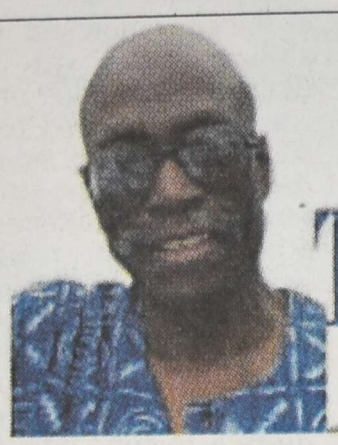

Talakawa Liberation Herald (127)

BIODUN JEYIFO

Between Sagay and Falana: the law, the people and the social cannibalism of corruption (1)

The first thing we do is kill all the lawyers.
Shakespeare, *Henry VI*, Part 2

Doctors are just the same as lawyers; the only difference is that lawyers merely rob you, whereas doctors rob you and kill you too.
Anton Chekhov, Russian dramatist

•"The Supreme Court" - Shakespeare did not have this building and its occupants in mind when he wrote, "the first thing we do is kill all the lawyers"!

ON Saturday, July 13, 2013, I gave a public lecture at the Nigerian Institute of International Affairs (NIIA) under the auspices of the Wole Soyinka Centre for Investigative Journalism. The lecture was titled "The Freedom of Information Act and the Dictatorship of Corruption and Mediocrity". In the extensive research that I conducted before writing and delivering the lecture, I came across many facts, figures and statistics that both depressed and enraged me to no end. Of these, no item among my discoveries was as depressing and infuriating as my finding that a Sub-Committee of the House of Representatives had issued a comprehensive report on the oil subsidy mega-scam of 2011 in which the names of all those who had wrongfully and illegally benefitted from the scam had been published, together with the astronomical sums that each of these Nigerians had looted. I swear that before conducting that research for my lecture, I had been completely unaware that the names of the mega-scam looters were known, that they were not shadowy figures who had forever disappeared into the night of personal anonymity and legalistic oblivion. But together with my astonishment that these men and women were known and indeed meticulously identified, there was also my greater frustration that they had all without exception tied up the cases pertaining to their prosecution in the law courts by all manner of so-called "interlocutory injunctions" and "stay of execution" writs. That was in the year 2013. Two years later, the cases are still tied up in the law courts and not a single one of the men and women indicted in that oil subsidy mega-scam has either paid a kobo back or gone to jail. Their lawyers and the judges before whom their cases are being tried have seen to that; they have provided what seems to be a permanent and impregnable juridical cover and protection for these men and women whose looting of our national coffers has caused untold suffering and hardship to millions of Nigerians. In this context, the law may be said to be the last refuge, the last redoubt of the looters who, as human vampires, are sucking the blood from the economic arteries of our national commonweal.

If the language I am using here seems too emotive, too sensationalistic, I plead guilty to the charge. Even more, I plead guilty to the charge of deliberately clothing myself in a long tradition of savage linguistic and literary critique of lawyers and the law as moral cesspits wherein some of the most unscrupulous and cynical professionals can be found. This is the context that makes the extraordinarily ferocious attack on lawyers in Shakespeare's *Henry VI, Part Two*, that supplied the first of the two epigraphs to this piece seem not too harsh, not too extreme: "The first thing we do is kill all the lawyers". This was said by a character in that play against the background of a looming uprising of the people against centuries of oppression by their social superiors in which lawyers had played a significant role in maintaining the legal infrastructures and practices of a dog-eat-dog social order. I quote the words here in the hope, the wish that the lawyers and the judges who have for long prevented the men and women bleeding our country and its resources dry may perhaps get a glimpse of the sentiments that some of the world's greatest literary minds have expressed about them and their kind.

The second epigraph from the great Russian dramatist, Anton Chekhov, seems a tad gentler in its critique of lawyers and the legal profession on the same count of being always prone to acting as accessories to cynical, merciless robbery: "Doctors are just the same as lawyers; the only difference is that lawyers merely rob you, whereas doctors rob you and kill you too". However, if we juxtapose this ludic and playful Chekhovian quote with the one from Shakespeare's play, we can see that lawyers, like incompetent and conscienceless doctors, kill too. They "kill", not directly and interpersonally but by the indirect and epiphenomenal effects and consequences of the legalistic protection and cover that they give their clients, the looters who, it seems, can never be successfully prosecuted in the law courts of the land.

