**CHAPTER ONE**

**INTRODUCTION**

* 1. **Background to the Study:**

The Judiciary represents the court system in the land, it symbolizes judges and justice. It is the third arm of any modern government and was popularized by Montesquieu, the French political philosopher and jurist who postulated that there should be separation of judicial duties from legislative and executive functions to forestall tyranny. A court system implies a judicial arrangement of graduated competences of hierarchical structural arrangement from lower to superior courts, courts of first instance to Supreme Court, where appeals are taken or heard, and special courts or tribunals, exists in modern democratic states.

The judiciary also has other notable functions according to Akpan (2008) which include punishing offenders of the laws, swearing in of the President and other important public officers, granting letter of administration of estates and above all, guarding against an arbitrary use of power by the other arms of government. For the administration of justice to be fair and equitable in any political setting, it should combine autonomy with accessibility and a certain degree of uniformity. To be fair means that it is objective and fearless. To be equitable implies that court rules are equally applied, as rewards and punishment to both the poor and the rich. Autonomy connotes independence and authority.

Corruption has been the major problem bedeviling Nigeria, as it has virtually defied all solutions so far. In Nigeria bribery and corruption have assumed an alarming rate, established stronghold that the weekly star of 15th May, 1983, quoted in Achebe (1983.43), unequivocally maintains “that keeping an average Nigerian from being corrupt is like keeping a goat from eating yam” Corruption has been recognized as the major enemy of man, it is however, lack of political will to begin to tackle this problem, except for Buhari /Idiagbon regime (1983-1985) and Obasanjo regime (1999-2007). Past futile intervention against corruption include the Corrupt Practices Decree of 1975, the Public Officer (investigation of Assets) Decree No 5 of 1976, supplemented by the Code Of Conduct Bureau and Code Of Conduct Tribunal as provided for in the 1979 constitution. Shehu Shagari ethical revolution (1979-1983), with a minister of cabinet rank in charge of “national guidance”, the “war against indiscipline” campaign under the Buhari and Idiagbon junta which was to some extent the only serious intervention and the National committee on corruption and other Economics crimes under Ibrahim Babangida (1985-93). The IBB regime also came up with the corrupt practice and Economic crime Decree of 1990. Even the Sani Abacha regime (1994-98) came up with its own anti- corruption Decree, the “Indiscipline, Corrupt Practices and Economic Crime (prohibition) Decree 1994” which was a replica of IBB Decree of 1990. However, it is regrettable to note that inspite of interventions by past regimes to stamp out corruption, the evil monster keeps on recurring. According to Okonkwo (2005: 85), a historical view of bribery and corruption in Nigeria shows that rhetoric against corruption does not end corruption. All the inspiring words of our leaders and journalists have not changed anyone. Against this background, it has become unavoidably important to critically assess the judiciary and anticorruption in Nigeria.

* 1. **Statement of the Problem**

Over the years, successive administrations in Nigeria have set up various institutions designed to fight corruption. These institutions have not functioned appropriately and as a result, there is institutionalization of corruption. The above scenario almost turned Nigeria into pariah nation. In foreign states, Nigerians were treated with suspicion and embarrassment and foreigners were wary of making Nigeria their investment destination. The more government devises genuine policies and plans to combat corruption, the more the implementation pattern seems to be frustrated. Corruption, real or imagined, is believed to be so endemic in Nigeria that public disapproval of it has gradually turned into tacit acquiescence and positive acceptance. There is a need to act and investigate the hydra-headed problem of corruption for the sake of the unborn generations. The political and socio-economic destructive effects of corruption have been so overwhelming that unless decisive steps were taken, the state might well be doomed. In spite of the several legislations and multiple institutions put in place to fight corruption, little result has been achieved. This has made people lose hope in our ability to get out of these difficult situations.

On the night of the 7th of October 2016, between the hours of 10 pm and the wee hours of the next day, the Department of State Services (DSS), executing a carefully prepared script, invaded the homes of selected Justices of the Supreme Court of Nigeria in Abuja, Judges of the Federal High Court in Port Harcourt and Abuja and State High Court Judges in Gombe and Kaduna States. These judicial officers and their families had their sleep rudely interrupted, homes broken into, searches conducted and reputations tarnished. The Government agency that spearheaded this ordeal anchored these unorthodox actions, on the overriding and compelling necessity to eradicate corruption. It was put in the public domain, snippets of the crimes these judicial officers were said to have committed. By and large, since these strong arm tactics were employed, there have been a torrent of views on both sides of the aisle hotly debating the bona fides or otherwise of the actions of the DSS and its aftermath. In this discourse, it is intended not only to review the legality or otherwise of the steps referred to above, but also to find a lasting solution to the incidences of corruption in the Nigerian Judiciary. There are many other ancillary issues that must be touched upon, such as the role of the National Judicial Council (NJC) and other stakeholders such as the Bar Association (NBA) in the fight against judicial corruption and the impact of public opinion on the evolving issues. Hence the research questions:

* 1. **Research Questions**

1. To what extent is the judiciary efficient in its fight against in its fight against bribery and corruption in Nigeria between 2015 and 2017?
2. How does legal provisions impart on judicial decisions on anti-corruption fight in Nigeria between 2015 and 2017?
3. What are the challenges militating against the performance of judiciary in its fight against corruption?
   1. **Objectives of the Study**

1. To analyze the efficacy of Judiciary in its fight against bribery and corruption in Nigeria.

2. To analyze the effect of severe punishment of offenders on anticorruption fight in Nigeria.

3. To identify the challenges militating against the performance of judiciary in its fight against corruption.

* 1. **Significance of the Study.**

The significance of this study or research cannot be over emphasized because of the immense contribution it is supposed to offer in the area of development of knowledge in Judiciary and anti-corruption in Nigeria. Over the years, scholars and experts have dedicated much attention to the study of corruption and their effects on the underdevelopment and development of different world’s economies. This study therefore is centered on the impacts of Judiciary on anti-corruption campaign in Nigeria, and the war against the end called corruption and how the government has used certain policies and institutions to fight this malaise.

This work will serve as a very relevant and important material for further research on activities of the Judiciary in war against bribery and corruption in corruption among nations in the world.

* 1. **Hypotheses.**

1. Severe punishment of offenders has not boosted the anti-corruption fight in Nigeria (2015-2017)
2. There is no efficacy for the judiciary in its fight against bribery and corruption in Nigeria (2015-2017)
3. The appointment method of the top positions in the courts seems to be the major challenge militating against the performance of the judiciary in its fight against corruption (2015-2017)

**CHAPTER TWO**

**LITERATURE REVIEW**

This chapter seeks to examine past works of authors and literatures that are relevant to the study.

**Conceptual Analysis**

**2.1 JUDICIARY**

The judiciary (also known as the judicial system or court system) is the system of [courts](https://en.wikipedia.org/wiki/Court) that interprets and applies the [law](https://en.wikipedia.org/wiki/Law) in the name of the [state](https://en.wikipedia.org/wiki/State_%28polity%29). The judiciary also provides a mechanism for the [resolution of disputes](https://en.wikipedia.org/wiki/Dispute_resolution). Under the doctrine of the [separation of powers](https://en.wikipedia.org/wiki/Separation_of_powers), the judiciary generally does not make [statutory law](https://en.wikipedia.org/wiki/Statutory_law) (which is the responsibility of the legislature) or enforce law (which is the responsibility of the executive), but rather interprets law and applies it to the facts of each case. However, the judiciary does make [common law](https://en.wikipedia.org/wiki/Common_law), setting precedent for other courts to follow. This branch of the state is often tasked with ensuring [equal justice under law](https://en.wikipedia.org/wiki/Equal_justice_under_law).

In many jurisdictions the judicial branch has the power to change laws through the process of [judicial review](https://en.wikipedia.org/wiki/Judicial_review). Courts with judicial review power may annul the laws and rules of the state when it finds them incompatible with a higher norm, such as [primary legislation](https://en.wikipedia.org/wiki/Primary_legislation), the provisions of the [constitution](https://en.wikipedia.org/wiki/Constitution) or [international law](https://en.wikipedia.org/wiki/International_law). Judges constitute a critical force for interpretation and implementation of a constitution, thus *de facto* in [common law](https://en.wikipedia.org/wiki/Common_law) countries creating the body of constitutional law Benard(2000).

The Judiciary is the third organ of the government. It has the responsibility to apply the laws to specific cases and settle all disputes. The real 'meaning of law' is what the judges decide during the course of giving their judgments in various cases Ali(1998).

**2.2 ANTI-CORRUPTION**

Corruption is a considerable obstacle to economic and social development around the world. It has negative impacts on sustainable development and particularly affects poor communities.

For companies, corruption impedes business growth, escalates costs and poses serious legal and reputational risks. It also raises transaction costs, undermines fair competition, impedes long-term foreign and domestic investment, and distorts development priorities. Investors too understand that corruption can negatively impact value and pose financial, operational and reputational risks to their investments.

