceedings against corruption has now been recognized in key international treaties. The Council of Europe's Civil Law Convention on Corruption provides the right to compensation for damages resulting from an act of corruption and requires that each state legislates for the right to bring a civil action in corruption cases.

The extensive adoption and universal application of the UN Convention Against Corruption (UNCAC) makes it arguably more significant. Article 35 of the Convention requires that State parties ensure that entities (including states) and legal and natural persons who have suffered damage as

a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation. Further, article 53(a) provides that states can initiate civil actions in connection with asset recovery proceedings.

Despite these developments, awardees of the civil law option in the fight against corruption in education, is low in the general public. This might change through better communication of the notable advantages of the civil actions approach.

Challenges of the Civil Actions Approach

There are several difficulties with civil suits against corruption as outlined below:

1. The approach is seldom used. Thus, there is shortage of jurisprudence and experience to provide guidance in the preparation and pursuit of legislation.
2. The fear of consequences which inhibits whistle-blowing would have to be overcome. It takes a brave soul to file civil suit against a public official in any country.
3. The surreptitious nature of corrupt acts makes them difficult to prove. Without sufficient evidence, a suit is not likely to be successful.
4. Cost of launching civil suits, the time needed for litigation, the need to identify assets against which the judgment can be enforced and the possibility of them requiring asset-freezing orders to ensure that a judgment can be paid.
5. The problem of establishing causation between the corrupt act and the damage suffered, as well as the actual calculation of damages.
6. Finally, the possibilities of initiating civil actions presume a transparent and functioning judiciary. This may not be present where the judiciary is weak and courts are clogged with backlog of legal claims.

Public Interest Litigation for Corruption in Education: The SERAP v. Nigeria Case

Public interest litigation is a veritable tool to fight corruption in education. The SERAP v. Nigeria, Suit No. ECW/CCJ/APP/12/07, Judgment No. ECW/CCJ/JUD/07/10 was brought before the Community Court of Justice (CCJ) of the Economic Community of West African States (ECOWAS) by the Socio-Economic Rights and Accountability Project (SERAP). [In 2006, SERAP received information from whistleblowers alleging massive corruption by Nigeria's Universal Basic Education Commission (UBEC), a body established by the government with the aim of ensuring basic education in the country. SERAP submitted a petition to Nigeria's ICPC in January 2007, to undertake formal investigation. The ICPC investigation revealed that N3.3 billion (US\$21 million) had been lost in 2005 and 2006 to the illegal and unauthorized utilization of funds. SERAP estimated that, as a direct consequence, over five million Nigerian children lack access to primary education.

The findings of the ICPC report gave SERAP the impetus to file a right to education case before the ECOWAS Court in Abuja, arguing that corruption in UBEC amounted to a denial of the right

to free, high-quality and compulsory education for Nigerian children as provided by article 17 of the African Charter on Human and Peoples Rights.

In a landmark judgment delivered in November 2010, the CCJ noted that there was prima facie evidence of embezzlement of funds on the basis of the ICPC report. The court upheld SERAPs submission and declared that the Nigerian government has legal responsibility to provide as of right, free, high-quality and compulsory basic education to every Nigerian child. The court asked the government to ensure that the right to education was not undermined by corruption. The CCJ held that UBEC has the responsibility of ensuring that funds disbursed for basic education are used properly for this purpose.

Although the government failed to implement the judgment, the case highlighted the high impact that a nations civil society organization could have in utilizing public interest litigation, through human rights law, as a means to tackle corruption in education in Nigeria (Mumuni, 2013).

Recommendations

In view of the impact, effects and challenges of criminal and civil suits in tackling corruption in education, the following recommendations are made:

1. ***Whistleblowers' Protection:-*** Safeguards can protect and encourage people willing to take risk of speaking about these crimes. We must demand a commitment to high quality education that is available to us. For this, we need policy information that is clear and easy to understand. National, district, school and university budgets need to be published in detail so that we can monitor how resources are allocated. Confidential complaint channels are essential to report suspected corruption without fear of retaliation.
2. ***Policies in Teacher Appointment and Promotion:-*** There should be well established criteria for teacher recruitment, uniform policy on teacher promotion and deployment. No teacher should be appointed without proof of their qualifications and experience.
3. ***Policy on Remuneration:-*** The most obvious links with corruption arise when teachers provide extra fee-charging tutoring for students for whom those teachers are already responsible in regular classes. Some teachers reduce the content in their regular lessons in order to stimulate demand for the supplementary lessons. In many cases, a link may be made between tutoring and teachers' salaries. In many low-income countries, such as Nigeria and South Asia, it is difficult for teachers to meet their families' basic needs with only their official salaries. The teachers, therefore, turn to private tutoring (which in a formal setting is unethical) as an obvious way to support their incomes. The remedy to this problem lies in an enhanced salary policy.
4. ***Education Regulations:-*** We all want the best possible education for our children, but corruption causes poor teaching and unequal access to schooling. Tighter regulations are essential. It is important to have clear regulations controlling education, finance and management. These give guidelines on new schools, examination processes and fees. There is need to also push for examination regulations to be widely published. Also grading must

be monitored so that students do not have to buy their way to undeserved scores and grades.

5. **External Audit:-** Regular external audits must take place to detect and deter fraud. Also funds disbursed for education must be tracked.
6. **School Inspection:-** Frequent school inspections can prevent corruption in teacher management and behavior.
7. **Penalties for Abuses:-** There should be consistent penalties for abuses in the education process.

CONCLUSION

Corruption is like the salt in the sea water. It cannot be eradicated unless drastic measures are taken. Strategies to prevent corruption in education should consider strengthening education on civic values and respect for established rules, guidelines and criteria. Consequently a programme should be embarked upon to educate the educators. In May 28, 2016, Transparency International organized a seminar at the Pedagogical Institute of Cyprus (TI-C). TI-C has included in its strategic plan for 2016 the important issue of education in an effort to raise awareness and build capacity for primary school teachers on transparency, corruption and education.

The programme is designed to be integrated in the broad objectives of the Ministry of Education in Cyprus. All related thematic areas of each taught subject were identified and material was prepared in an effort to assist teachers as to what to discuss in each subject.

The aim is to raise awareness for grade 5 and 6 pupils on topics such as integrity, objectivity, nepotism, corruption, bribery, transparency, etc. Teachers have also been provided with teaching material, classroom posters and audio visual material.

Students would be more alert, listen to the news and discuss with their parents cases of corruption that were in the media.

Teachers can organize composition, art, poetry competition, as well as play writing and acting of relevant topics.

The aim of the programme is to raise awareness for children and young people to respect the laws and develop their moral fibre.

The programme is highly recommended for primary and secondary schools in Nigeria. More of such seminars should be conducted for interested teachers who will act as the force to building capacity for youngsters and ensure that they will not tolerate corruption in schools.

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