If all this talk about "killing" seems unwarranted in its application to lawyers and judges that are, after all, merely practicing their lawful profession (no pun intended), please consider the N2.53 trillion naira that was looted in the oil subsidy mega-scam; consider too, the fact that thanks to lawyers and judges, not a kobo of that loot may ever be recovered; and finally, consider the number of lives that could have been saved or made richer and more fulfilled if a fraction of that N2.53 trillion naira had been productively spent to create jobs, build roads, improve hospitals and clinics and raise the quality of teaching in our primary and secondary schools. And indeed, there are no *literal* cannibals anymore, if ever they existed as a distinct social or "tribal" group; what we have now and have aplenty, thanks to many of our best trained lawyers and judges, are *social* cannibals who have not the slightest inkling that they are "killing" hundreds of thousands, millions through the sense of total protection that they feel when they loot, and loot, and loot yet again.

At this stage, it is perhaps time in this discussion to bring into our conversation two lawyers who indeed recently have had much to say on these issues. Moreover, they are eminent, progressive and patriotic lawyers. These are none other than Professor Itse Sagay and Mr. Femi Falana, SAN. In an article published in **The Nation** on Sunday, July 19, 2015, titled "Politics, Public Service, Morality and Integrity in Nigeria", Sagay more or less admitted that the law and the manner in which it is applied in our law courts at the present time make it near impossible to recover stolen loot and put an end to rampant corruption. Indeed, so sanguine was Sagay on this point that he was quite willing to go as far as to suspend the protection of the individual rights (of looters), if any headway is to be made in the struggle to recover stolen loot and curb corruption in our society. Perhaps it is best to hear directly from the Professor himself on this point:

"There will a need to amend our laws to strengthen the state at the expense of individual liberty at least for a short while, if we are to get to redemption point. All legal provisions permitting preliminary objections to prosecutions for corruption must be repealed from our laws. The power of any court to issue an order of injunction against a trial for a crime, particularly corruption, should be repealed. Interlocutory applications, in cases concerning corruption, should be banned.

You cannot read such words from the pen of a lawyer who is also a teacher of lawyers and still repeat, like a robot, the savage indictment from Shakespeare, "the first thing we do is kill all the lawyers"! For in the struggles against the social cannibalism that is at the root of the corruption that has penetrated so deep into the political, economic and juridical order in our country, some of the most eloquent voices have, in fact, been that of lawyers. As everyone knows, Sagay and Falana have been frontline professional and intellectual activists in those struggles.

And indeed, the main point of my bringing Sagay and Falana together in this piece is precisely to try to reconcile what seems to me to be a tension, a contradiction between recent pronouncements of both men on this issue of the seemingly immovable obstacle that the law and its operations in our country pose to the fight against corruption by the new administration of President Buhari. On the one hand, Sagay says laws must be repealed and that we may even have to suspend protection of individual liberty, at least for a while. But on the other hand, Falana says that the enabling acts have now been enacted by the National Assembly and that all that is required now is for the bills to be forwarded to Buhari for them to be signed and made into effective laws. How did I come by this information? Well, Falana himself through an email forwarded to me a speech that he recently gave that contained these claims. The speech was a keynote address that he gave at the 7th Annual Distinguished Lecture of the Nigerian Institute of Quantity Surveyors (Lagos Chapter) on Tuesday, July 21, 2015. The lecture bore the title, "Involvement of the Nigerian people in the anti-corruption war". Here's a relevant quotation from the lecture:

"While the decision of the Federation (sic) Government not to interfere in the work of the anti-graft agencies is a welcome development, the National Assembly should forward to President Buhari for his assent the Witness Protection Bill and the Whistle Blowers' Bill. The National Assembly deserves commendation for enacting both laws together with the Administration of Justice, 2015.