Anti-corruption can therefore be described as any strategical attempt to stop, reduce or suppress corruption in all ramifications Onos(1991).

**2.3 FUNCTIONS OF THE JUDICIARY**

The primary function of the judicial organization is that of adjudication, whereby a court determines guilt and administers punishment to anyone who has breached the law. In this way, a judge or group of judges settles disputes between parties, through the application of rules and procedures already laid down by the appropriate state agencies. It should be pointed out that all judicial systems perform the function of adjudication; the political environment in which the court operates dictates the mode of its application.

Interpretation of the law is another function performed by the judiciary Legal interpretation, in fact, goes hand-in-hand with adjudication. This is because whenever a matter is brought before the court for adjudication, the essence of findings the ‘true’ meaning of the law is made apparent, and whenever this is done a judicial precedent is set, and it affects all future court decisions. Thus, the judicial arm becomes actually engaged in law-making through the process of the interpretation and consequent setting of judicial precedent.

Another function of the judiciary is the power of judicial review. This ensures that actions and activities of other arms of government and administration are in accordance with the law and the constitution. Judicial review is the power of the court inappropriate proceedings before it, to declare a legislative or executive act either contrary to, or in accordance with the constitution, with the effect of rendering the act invalid or vindicating its validity and thus putting it beyond challenge in future. The court can declare a law unconstitutional, as in the United States, on the grounds that it contravenes certain provisions of the concerned Federal or State constitution. This process is known as *Judicial Review* and it is considered as a check against possible excesses by the legislature or the executive. Similarly in the Nigerian case of Olewoyin V. Police, the plaintiff claimed that the Northern Region High Court (Amendment) Law 1960, which provided for a judge of the Sharia Court of appeal to sit in the High Court of appeals from native courts, was declared contrary to the 1960 constitution of Northern Nigeria which created the high court and prescribed its constitution.

However, it is pertinent to note that such safeguard against possible abuses is possible only when courts are genuinely independent and responsive to social needs and objectives. Coupled with the willingness of the executive branch to obey or cooperate, the most elaborate constitutional provisions will prove fraudulent and empty, as the experience in many Latin American and African countries has shown. In Nigeria, during the 1999-2007 Obasanjo Administration, a lot of court decisions were not obeyed by the Federal executive. A special case in point was the decisions of the Supreme Court on the Federal Government to pay Lagos State’s revenue allocation, which was withheld for political reasons by the President. It was however when some Yoruba Elders went to see President Obasanjo over the matter that he reluctantly released part of the withheld allocation to the Lagos State government much later.

During this period also, the courts in Nigeria lived above board, by maintaining their independence and responsiveness to social needs. In another case, at the 2007 Edo State Electoral Tribunal holding in Benin City, Justice Olabanji Orilonishe, while ruling on the preliminary objections raised by the Governor Osunbor’s counsel, who urged the tribunal to strike out the petition by the then initially defeated Governorship Candidate, Adams Oshiomhole on grounds that there were many irregularities that made the petition unfit for hearing declared:

The days of justice by technicalities, which is as bad as injustice are over because the weight of judicial authorities have shifted from undue reliance on technicalities to doing substantial justice even-handed on parties in a case. Justice by technicalities has died in Nigeria for good and has been buried; the trend these days is to do substantial justice by the merit of each case.

The above case is an example of situations where the courts in Nigeria tried to maintain their independence from the Executive and responsiveness to societal needs.

In Sierra-Leone 2008 election, the government party (the ruling party) requested the Constitutional Court to stay action on the release of the final results of the Presidential election, on the grounds that a particular wards election was inclusive.

The Constitutional Court ruled against the government party stating that if even the election is rerun and the government party wins all the votes, the party would not win the election. So, the court declared the final results in defiance of government request, thus upholding its independence and responsiveness to societal need, peace and good government. This paved the way for an opposition party candidate, Ernest Koroma, winning the election.

Similarly, in Nigeria, the judiciary has made many landmark judgments that can be said to have contributed immensely to the survival of its democracy. Some examples are the restoration in Anambra State of Governor Peter Obi’s mandate against that of the government party, the People’s Democratic Party (PDP), whose Governorship candidate was Andy Uba, the reinstatement of former Governor Rashidi Lodoja of Oyo State after his unconstitutional impeachment by the House of Assembly; likewise is the Appeal Court annulment of the purported victory of former Governor Olusegun Agagu of Ondo State and the restoration of the opposition candidate of the Action Congress party. Dr. Olugsegun Mimiko; and also the reinstatement by the Appeal Court of the candidature and victory of Chibuike Rotimi Amaechi as Governor of Rivers State over Clement Omehia who was illegally used by their party (PDP) to usurp Amaechi’s victory at the party’s primaries. The directive was even after the election which Omehia had won but the court’s decision was based on the fact that Amaechi was the candidate known to law since he won the primaries and the party was the legal platform that the electorate voted for and not Omehia.

As commendable as these decisions, there are many Nigerians who have serious reservations about the performance of the Nigerian judiciary. They think that some cases or matters were compromised. This is because obvious bad cases were won and good ones were lost by parties in litigation.

There are others who complained about the unduly long delay in the handing of the election cases. It is submitted that the political party’s constitution and the Electoral Act should be reviewed and streamlined to avoid administrative abuses and delays in the conduct of elections and adjudication by the courts. There should also be serious capacity building of judicial personnel for overall effective performance and quick adjudication of cases. In ending this subsection, let us not forget to mention in passing, that Switzerland stands alone in using the Federal legislature as the final interpreter of the constitution, subject to referendum of the electorate.

The courts, most times, in the process of judicial review, performs legislative functions. When the judiciary interprets a particular law by assigning specific meanings, such new meanings become rules which guide actions and behaviour. In the same vein, when a particular legislation is declared unconstitutional, there is a new rule, inherent in the judicial decision, which guides behaviour and action. This judicial judgments and decisions constitute some form of rule-making. The judicial responsibilities of the courts place them as moderators of behaviour, a balance of powers, restrainers of the excesses of other arms of government and government officials. It also places the judiciary as the settler of disputes and conflict between governments and between individuals and government. Implicitly, from the above, there is the perception that the judiciary is the protector and bulwark against the oppression and abuse of individuals and groups in the society.

The performance of these later functions depends on the impartiality, independence and powers of the judiciary. This is because in many countries, the court are politicized by the executive, making them to be ineffective in the system, and thereby flagrantly refusing to implement court ruling with impunity. The executive sometimes, influence the decision of courts, because in many countries of the world, the executive appoints judges which in some countries is subject to the ratification of the legislature which determines the appointments, tenure and conditions of service of judges. This defeats the courts duty and responsibility as an organ that should serve as a factor in social change. As an eminent writer Kousuolas’ noted:

Through judicial review as well as ordinary interpretation of the laws the courts may serve as a safety valve against social pressures which the executive or the legislature is unwilling to meet, provided, of course that the courts reflect as accurate as possible the prevailing social trends and have sufficient autonomy to react accordingly. If (however) they are oblivious or hostile to new imperatives, the courts may actually become an obstacle to change.

Also, judges may be called upon, as it has happened in many countries, including Nigeria members of the political duties when fairness, integrity and impartiality are considered top priority. In Nigeria members of the highest courts have now and then been invited to chair sensitive posts requiring absolute political neutrality. For example, electoral commissions, truth and reconciliation commissions, appointed as receivers in bankruptcy, perform marriages and above all swear-in political office holders, Kousoulas moreover tells us that in several Southern American States, especially in the hinterlands, county judges administer mental institutions, orphanages, or relief programmed for the poor; courts also administer estates, issue licenses, naturalize citizens and so on.

**2.4 ORGANIZATION OF THE JUDICIARY**

Judicial Arrangement in the federal system conforms with its federal nature that there are courts at the centre and the regions or states which carry out adjudication in their respective jurisdictions. They do it in such a way that the rural nature of the society is provided for. There are courts which settle disputes between the central government and the government of the federating units. In the former Yugoslavia, for instance, they are called the Constitutional courts which ensure “constitutionality and legality in accordance with the constitutions”. There are inferior courts that settle cases at the level of the federating units and at the grassroots level.

In the United States of America, (USA) there are three levels of federal courts. These are the Supreme Court, the Appeal Courts and the Federal District Courts. They settle disputes at the Federal and State levels. The arrangement in Canada is different, in the sense that the Supreme Court is a creation of an Act of Parliament rather than that of the constitution. All the lower courts there are provincial courts, as the Dominion government does not set up courts. In Australia, the High Court serves as the highest Court of Appeal. State courts exercise federal jurisdiction. In India, there is a peculiar judicial arrangement, where courts which are headed by the Supreme Court perform special function of maintenance of the federal system. They ensure that the relations between the union and the states are properly maintained.

In Britain, the highest Court of Appeal is part of Parliament, into which Cabinet Ministers are also members. Under such fusion of power, one could be skeptical about how such arrangement could allow for independence of the judiciary. It may be taken for granted, however, that when the nine Law Lord sit to perform their judicial functions, they see themselves as different from the legislature and the executive. The judiciary in Britain is made up of different court structures. There are courts that try criminal cases normally brought before them by the state, courts of civil jurisdiction which try civil cases which the state is not a party to, which are between two parties. There are also courts of unlimited jurisdiction which try any case that are brought before them. This is unlike courts of limited jurisdiction which cannot hear cases involving any amount that is above is specified monetary value. There are courts of first instance or courts of primary jurisdiction and any case that come into it can be allowed to get to another court on appeal, in most cases, therefore appeal goes from the court of lower grades to the court of higher grades.

The judiciary in Britain enjoys much respect and confidence both within and outside the country. This is because their judges are largely associated with impartiality and independence, irrespective of the fusion of power in the country’s parliamentary system of government. The judges are insulated from politics; their remuneration is not subject to the influence of politicians, as they are paid directly from the consolidated revenue fund.

In the USA, there is a similarity between its judiciary and that of Britain, in well-established tradition of respect, independence and impartiality of the judges. Like in Britain, the judges are insulated from politics and their remuneration is equally charged directly to the consolidated revenue funds. The United States has a hierarchical arrangement of courts. There are the district courts, the appeal courts and the supreme courts. The major area of difference in the judicial arrangement between these two countries is that, that of the United States is designed to meet its Federal structure while that of Britain is designed to meet its unitary structure. In the USA, the Supreme Court is the highest court of appeal of the land. It settles constitutional matters and disputes between states and also those involving the federal government. The appeal courts hear cases between government and between individuals.

In Nigeria, the Supreme Court serves as the highest court of Appeal. In addition to it, there are Federal Courts like Appeal Courts. At the state level there are High Courts and Magistrate Courts. In addition, the Northern states have Sharia Courts. At the local government level there are Alkali Courts in the North and Customary Courts in the South. The various military regimes that have ruled Nigeria, managed to retain the federal nature of organization of the judiciary, with minor changes. Although the judiciary in Federal system is organized to cater for the diversities in the political system, the need for its independence and impartiality probably attracts higher priority in designing the judicial structure.

The tradition of high level of confidence in the judges in Europe and the United States of America and their appreciable level of impartiality and political neutrality is yet to find its feet in Nigeria. The same applies to most countries of the Third World like Haiti, Liberia, Mauritania, Mexico, Pakistan, etc. The situation is worsened by military dictatorship frequently prevalent in these countries.

China and other communist countries organize their judicial system in such a way that their revolutions can be sustained. In the former Union of Soviet Socialist Republics (USSR), the Tzarist Legal System was perceived by the Bolsheviks as designed to perpetuate oppression of the people. One variable which is noticeable in the judicial system of most of the communist countries is that they basically have the tradition of the British courts in their organization and expectation of impartiality of the judges. The former USSR had a supreme court with civil, criminal and military divisions. The Supreme Soviet appointed the Supreme Court judges but in reality, the communist party played the most fundamental role in appointment of judges. This is a total departure from the British tradition where judges are expected to be politically neutral. Every republic in the former USSR had its own courts as people’s courts at the lowest level.

**2.5 CAUSES OF CORRUPTION WITHIN THE JUDICIARIES IN NIGERIA**

The field known as law and economics of development focuses its attention on the effects that well-functioning legal and judicial systems have on economic efficiency and development. Adam Smith states in his Lectures on Jurisprudence that a factor that "greatly retarded commerce was the imperfection of the law and the uncertainty in its application" (Smith, 1978). Entrenched corrupt practices within the public sector (i.e., official systemic corruption) hamper the clear definition and enforcement of laws, and therefore, as Smith (1978) stated, commerce is impeded. A scientific approach to the analysis of corruption is a necessary requirement in the fight against any social ill. Corruption is no exception. Systemic corruption deals with the use of public office for private benefit that is entrenched in such a way that, without it, an organization or institution cannot function as a supplier of a good or service. The probability of detecting corruption decreases as corruption becomes more systemic. Therefore, as corruption becomes more systemic, enforcement measures of the traditional kind affecting the expected punishment of committing illicit acts become less effective and other preventive measures, such as organizational changes (e.g., reducing procedural complexities in the provision of public services), salary increases, and other measures, become much more effective. The growth and decline of systemic corruption is also subject to laws of human behavior. We must better define those laws before implementing public policy.

In this context, in order to design public policies in the fight against corruption, it is necessary to build a data base with quantitative and qualitative information related to all the factors thought to be related to certain types of systemic corrupt behavior (embezzlement, bribery, extortion, fraud, etc.). For example, the World Bank is currently assembling a data base of judicial systems worldwide (Buscaglia and Dakolias 1999) that covers those factors associated to relative successes in the fight for an efficient judiciary.

International experience shows that specific policy actions are associated with the reduction in the perceived corruption in states ranging from Uganda to Singapore, from Hong Kong to Chile (Kaufmann, 1994). These actions include lowering tariffs and other trade barriers; unifying market exchange and interest rates; eliminating enterprise subsidies; minimizing enterprise regulation, licensing requirements, and other barriers to market entry; privatizing while regularizing government assets; enhancing transparency in the enforcement of banking, auditing, and accounting standards; and improving tax and budget administration. Other institutional reforms that hamper corrupt practices include civil service reform, legal and judiciary reforms, and the strengthening and expansion of civil and political liberties. Finally, there are the micro organizational reforms, such as improving administrative procedures to avoid discretionary decision making and the duplication of functions, while introducing performance standards for all employees (related to time and production); determining salaries on the basis of performance standards; reducing the degree of organizational power of each individual in an organization; reducing procedural complexity; and making norms, internal rules, and laws well known among officials and users (Buscaglia and Gonzalez Asis 1999).

**2.6 EFFECTS OF JUDICIAL CORRUPTION**

The poor need legal aid, not pressure to pay bribes, they need proof that everyone is equal before the law. They need a system of justice that is fair and unbiased Hammarberg (2009). Some potential factors of judicial corruption have now been discussed and in the following sections the focus will be on how corrupt judiciaries affect fundamental rule of law principles. The foundation of a well-functioning society is based on the rule of law and many of the core principles in rule of law depend on the correct behaviour of the judiciary. Corrupt judges ignore those fundamental principles and therefore it is so important to effectively rid the judiciary from corruption. When a person considers that his or her rights have been violated, where does he or she turn? The obvious answer should be to the courts, but that would be without effect if the courts are corrupt. The mere existence of rights in theory does not satisfy a person in case of a breach. Rights do only really exist if there is effective implementation of them and hence also a functioning mechanism defending those who suffer from breaches. A corrupt judiciary neglects the very core of the rule of law and some the fundamental justice principles, through which citizens and their rights are supposed to be protected, namely:

• Impartiality and Propriety

• Equality

• Integrity

• Competence and Diligence

• Separation of Powers and Judicial Immunity

Rule of law is generally considered to be crucial to achieve several foreign policy goals for e.g. state-building missions, for support strategies for membership of international and regional bodies, and for other significant support strategies in states or organizations in transition and development Bergling (2006). Though most would agree upon the necessity of rule of law as a condition in a functioning society, there is still no general definition of it. For centuries legal scholars have argued and tried to put it into place. Still, the rule of law means different things to different people, much since the view of the rule of law in government and society is divided. Even though the rule of law might function, it may not always be legitimate. In states that have written laws, trials are held and the judiciary and other main institutions are functioning, the rule of law is a fact for the minimalist. Some states claim to uphold the law procedurally and that that requirement is enough for the rule of law to be the game in town.

The rule of law could in this case be a tool of repression; Zimbabwe is an example of that. This means that laws could still discriminate certain groups and violate human rights. When the judiciary has lost or is on its way to lose its independence and impartiality, the rule of law has become corrupt and dysfunctional. Justice is here only provided for the elite and not the ordinary population. When that happens, the rule of law characteristics disappears even though the appearance of the rule of law continues to subsist. This condition could be illustrated in Bosnia and Herzegovina. When entire legal apparatus collapse and disappear, like in Sierra Leone and Liberia, the rule of law ceases to exist.

Randall Peerenboom (2008) suggests the rule of law to be divided into two types; ‘thin’ and ‘thick’. Which type is implied depends on the political goals and purposes of the state or organ defining it. The ‘thin’ conception mainly consists of formal or instrumental aspects of the rule of law, regardless if the legal system is part of a democratic or authoritarian, secular or theocratic society. However, the laws must be reasonable and acceptable at least to the mainly affected groups. The ‘thick’ conception is just as the name indicates a substantial conception and it consists of all the ‘thin’ elements. Additionally, the ‘thick’ also includes elements conducive to the realisation of certain political or moral visions. The specific conception of human rights is one of them.