Under the new Act, the granting of stay of proceedings and other delay tactics have been banned in the trial of criminal cases. Accordingly, a criminal trial shall be concluded within 6 months unless there are exceptional circumstances which may prolong any trial beyond that period. Indeed, the elevation of trial judges to the Court of Appeal will no longer lead to fresh trial before other judges as judges will be given the fiat to conclude part heard matters."

Have the issues raised in Sagay's article been resolved by the revelation of the passing of new laws by the National Assembly in Falana's lecture? And is this a matter to be settled only by and among lawyers? These will be our starting points in next week's concluding piece.

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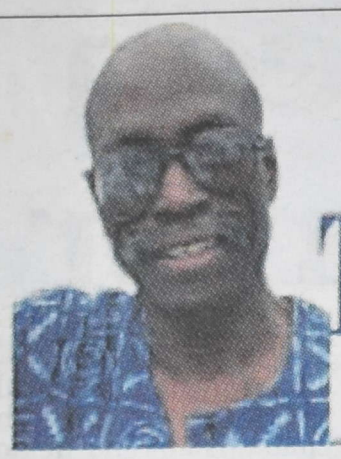


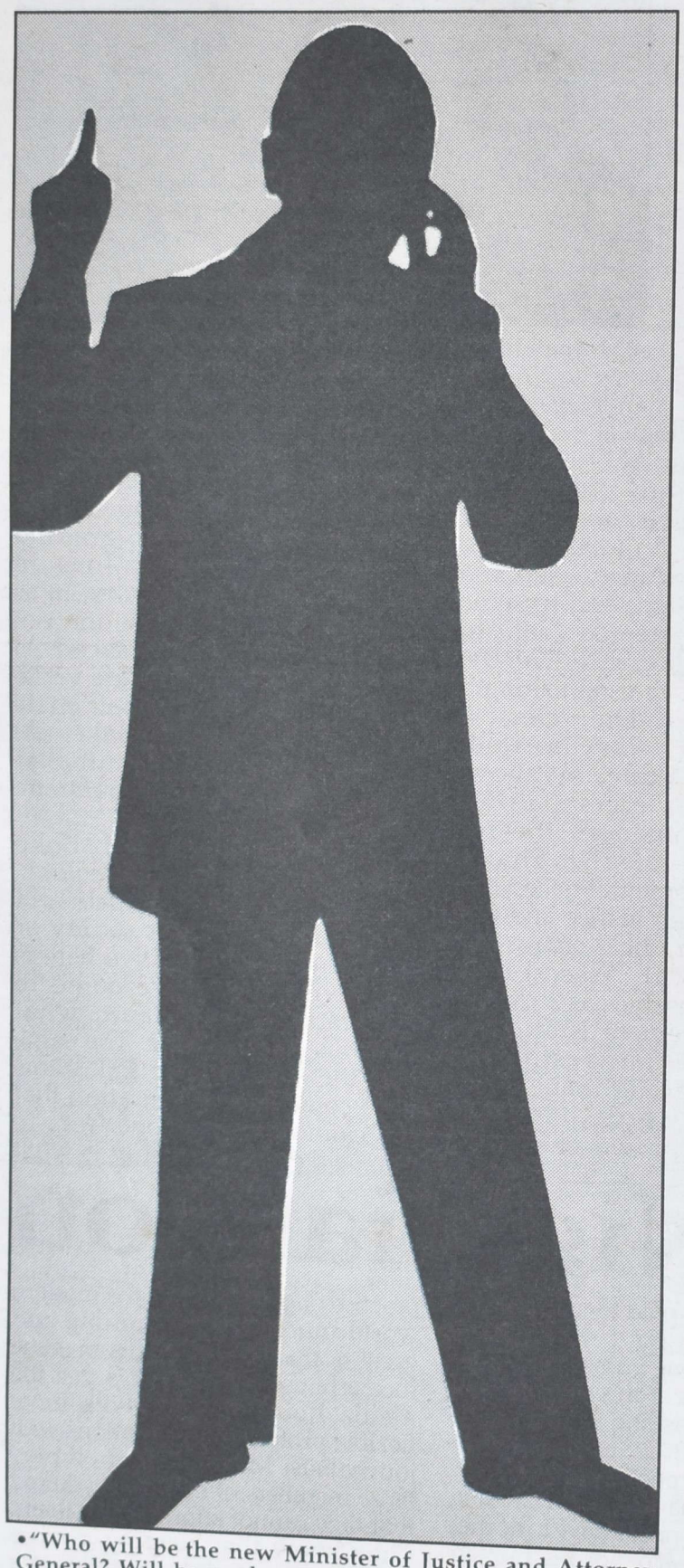
Talakawa Liberation Herald (129)

BIODUN JEYIFO

In the war against corruption effective prosecutions not probes are the ultimate weapons

I START my column this week with two separate but related questions and their answers, together with the known, documented effects of the answers. First question: what does a probe of probable or suspected cases of looting of government revenues or assets achieve? Answer: if successful, it will reveal the identities, the names of the culprits, together with the sums they might have stolen. Known and documented effects: in most cases no effect is achieved; there are no punishments, and no refund of stolen loot. Second question: what will vigorous and effective prosecution of identified and named culprits of looting of government or public funds and assets achieve? Answer: it will recover vast amounts of stolen loot; it will send culprits to long terms of imprisonment; and it will serve as a warning, a deterrent to others that corruption will be met with the full force of the law in our country. Known and documented effects: None, precisely because vigorous and effective prosecutions of criminal looters have been virtually absent in our law courts for at least the last decade and a half; our country is a looters' paradise, the most redoubtable in the whole world.

The causative background to this series of questions and answers is the controversy currently raging over the announcement of President Buhari that his administration's probe of corruption in our country will be limited to only the administration of his immediate predecessor in office, Goodluck Jonathan. I am not uninterested in the controversy, but I confess that it is of very mild interest to me. If I had to take a clear and unambiguous position on the issue, it will be that Buhari ought not to limit the probe to the Jonathan administration, that all the administrations since the return to civilian rule in 1999 should be probed. This is because, absolutely without any exception, looting with impunity was a constant and invariant phenomenon as much in the Obasanjo and Yar' Adua administrations as in the Jonathan government. For this reason, Buhari is playing into hands of those who, for their own self-interested reasons, have been making loud and acrimonious noises that the new administration's intended probe is nothing but a witch-hunt directed solely at the Jonathan administration. And now having stated my own views on the matter, I wish to say with as much emphasis as I can muster that this controversy is a diversion away from the most serious area of the war against corruption and its ramifications for the survival of our country. This area is none other than vigorous and effective prosecution of criminal cases against our high and mighty class of "untouchable" looters. Permit me to make a few comments in support of this observation, this claim.



•"Who will be the new Minister of Justice and Attorney General? Will he or she wrest control of the law from the 'lootocrats'?

It is an understatement to say that probes relating to official corruption are not lacking in Nigeria for indeed, there are few places on the planet with as many probes and investigations of corruption as in our country. Indeed, if probes had any positive connection to the war on corruption, Nigeria would have emerged more than a decade ago as one of the countries in the world with the lowest levels of official or governmental corruption. As a matter of historical fact, the tradition goes all the way back before 1999 to the period of military dictatorships. So endemic, so constant but so utterly of little or no use is the legal-administrative culture of probes into corruption in our country that there have been even probes to probe probes! In my recollection, the most recent of such uniquely Nigerian and endlessly redundant "probes-to-probe-probes" is the well known scandal-within-a-scandal involving the Hon Farouk Lawan. As readers of this piece may recall, in the probe into the oil subsidy mega scam of 2011 by a Committee of the House of Representatives that Lawan chaired, he was caught in a bribery setup that then attracted a probe of Lawan and his Committee by a Sub-Committee of the same House of Representatives. In that notorious case, neither the person being probed who bribed Lawan nor Lawan himself paid any significant price for the revelations of both the initial probe and the subsequent probe-to-probe-the-probe.