For the rule of law to be used as a development concept, it takes organizations to strive for policy frameworks (Bergling 2006). After much struggle e.g., the World Bank has now decided to strive for replacing autocratic and state-centred systems with the rule of law that “operates objectively, is accessible, reasonably efficient, transparent, predictable, enforceable, and protects human rights and legitimate state interests, etc”. When it comes to the rule of law programs carried out by the UN, the objective is to find a common language. Therefore, a report was made in 2004, namely ‘The Rule of Law and Transitional Justice in Conflict and Post- Conflict Societies’. The report defines the rule of law, consisting of procedural, institutional and substantive principles; For the United Nations, the rule of law refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.

Most individual rule of law project documents do not deal with how the rule of law should be comprehended, although in some cases the procedural definitions can be considered. It is practically and politically more facilitating to avoid specificity(Bergling, 2006). Even if this broad and vague definition makes it easier for societies to cooperate, it is not without risks, as the rule of law could lose its stability when being invoked for too many, possibly conflicting, reasons. To emphasise judicial independence and transparency is difficult from this point of view, as the areas of civil, criminal and administrative law that are politically sensitive, are based upon a more undecided policy. The rule of law is however crucial for the maintenance of a minimum standard of decent society.

**2.6.1 Impartiality and Propriety**

A judge accepting a bribe from a plaintiff and in exchange decides in his or her favour can never be impartial. The distinction between the terms judicial independence and impartiality have been expressed by the Supreme Court of Canada, who stated that “impartiality refers to a state of mind or attitude of the tribunal in relation to the issues and the parties in a particular case” while judicial independence “connotes not merely a state of mind or attitude in the actual exercise of the judicial functions, but a status or relationship to others--particularly to the executive branch of government--that rests on objective conditions or guarantees”. Even if the two terms represent different values, they are closely interrelated. Impartiality cannot exist without independence, although some level of case to case independence can be achieved without impartiality.

The ECtHR stresses the fundamental importance of public confidence in the courts and that the courts must be impartial, both subjectively and objectively. Subjective impartiality means that no court member should have any personal prejudice, while objective impartiality means that the court must be viewed as impartial by the public without any reasonable doubts. However, judges are not robots and by the time they reach the office of the judiciary, they probably have some personal notions and that cannot disqualify them from positions as judges. If judges are human beings, there will be no completely blank mind in the judiciary and perhaps that is nothing to strive for either. As Justice Rehnquist stated in Laird v. Tatum, “Proof that a Justice’s mind at the time he joined the Court was a complete tabula rasa … would be evidence of lack of qualification, not lack of bias.”

Judicial propriety is how the public perceives judges’ behaviour. The essential feature of a judge and of the judiciary is impartiality and it must exist de facto but also, not less importantly, in the perception of the public. The confidence of the judicial system will be destroyed if partiality is observed by the public. If a judge is seen talking privately with a petitioner in a pending case, people might speculate that the judgement will be tainted by the conversation, even if it had nothing to do with the actual case. Corrupt judges may be very good at hiding their business, but systematic corrupt behaviour would endanger the propriety and in the long-term, unavoidably destroy the public perception of the judge. Even if the public continues without knowing, the mere fact that the persons involved in the corruption knows about it, questions the judge’s propriety, since the scope of the term is so extensive. Any gift or favour to the judge or to a member of the judge’s family given to gain favour in a case therefore distorts the propriety.

Judges are human beings with different interests and they have the same rights to freedom of expression, association and assembly as everyone else, but they do have a responsibility to protect their appearance in the eyes of the public. They must avoid relationships that may question their propriety as a judge. Both professionally and privately, judges must consider propriety and the emergence of propriety. He or she shall e.g. never get publicly involved in controversies, since that could question their impartiality and jeopardize the propriety.

Judges must accept that there are some restrictions on what kind of behaviour is tolerable. A judge must, inter alia, live a cautionary life and must behave with self-control in public, also when he or she is not in office. They shall also exercise discretion when it comes to visiting bars, engaging in gambling or entering clubs, especially if such venues are connected with some kind of unlawful activities or persons or in other ways can be seen as indecent in the eyes of an imaginary, reasonable observer. Judges shall also be careful with socializing with lawyers and litigants that frequently appear before them in court, especially when they are part of a pending case. If a person of a judge’s family participates in any way in a case, the judge shall recuse himself or herself from the case in order to avoid suspicions of partiality.

**2.6.2 Equality before the Law**

Any kind of discrimination before the law is incompatible with everyone’s long recognized right to fair and equal treatment of justice, but discriminatory practices are effectively supported by corrupt judges. Judges shall treat everyone equally, regardless of gender, race, sexuality, age, religious beliefs, social background and other such characteristics. Equality is strongly correlated with judges’ impartiality and he or she must not give in to prejudices about stereotypes. Such attitudes shall on the contrary be recognized and corrected by the judges. They must also pay attention to, and be familiar with diversity of different kinds in society. Judges shall always refrain from humiliating gestures, statements and other derogatory behaviour and they shall also prevent lawyers from such manners in court proceedings.

Equality before the law is one of the core principles in a democratic society. Corrupt judges do not necessarily share the opinion of the bribing party, but to judge in anyone’s favour on basis other than the merits of the case, distorts the very essence of the principle of equality. The very first article of the Universal Declaration of Human Rights of 1948 (UDHR) states that everyone is equal in dignity and rights and judges have several other international instruments to consider when it comes to equality, something that shows the magnitude of the principle and why the fight against corruption in the judiciary is so vital, since many groups protected by the international instruments are generally fragile.

**2.6.3 Integrity**

Two components can be found within the definition of integrity, namely judicial morality and honesty. Judges shall always behave honourably, also in their private life. They shall not be involved in fraud or other corrupt behaviour, since it contradicts the very essence of integrity.

Integrity is unconditional and necessary for the judiciary to function in a satisfactory way. It is important that judges always consider their behaviour in the eyes of a realistic observer. A judge with high integrity must show it at all times, otherwise he or she can be considered as a hypocrite, and that would damage the court’s appearance. Judges’ integrity can be measured from their actual conduct in certain situations.

Society expects a lot of a judge and he or she must not only be a good judge, but also a good person. A judge must handle the society’s high demand of integrity carefully, since “a judiciary of undisputed integrity is the bedrock institution essential for ensuring compliance with democracy and the rule of law”. The judicial integrity de facto is very important, but so are the parties’ and the public perceptions of judges’ integrity. Parties standing before the court have to believe in the honesty of the judge. This is as important as the judge’s actual knowledge about the law and the independent and impartial interpretation and application of it. Evidently, a corrupt judge cannot be considered honest.

**2.6.4 Competence and Diligence**

A problem in many corrupt judicial systems is that the judges lack in competence. They may not have the necessary education, insufficient experience or they may have personality or temperament problems, which makes them unsuitable as judges. Judicial diligence is fundamental for the impartial application of the law; to consider the facts of a case soberly, to decide a case based only on the facts and the law, to act efficiently, and to thwart abuses of the process. Judges must take the responsibility to educate themselves also during their times of office, not only in national law, but also in international norms and standards. A judge cannot ignore e.g. human rights regulations, whether deriving from customary law, international treaties or regional instruments even if the local law differs from such laws. The lack of competence is also a potential factor of corruption and states with unsatisfying educational systems might be trapped in a circle of low education culture and a dysfunctional judiciary.

**2.6.5 Separation of Powers and Judicial Immunity**

Persons working within the judiciary are not special people but they do hold a special office which implies the responsibility of guarding the independence and requires them to be separate from other governmental institutions. For the rule of law to be reigned, the judiciary’s freedom from outside influences is essential. A judge cannot live with the fear of repercussion or revenge when deciding a case. A court can only be accepted as just and fair if the public has its confidence, it is therefore not only essential for the court to be independent but also to appear independent.

As the proverb says, ‘justice must not only be done, but also must be seen to be done’. Therefore, it is important for court personnel to refrain from any kind of contact with political parties. The judiciary must be effectively and authentically independent, not only from political pressure, but also from economic and social pressures. Therefore, it is important that enough resources are provided so that the judiciary can keep a high quality. It is also important that the judges exercise their judicial powers without interference from other judges or court personnel.

The appointment procedure of judges is very important when it comes to separation of powers. Politicians may appoint judges who they know will follow their agenda. A judge can then feel threatened and he or she might take decisions that are unlawful to please the politician that is responsible for his or her appointment. If the judge decides not to follow the politician’s recommendations, he or she might have less future possibilities such as career prospects, appointment to more interesting courts and other promotions. This is a complex area, e.g. in the United States, where judges are elected on the basis of party sponsorship. There are strict limitations though; judges shall refrain from all inappropriate political activity. Blundo, Sardan &Alou, (2006).