Given this inglorious history of probes in the war against corruption in our country, the reader may wonder why so much discursive energy and political capital are invested in calls for probing either only the Jonathan administration or all the administrations since 1999. Is it because probes and their revelations act as a sort of shaming ritual against our "lootocrats"? Perhaps. On this account, deep down in the Nigerian collective psyche and popular imagination is the conviction that the law in general and most of our very senior lawyers, and a great number of our magistrates and judges are there to protect the lootocrats. On this account, the thinking is that at least if, thanks to the prevailing judicial system, you can't jail them and you can't make them pay back what they have looted, you can at least shame them by revealing through probes who they are and how much they have looted. If this underlying logic holds true, it means that ours is a society that has already lost the entire war against corruption even before the first battle – in the law courts – has been fought and lost. And there is also the fact that our looters are completely beyond shame; indeed to the contrary, they normatively wear their "shame" like a badge of honor, unfortunately with the connivance of the popular masses, the looted and the disenfranchised.

The great challenge now is to shift the indisputably great public interest in the success of the war against corruption away from calls for or against probes to why it is that the battles are nearly always lost in our law courts and what we need to do to end the control of the law by the looters and their advocates. In making this particular observation, I ask the reader to please reflect on the fact that only a very tiny segment of civil society organizations and individuals, trade unions and professional associations, and students' bodies and voluntary organizations pay careful and sustained attention to what goes on in our law courts with regard to how the high and mighty of the land who have looted and continue to loot our public coffers control senior lawyers, judges and magistrates. As I write these words, there are dozens, indeed scores of cases tied up in our law courts more or less permanently against successful prosecution. In the few cases where accused culprits are actually tried and found guilty, the "punishments" are so light as to be laughable in their ineffectiveness, either as punishment or as deterrent. I cite just a few of these. One: John Yakubu Yusuf who admitted to stealing more than 2 billion naira from Police Pension Funds; he was given only two years jail sentence but with an option of a fine of N750,000 naira which he paid and then walked away a free man. Two: the Judge who gave him this "handshake" of a sentence, Justice Abubakar Talba, was found compromised by the National Judicial Council (NJC). What punishment did the NJC give him? One year suspension from duties without pay! Three: a certain Justice Okechukwu Okeke of the Federal High Court who, in his appearance before the NJC, had no convincing defense against the numerous petitions against his judgments; he was not sanctioned at all but was let off the hook because his retirement was close at hand!

I am not of course saying stop all probes; far from it. Probes have their uses, especially if and when they are complemented by vigorous and effective prosecutions. What I am saying is that beyond the calls for probes, please pay far greater attention to what is going on in the law courts! The names of the most active and notorious senior lawyers, magistrates and judges who provide cover and protection to the lootocrats should be publicized. Tear away the cloak of judicial respectability and personal anonymity from their "illustrious" careers! Don't scapegoat them in place of the lootocrats themselves, but unmask the hidden symbiosis between the two groups! Above all else, pay attention to the Administration of Justice Act of 2015 and fight with all your moral energy and political imagination to make sure that the provisions of this new Act are enforced in our law courts.

Naturally, the reader will wonder: what exactly is the Administration of Justice Act of 2015 about? Well, here I must confess that I have myself just come into knowledge of both its clearly revolutionary implications and the tremendous obstacles that we may expect from the forces both inside and outside our judicial system who benefit from the status quo that favors looters. For this reason, rather than give a summary or outline of the provisions and implications of this Act, I intend next week to invite one or two members of the judiciary to share the space of this column with me in discussion and explication of the Act. For now, let me close the present discussion with the following "last words".

One of the truly amazing ironies of the war against corruption in our country in the law courts is the fact that our looters have been far more widely successfully prosecuted *outside* the country than in Nigeria. In some really unbelievable cases, individuals who had been unsuccessfully prosecuted in Nigerian courts have been victoriously prosecuted abroad *for the same crimes*! This pattern has brought much ridicule and infamy to our judicial order in the court of international juridical onion. Right now, at this present historical moment when so many countries in the world have promised to help the new administration recover the untold loot hidden away in foreign countries and bank vaults, the very least we can begin to do is prosecute our looters vigorously and successfully at home. Charity, they say, begins at home. So does justice for the millions of the looted and impoverished in the land.

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