**2.7 CORRUPTION AND ITS LONG-TERM IMPACT ON EQUITY**

Some scholars have observed that official corruption generates immediate positive results for the individual citizen or organization that is willing and able to pay the bribe (Rosenn 1984). For example, Rose-Ackerman (1997) accepts that "payoffs to those who manage queues can be efficient since they give officials incentives both to work quickly and favor those who value their time highly." She further states that, in some restricted cases, widely accepted illegal payoffs need to be legalized (Rose-Ackerman 1997). This statement, however, disregards the effects that present entrenched corruption has on people's perception of social equity and on long-term efficiency. The widespread effects of corruption on the overall social system have a pernicious effect on efficiency in the long run. To understand this effect, an economic theory of ethics needs to be applied to the understanding of the long-term effects of corruption on efficiency.

The average individual's perception of how equitable a social system is has a pronounced effect on that individual's incentives to engage in productive activities (Buscaglia 1997a). The literature has delved into many of the negative impacts that corruption has on the efficient allocation of resources. Yet previous work does not pay attention to the effects that corruption has on the individual's perception of how equitable a social system is. First, in all developing countries, a vast majority of the population is not able to offer illicit payoffs to government officials, even when they are willing to do so (Buscaglia 1997a), and, second, legalizing illicit payoffs may have no impact on social behavior in societies where most social interactions are ruled not by modern laws but by multiple layers of customary and religious codes of behavior.

A significant impact of corruption on future efficiency is the effect that official corrupt practices have on the average citizen's perception of social equity. Homans (1974) shows that, in any human group, the relative status given to any member is determined by the "group's perception" of the member's contribution to the relevant social domain. Homans further states that changes in the relative wealth-related status of an individual member without a perceived change in his social contribution will face open hostility by the other members of society (e.g., envy may generate retaliation and destruction of social wealth). Therefore, within Homans's view, in cases of corrupt practices, a "socially unjustified" increase in the wealth-related status of those who offer and accept bribes represents a violation of the average citizen's notion of what constitutes an "equitable hierarchy" of status within society.

Homans's theory of ethics can be applied to the understanding of the effects of official systemic corruption on efficiency over time. Those members of society who are neither able nor willing to supply illicit incentives will be excluded from the provision of any "public good" (e.g., court services). In this case, even though corruption may remove red tape for those who are able and willing to pay the bribe, the provision of public services becomes inequitable in the perception of all of those who are excluded from the system due to their inability or unwillingness to become part of a corrupt transaction. This sense of inequity has a long-term effect on social interaction. Systemic official corruption promotes an inequitable social system where the allocation of resources is perceived to be weakly correlated to generally accepted rights and obligations. Buscaglia (1997a) shows that a "perceived" inequitable allocation of resources hampers the incentives to generate wealth by those who are excluded from the provision of basic public goods. The average citizen, who cannot receive a public service due to his inability to pay the illegal fee, ceases to demand the public good from the official system (Buscaglia 1997a). On many occasions, the higher price imposed by corrupt activities within the public sector forces citizens to seek alternative community-based mechanisms to obtain the public service (e.g., alternative dispute resolution mechanisms such as neighborhood councils). These community based alternative private mechanisms, however, do not have the capacity to generate precedents in certain legal disputes affecting all society (e.g., human rights violations or constitutional issues) like the state's court system does. Hernando de Soto's account of these community-based institutions in Peru attests to the loss in a country's production capabilities owing to the high transaction costs of access to public services (de Soto 1989).

One may initially think that, by eliminating bureaucratic red tape, the payment of a bribe can also enhance economic efficiency. This is a fallacy, however, because corruption may benefit the individual who is able and willing to supply the bribe. As described above, however, the social environment is negatively affected by diminishing economic productivity over time because of the general perception that the allocation of resources is determined more by corrupt practices and less by productivity and, therefore, is inherently inequitable. This creates an environment where individuals, in order to obtain public services, may need to start seeking illicit transfers of wealth to the increasing exclusion of productive activities. In this respect, present corruption decreases future productivity, thereby reducing efficiency over time.

**2.8 CORRUPTION AND INSTITUTIONAL SPOILS**

When designing anticorruption policies within the legal and judicial domains, we must take into account not only the costs and benefits to society of eradicating corruption in general but also the changes in present and future individual benefits and costs as perceived by public officials whose illicit rents will tend to diminish due to anticorruption public policies. Previous studies argue that institutional inertia in enacting reforms stems from the long-term nature of the benefits of reform in the reformers' mind, such as enhanced job opportunities and professional prestige (Buscaglia, Dakolias, and Ratliff 1995). These benefits cannot be directly captured in the short term by potential reformers within the government. Contrast the long-term nature of these benefits with the short-term nature of the main costs of reform, notably, a perceived decrease in state officials' illicit income. This asymmetry between short-term costs and long-term benefits tends to block policy initiatives related to public sector reforms. Reform sequencing, then, must ensure that short-term benefits compensate for the loss of rents faced by public officers responsible for implementing the changes. In turn, reform proposals generating longer-term benefits to the members of the court systems need to be implemented in later stages of the reform process (Buscaglia, Ratliff, and Dakolias 1996).

For example, previous studies of judicial reforms in Latin America argue that the institutional inertia in enacting reform stems from the long-term nature of the benefits of reform, such as increasing job stability, judicial independence, and professional prestige. Contrast the long-term nature of those benefits with the short-term nature of the main costs of judicial reform to reformers (e.g., explicit payoffs and other informal inducements provided to court officers). This contrast between short-term costs and long-term benefits has proven to block judicial reforms and explains why court reforms, which eventually would benefit most segments of society, are often resisted and delayed (Buscaglia, Dakolias, and Ratliff 1995). In this context, court reforms promoting uniformity, transparency, and accountability in the process of enforcing laws would necessarily diminish the court personnel's capacity to seek extra income through bribes. Reform sequencing, then, must ensure that short-term benefits to reformers compensate for the loss of illicit rents previously received by court officers responsible for implementing the changes. That is, initial reforms should focus on the public officials' short-term benefits. In turn, court reform proposals generating longer-term benefits need to be implemented in the later stages of the reform process.

Additional forces also enhance the anticorruption initiative. We usually observe that periods of institutional crisis come hand in hand with a general consensus among public officials to reform the public sector. For example, within the judiciary, a public sector crisis begins at the point where backlogs, delays, and payoffs increase the public's cost of accessing the system. When costs become too high, people restrict their demand for court services to the point where the capacity of judges and court personnel to justify their positions and to extract illicit payments from the public will diminish. At that point court officials increasingly embrace reforms in order to keep their jobs in the midst of public outcry (Buscaglia, Dakolias, and Ratliff 1996, 35). At this point, the public agency would likely be willing to conduct deeper reforms during a crisis as long as reform proposals contain sources of short-term benefits, such as higher salaries, institutional independence, and increased budgets.

It comes as no surprise, then, that those developing states undertaking judicial reforms have all experienced a deep crisis in their court system, including Costa Rica, Chile, Ecuador, Hungary, and Singapore (Buscaglia and Dakolias 1999). In each of these five countries, additional short-term benefits guaranteed the political support of key magistrates who were willing to discuss judicial reform proposals only after a deep crisis threatened their jobs (Buscaglia and Ratliff 1997). Those benefits included generous early retirement packages, promotions for judges and support staff, new buildings, and expanded budgets.

Nevertheless, to ensure lasting anticorruption reforms, short-term benefits must be channeled through permanent institutional mechanisms capable of sustaining reform. The best institutional scenario is one in which public sector reforms are the by-product of a consensus involving the legislatures, the judiciary, bar associations, and civil society. Keep in mind, however, that legislatures are sometimes opposed to restructuring the courts in particular and other public institutions in general from which many of the members of the legislature also extract illicit rents. This essay has provided a review of the most recent literature related to the economic causes of entrenched corruption within the public sector in general and particularly within the court systems in developing countries. Along these lines, this essay proposes that the joint effects of organizational, procedural, legal, and economic variables are able to explain the occurrence of corruption within the courts in developing countries. Additionally, this essay describes how equity considerations by individuals affect long-term efficiency. Social psychologists could shed more light in future studies linking the impact of corruption on equity and efficiency. Finally, in order to understand and neutralize institutional inertia during anticorruption reforms, all future studies must incorporate the identification of those costs and benefits that are relevant to those who reform public sector institutions and are responsible for implementing new anticorruption policies.

**CHAPTER THREE**

**THEORETICAL FRAMEWORK AND METHODOLOGY**

**3.1      Theoretical Framework**

The theoretical framework adopted for this study is the Elite theory. There are several versions of the theory ranging from that developed by Vifredo Pareto and Gaetano Mosca (1956) and those by C.W. Mills (1968), Floyed and Raymond Aron (1969). A combination of these versions of the theory will therefore be utilized as framework of analysis. The elite theory was first developed by two Italian sociologists namely: Vilfredo Pareto and Gaetano Mosca. The earlier versions of the theory emphasized personal attributes of leaders, which aided their hold or dominance in power positions. Later versions dwelt more on the institutional framework of society. (Haralambos 1999:107). The thrust of the theory according to Pareto and Mosca are as follows:

• Elite owes its power to its internal organization and forms a united and cohesive minority in the face of an unorganized and fragmented mass.

• Major decisions which affect society are taken by the elite and this decision usually reflects the interest of the elite than the wishes of the majority.

• The mass of the population is largely controlled and manipulated by the elite, passively accepting the propaganda which justifies elite rule.

• Major change in society occurs when one elite replaces another. Parato refers to this as “circulation of elites” and he added that, “all elite tend to become decadent”. They decay in quality and lose their vigour. They may become soft and ineffective with the pleasures of easy living and the privileges of power…” (Haralambos, 1999:108).

• The rule by a minority is an inevitable feature of social life and that the ruling minority is superior to the mass of the population who lack capacity for self-government and require the leadership and guidance of an elite. In addition to the foregoing, C.W.Mills theorized “that American society is dominated by a power elite of unprecedented power and unaccountability…free from popular control..pursues its own concern-power and self-aggrandizement (Haralambos 1999:111). F. Hunter argued “that power rests in a small decision making group which … rules by persuasion, intimidation, and coercion, and if necessary, force”. Dahl in Haralambos (1999:112) argued in reaction to C.W. Mill theory that if it can be shown that a minority has the power to take “decisions on taxations and expenditures, subsidies, welfare programs military policy and so on, and …. Overrule opposition to its policies, and then the existences of power elite will have been established”

**3.2      Research Design**

A research design is the structure of investigaion, aimed at identifying variables and their relationship to another. The study shall adopt the ex post facto research design. Here, the independent variable has already occurred, a researcher begins the process with observation of a dependent variable, then analyzes the independent variable in retrospect for its possible relationship to and effects on the dependent variable (Asika, 2006).

**3.3 Method of Data Collection**

The study adopted qualitative method of data collection. According to Biereenu-Nnabugwu (2006), qualitative method is used to obtain in-depth information and concept clarification so as to facilitate instrument designs. More so, secondary data was collected for the study. Secondary sources of data include second-hand information, already documented by another person or institution. Hence, we used internet materials, journal articles, newspaper reports and books obtained from Godfrey Okoye University library.

**3.4 Method of Data Analysis**

In view of our sources of data and method of collection, we adopted qualitative descriptive method of analysis. According to Asika (2006), qualitative descriptive analysis involves summarizing the information generated for the study. Qualitative descriptive analysis requires creativity, for the challenge is to place the raw data into logical, meaningful categories and to communicate this interpretation to others.

**CHAPTER FOUR**

**DATA PRESENTATION**

|  |  |  |
| --- | --- | --- |
| **Year** | **Case** | **Judgment** |
| 2018 | Misappropriation of N1.64 billion state funds | Trial Justice Adebukola Banjoko found the defendant guilty on 27 out of the 41-count money laundering charge the Economic and Financial Crimes Commission, EFCC, preferred against him.  Specifically, the court sentenced Nyame to 14 years for criminal breach of trust, 2 years for misappropriation, 7 years for gratification and 5 years for obtaining valuable public properties without consideration. |
| 2018 | Misappropriation of N1.162 billion ecological funds for the state | Dariye was found guilty and convicted on 15 out of the 23-count charge bothering on criminal breach of trust and criminal misappropriation of Plateau State ecological funds to the tune of N1.162billion.  The former governor was sentenced to a maximum of 14 years for criminal breach of trust with additional two years for criminal misappropriation which were to run concurrently. |

**4.1 EFFICACY OF JUDICIARY IN ITS FIGHT AGAINST BRIBERY AND CORRUPTION IN NIGERIA**

**4.1.2 The Criminal Code/Penal Code**

Both the Criminal Code and the Penal Code have provisions prohibiting corruption. However both codes focus on corruption in the public sector thereby neglecting the private sector which now constitutes the engine of growth in every economy. The Criminal Code provides for official corruption and judicial corruption. According to Okonkwo, offences of official corruption can be roughly divided into the offences of bribery and the offences of extortion (11). The offences of bribery are mainly contained in sections 98 and 116 of the Criminal Code and the elements common to both sections are as follows:

1. the public officer corruptly asks, receives, or obtains or agrees or attempts to receive or obtain a bribe
2. The act of asking, receiving obtaining or agreeing or attempting to receive or obtain the bribe by the public officer must have been done “corruptly’ and
3. There should be offered, demanded or received ‘any property or benefit of any kind for the public officer or any other person on account of anything already done or omitted to be done or t be afterwards done or omitted to be done by him’.

The offences of extortion by pubic officers are provided in section 404(1) a-d of the Criminal Code and involves a public servant taking advantage of his position (Colour of employment) to extort money from any person. Section 114 defines the offence of judicial corruption and a private person who offers a bribe to any judicial officer on account of anything already done or omitted to be done or to be afterwards done or omitted to be done by him in his judicial capacity is liable to fourteen years imprisonment. The provisions of the Criminal Cod on Corruption have been seriously criticized. The criticisms include: its inability to deal effectively with both private and official corruption and its complex and difficulty worded provisions relating to corruption and kindred offences which despite their similarity are inexplicably scattered throughout the Code; and its failure to make provisions for restitution and or forfeiture of corruptly acquired property or money. The result is the uncountable number of cases where the courts have felt compelled to acquit an obviously dishonest accused simply because he was charged under the wrong section. Commenting on this situation, T.A. Aguda (1983) stated that:

“in so far as corruption is concerned, the Criminal Code is a completely confused piece of legislation. I say this with the greatest sense of responsibility. Many of the sections of the Criminal Code deal with various aspects of the same matter…This is a legacy of the British government in Nigeria of which, most regretfully, we have not found it possible to divest ourselves…”

T.A. Aguda wrote this in 1983 and a number of significant legal developments have taken place since then. They include the establishment of the ICPC and EFCC which we now consider.

The ICPC and EFCC: The ICPC was established in 2000 by the Corrupt Practices and Other Related Offences Act (hereinafter called, The Act). Its provisions, to a large extent, addressed the inadequacies of the Criminal Code and Penal Code. The offences prohibited by the Act include accepting gratification, giving or accepting gratification through an agent, concealing offences relating to corruption, fraudulent acquisition of property, fraudulent receipt of property deliberate frustration of investigation by the Commission, making false statement or return, bribery of public office, bribery for giving assistance in regard to contracts etc .

Private persons are covered by most of the offences because the provision generally begins with ‘any person who…’ Also there is provision for forfeiture of gratification received by a public officer and payment of fine of not less than five times the sum or value of the gratification received. The ICPC is empowered to receive, investigate and present any report of corruption against any person. It is also empowered (amongst others) to examine the practices, systems and procedures of public bodies and direct or supervise a review where it thinks that such practices, systems or procedure aid or facilitate corruption. Officers of the body also enjoy the immunities of police officers when investigating or prosecuting cases of corruption.

One of the criticisms of the Criminal Code in respect of the offence of official corruption is the requirement for the prosecution to prove that the public officer received, or demanded the property ‘corruptly’. In order to avoid this difficulty, section 53 of the ICPC Act provides that” where in any proceedings against any person for an offence under sections 8-19, it is proved that any gratification has been accepted or agreed to be accepted, obtained or attempted to be obtained”.

Notwithstanding the wide range of offences covered by the Act and the enormous powers of the ICPC, Nigerians are yet to see any significant progress in the fight against corruption by the body. The Act has been criticized for the following:

a. The Act is an ex-post measure, being a legal and institutional enforcement measure designed to detect and prosecute already committed corrupt acts;

b. There is lack of commitment on the part of government to extensively expand the operation of the anti-corruption commission;

c. There is failure on the part of government to seriously incorporate the civil society in the struggle against corruption; and,

d. Failure on the part of the civil society itself to articulate its position and mobilize against corruption.

In respect of the EFCC, it was established by the EFCC (Establishment) Act 2002 for the investigation and prosecution of all financial Crimes including advance fee fraud, money laundering, counterfeiting, illegal charge transfers, futures market fraud, fraudulent encashment of negotiable instruments, computer credit fraud, contract scam etc. The commission is also charged with the enforcement of the following legislations-the Money Laundering Act 1995, the Advance Fee Fraud Act 1995, the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act 1994 (as amended) the Banks and Other Financial Institutions Act 1991 (as amended), the Miscellaneous Offences Act and other laws relating to economic and financial crimes.

The definition of economic and financial crimes is very wide. It is defined as the nonviolent criminal and illicit activity committed with the objectives of earning wealth illegally either individually or in a group or organized manner thereby violating existing legislation governing the economic activities of government and its administration and includes any form of fraud, narcotic drug trafficking, money laundering, embezzlement, bribery, looting and any form of corrupt malpractices, illegal arms deal, smuggling, human trafficking and child labour, illegal oil bunkering and illegal mining, tax evasion, foreign exchange malpractice including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic wastes and prohibited goods etc. The EFCC has been very active in the investigation and prosecution of past public office holders especially State governors. Examples include the investigation and prosecution of Chief Executives and other officials of banks for money laundering and other frauds. Its fight against advance fee fraud popularly called 419 has also resulted in the recovery of millions of dollars from fraudsters. The Commission has been criticized for not following due process in its activities and for being selective and partial. It has also been accused of going beyond its jurisdiction. The ICPC was created to fight corruption while the EFCC was created to wage war against financial and economic crimes. But the EFCC has taken over the function and duties of the ICPC. whatever the criticism may be, the Commission has achieved a lot in the fight against corruption in Nigeria and many Nigerians presently look up to it for better days to come in the fight against corruption.

**4.1.3 The Code of Conduct Bureau and Tribunal Act**

The code of conduct bureau and tribunal act established a bureau charged with the functions of receiving assets declarations by public officers, examining the assets declarations to ensure compliance with the requirements of the Act, taking and retaining custody of such assets declarations, receiving complaints about non-compliance with or breach of the Act and if necessary refer such complaint to the code of conduct tribunal established by section 20 of the Act. In addition, the Act contains a code of conduct for serving and retired public officers. Section 10 prohibits a public officer from asking for or accepting any property or benefit of any kind for himself or any other person on account of anything done or omitted to be done by him in the discharge of his duties. Section 7 prohibits some public officers from maintaining or operating a foreign bank account. The code of conduct tribunal is empowered to impose punishment which may include vacation of office whether elective or nominated office as the case may be; disqualification from holding any public office (whether elective or not) for a period not exceeding ten years; and seizure and forfeiture to the state of any property acquired in abuse or corruption of office. Although the code of conduct and tribunals act was enacted in 1989, the 1999 Constitution also established the code of conduct bureau as one of the federal executive bodies.

**4.2 EFFECTS OF JUDICIAL DECISIONS ON ANTICORRUPTION IN NIGERIA**

The fight against bribery and corruption by Eze (2011) revealed that in as much as the Economic and Financial Crimes Commission (EFCC) Act recommends for stiff punishment, corrupt people in the country for over time has not been given severe punishment as stated in the constitution and Economic and Financial Crimes Commission (EFCC) Act 2002. This can account for the new dimension of judgment recently introduced in the judicial system called plea bargaining. The procedure involves the accused persons disclosing some information, releasing some funds and properties in their possession and pleading guilty to a lesser offence than the ones they are originally charged with. Former Bayelsa state Governor, Chief Diepreye Alemieyesigh, was prosecuted by the Economic and Financial Crimes Commission (EFCC) for money laundering, false declaration of assets and illegal acquisition of properties. He, however, entered into a plea bargaining with the Economic and Financial Crimes Commission (EFCC) and was convicted on lesser charges and consequently to two years from the date of his arrest. He has now regained his freedom supposedly benefiting from plea bargaining (punch, 2008:5). The plea bargaining has created soft landing for corrupt people in the country. Plea bargaining amounts to judicial distortion of statutory provision because accused person may be charged with an offence far lesser than those he committed and therefore gets far lesser punishment than statutorily prescribed for offences actually committed.

The research work revealed that Nigerians have to embrace the courage of EFCC Chairmen by waking up from the shackles of condoling and encouraging corruption. Those involved in corrupt practices should be exposed in all ramifications no matter the cost. Moreover, religious bodies in Nigeria should join hand with the government to fight this monster. They should preach against it. The economy has been in a state of disarray for too long, as it is time for us to take the bull by the horn. Our slogan should be “say no to Bribery and Corruption” Churches and Mosques owe Nigerians a big deal of character molding at this moment of transformation. Finally, the finding established that the activity of Economic and Financial Crimes Commission (EFCC) has significantly reduced corruption in the country. This is supported by Table 5 in which Transparency International Corruption Ranking, ranked Nigeria 32nd in corruption out of 179 countries as in 2010 against the 2nd position in 2002. It acknowledged the insurmountable effort exhibited by Economic and Financial Crimes Commission (EFCC) in curbing the proliferation of corruption in the country.

**4.3 CHALLENGES MILITATING AGAINST THE PERFORMANCE OF JUDICIARY IN ITS FIGHT AGAINST CORRUPTION**

**4.3.1 Immunity of Certain Public Office Holders**

Another issue that has generated a lot of controversy is the immunity from prosecution being enjoyed by certain public office holders Section 308 of the 1999 Constitution gives the President, Vice President, State Governors and their deputy’s immunity from civil or criminal proceedings during their period of office. Under subsection 1(b) of the section they cannot be arrested or imprisoned during their period in office pursuant to the process of any court neither can any process of court be applied for or issued requiring or compelling their appearance. They can only be made nominal parties in any civil or criminal proceedings. Happily, the Supreme Court has held that this immunity does not shield the said public officers from being investigated. In Fawehimni Vs IGP , the Supreme Court held that section 308 does not grant to the officers mentioned in subsection (3) thereof immunity for policy investigation into allegations of crimes made against them. Investigation into a criminal complaint, according to the apex court, is not tantamount to instituting or bringing criminal proceedings.

It was based on this decision that the ICPC and EFCC were able to investigate serving State governors between 1999-2007 and many of them are presently being prosecuted. Yet, Nigerians seem to be still dissatisfied with the situation as many calls have been made for the removal of the immunity under section 308. Late President UmaruYar’Adua even joined in this clarion call thereby underscoring the unpopularity of the immunity provision.

Akintola on the other hand argued that leaders have not been serious about fighting corruption. He argued that the fact that President Goodluck Jonathan has refused, despite calls from all quarters that he publicly declare his assets, is enough evidence that this administration is not interested in being transparent. What is he (President Jonathan) hiding? He went on to posit that we know his background as a former deputy governor and vice president. I believe he is afraid that people could easily raise questions. Until we place the onus on public officers to justify their wealth, we will not get there. We should emulate the Asian countries where corruption attracts death penalty. The fight against corruption has to be taken seriously. It is the inability of our leaders to implement the law that is the problem. Those who are stealing us blind are not more than 5000. If Ghana could sacrifice 13 lives, we can afford to sacrifice them too for the rest of us to have peace. God even sacrificed his son to redeem the world (Olaleye et al, 2012:9).

**4.3.2 Underfunding of Anti-corruption Agencies**

When in December 17, 2013, the secretary of the Economic and Financial Crimes Commission, (EFCC) Mr. Emmanuel Adegboyega raised the alarm in Abuja, while briefing the Senate Committee on Drugs, Narcotics, Financial Crimes and Anti-Corruption, at a public hearing on the bill for an Act to establish the Nigeria Financial Intelligence Agency, that the agency was broke, so many got a public confirmation of what had been suspected. Investigation by LEADERSHIP Sunday shows that the fight against corruption by the administration of former PresidentGoodluck Jonathan either by act of commission or omission is being scuttled through inadequate funding, non remittance or delayed release of appropriated fund to the EFCC, Independent Corrupt Practices and other related offences Commission (ICPC) and others.

Earlier, stories had surfaced in the media saying that the EFCC is broke and that it can’t meet some of its key financial obligation including paying the various lawyers prosecuting it cases in different courtrooms across the country. Federal allocations to the anti-corruption agencies according to LEADERSHIP Sunday shows that allocations to some have dwindled in the last four years, highlighting Goodluck Jonathan’s administrations alleged insincerity in the fight against corruption. The agencies analyzed are the Economic and financial crimes commission (EFCC), Independent Corrupt Practices another related offences Commission (ICPC), the Code of Conduct Bureau (CCB), and the Code of Conduct Tribunal (CCT). While the EFCC, for instance, had about N13.8billion allocated to it in the 2011 fiscal year for its operations, funding declined sharply to N10.6billion in 2012 with a further decrease to N9.8billion in 2013. It enjoyed a marginal rise to N10.2billion in 2014.

For the ICPC, funding hovered between N3.6billion in 2013 and N4.6billion in 2014.The CCB was allocated about N1.4billion in 2011 and N2.9billion in 2013 after which it was further reduced to N2.8billion in the current year. In the case of the CCT, funding has also wobbled constantly in the past three years. While N359.6million was appropriated for it in 2011, it increased mildly to N461.2million was appropriated for it in 2011, it increased, mildly to N461.2million in 2012, N517.1million in 2013 and N512.6million in the current year. A peep into the Ribadu years reveals that in 2009, EFCC’s budget was N26billion. Five years later EFFC’s budget has reduced by more than a half.

Corroborating the fact that the EFCC had difficulties paying it lawyers, Lamorde in November 23, 2012, while defending its budget for 2013 before the Senate noted that funds were not provided in the 2012 Appropriation for legal services and had to struggle to get a few lawyers to help in working for them during the period. Lamorde has also added that though N200million was proposed by the commission for legal services for 2013, the Budget Office reduced it to N100million. This probably made them to start developing the capacity of its in-house lawyers. Conclusively, the fight against corruption in Nigeria according to Asobie, (2012b) has not been very effective so far for five main reasons:

First, contrary to Section 15.5 of the 1999 Constitution of the Federal Republic of Nigeria, the fight against corruption in Nigeria is, largely, a federal (Anti-Corruption Agencies) affair and not a national endeavour. Second, the fight lacks political leadership: it is not led from the top of the Nigerian political mainstream. Third, it is not energized, at all levels, by the force of personal example, which is the hallmark of transformational leadership. Fourth, the constitutional provisions for the fight against corruption are not faithfully enforced; in fact, many of them are breached, often brazenly. Fifth, the approach adopted in the fight is not holistic, reflecting the integral perspective: not surprisingly, there is no approved national strategic plan to combat corruption in Nigeria.

Nigeria today is at a critical stage since independence. The country faces a severe crisis in its economic, social and political development that is not unconnected to the problem of pandemic corruption. The manifestations of the crises are clear, the remedies much less so. Therefore, for a country awakening to democracy after long years of military authoritarianism, endemic corruption and stupendous wastage pose greater challenges. Since 1999 when the country returned to civil rule, there is no doubt that corruption has been the bane of democratic stability and survival.

News about corruption is no longer stunning. This vindicates consistent rating of Nigeria by Transparency International (TI), the global watchdog on corruption, as one of the most corrupt nations in the world. All anticorruption strategies by the various successive governments have had trifling impacts. The pathological effects of corruption-democratic instability, low level of governmental legitimacy, voracious poverty, infrastructural decay, electoral crisis, contract killing, political assassination, insecurity and generally, develop- mental problems- have been very devastating. Regrettably, those who claim to be the right physicians, as the previous and current revelations have shown, have come out as patients. The question is how to address the problems and challenges posed by corruption.

**4.3.3 EFCC Power to Prosecute and the Role of the Attorney-General of the Federation**

When the former attorney-general of the federation Mr. Aaondoakaa came into office, he reportedly issued an order directing the EFCC to hand over its files after investigation to the Attorney-General’s office for prosecution. This order generated a lot of controversy as the Attorney-General was called different names and openly castigated. In fact, the well-known lawyer, late Gani Fawelhinmi issued a statement published in various dailies calling for the removal of the Attorney-General. Some questions need therefore to be answered namely. (a) Does the EFCC have power to prosecute suspected offenders after investigation without reference to the Attorney-General as it had been doing? (b) Have the Attorney-General supervisory powers over the EFCC?

The answer to the first question is in the affirmative. The EFCC has the power to prosecute offenders under the Act. Section 11 (1)(b) of the EFCC Act established a unit called the Legal and Prosecution Unit and section 12(2) states that one of the responsibilities of the Unit is the prosecution of offenders under the Act. There is nothing unusual with this power of prosecution by the EFCC as other bodies such as the Police, the Customs and even some Government departments also enjoy prosecutorial powers.

However, this power to prosecute is subject to the over-riding powers of the Attorney General under Section 174 of the Constitution. That section not only gives the Attorney-General power to institute criminal proceedings against any person before any court in Nigeria other than a court martial but also to take over and continue any such criminal proceedings that may have been instituted by any other authority or person. It also empowers the Attorney-General to discontinue any such criminal proceedings that may have been instituted by any other authority or person. In State VS Ilori and Other the Supreme Court held that the powers of the Attorney-General under this section are absolute and the Court cannot entertain a suit to determine whether he exercised same having regard to the public interest, the interest of justice and the need to prevent abuse of legal process .

The above position shows clearly that the Attorney-General of the Federation can institute criminal proceedings after investigations by the EFCC. He can also take over and continue any criminal proceeding already instituted by the EFCC and may also discontinue such criminal proceedings. In discontinuing such criminal proceedings, the Attorney-General has no duty to give reason for the discontinuance as he is presumed to be acting on public interest. In State Vs Garba , the then Federal Court of Appeal expressed displeasure at the attitude of the High Court of Kaduna State which issued an order which had the effect of compelling the Attorney-General and the Solicitor-General respectively to appear in Court and continue with the prosecution of criminal cases even when they were not disposed.

The case against former Governor of Rivers State, Chief Dr. Peter Odili is hereby recast from a well-written petition filed before the National Judicial Commission (NJC) at the time by a UK-based Nigerian citizen, Osita Mba. In January 2007, the Economic and Financial Crimes Commission in the exercise of its statutory powers issued a report of its investigation into the finances of the Rivers State government under the then outgoing Governor Peter Odili. The “Interim Report of the EFCC on Governor Peter Odili” disclosed that “over 100 billion Naira of Rivers State funds were diverted by the Governor, and contained serious allegations of fraud, conspiracy, conversion of public funds, foreign exchange malpractice, money laundering, stealing and abuse of oath of office.

Subsequently, the Rivers State Government through its Attorney-General filed an action challenging the powers of the EFCC to probe the affairs of the State and claiming that the activities of the EFCC were prejudicial to the smooth running of the Government of Rivers State. The case was given expeditious hearing and on March 23 2007, the trial judge, Honorable Justice Ibrahim Nyaure Buba, granted all the declaratory and injunctive reliefs sought by the Plaintiff. These include a declaration that the EFCC investigations are invalid, unlawful, unconstitutional, null and void; an injunction restraining the EFCC and the other defendants from publicizing the report of the investigation; and an injunction restraining the EFCC from any further action in relation to the alleged economic and financial crimes committed by DrOdili. In a subsequent action Dr. Odili filed against the EFCC and including the Federal Attorney General in suit no. FHC/PHC/CSI78/2007, seeking to enforce the original judgment by way of an ex parte order barring the EFCC from investigating or arresting or prosecuting him, Justice Buba held that,

The subsisting judgment of March 2007 by this court is binding on all parties, therefore there is a perpetual injunction restraining the EFCC from arresting, detaining and arraigning Odilion the basis of his tenure as governor based on the purported investigation (Eme, 2010).

Digital revolution has dissolved physical boundaries of countries around the world, making those with inadequate cyber crimes or internet related offences laws like Nigeria to be vulnerable for the commission of such crimes. Thus, legal experts always disagree on matters relating to the territorial jurisdiction for the trial of the aforesaid offences, a situation that makes the investigation and prosecution of cyber crime offences extremely difficult. We are aware that a cyber crime Bill is presently receiving attention of the Attorney General of the Federation. When eventually passed into law by the National Assembly, the situation will be hopefully addressed.

**CHAPTER FIVE**

**SUMMARY, CONCLUSION AND RECOMMENDATIONS**

**5.1 Summary**

This analysis calls for a reform of the anti-corruption agencies to increase accountability in government agencies as a way of curbing corruption. It is hopeful that if the reform measures suggested in this paper are implemented, there will be some reductions in the level of corruption in the polity. This will make the public sector to be more efficient and effective in the execution of its job duties and become more responsive to the needs of its populace. Given the central role played by the public service in Nigeria, it is essential that public goods and services should be evenly distributed to all citizens.

**5.2 Findings**

The following findings were made.

1. The judiciary has not been adequately funded to boost the fight against corruption in Nigeria
2. Independence of the judiciary is practically not tolerated in Nigeria democracy; being that the executive wields so much control of the judiciary.
3. Top government officials in Nigeria enjoy immunity clause; which protects them against any form of probe and possible sanction.
4. The citizens have lost faith in the judiciary which was hitherto referred to as the last hope of the common man.
5. The criminal justice system in Nigeria favors the wealthy and influential class who possess the wherewithal to manipulate cases in their favor

**5.3 Recommendations**

Based on the analysis and evaluation of the study, the following recommendations were made.

1. There is need for reform in the Nigeria criminal justice legal system to pave way for judicial independent.
2. Specialized court system should be established for corruption cases and with specific time frame.
3. Nigerian government should make public expenditures more transparent, with clearer rules on procurement and budgeting.
4. Nigeria should abolish the clause on immunity from prosecution of executive, legislative, and judiciary figures from the constitution.
5. Anti-corruption agencies in Nigeria should be strengthened and linked with other international anti- corruption bodies like Transparency International (TI) to build capacities and monitor international collaborators towards corruption free society.
6. Central Bank of Nigeria (CBN) should testify effort in cubing money laundry and other financial crime in the sector, especially the political office holders.
7. Code of Conduct Bureau should verify asses and identify wealth and resources owned by political office holders before and after their tenures, these will complement the effort of other relevant agencies in minimizing corruption in the polity.

**Bibliography**

**Books**

Buscaglia, Edgardo. (1997). "*An Economic Analysis of Corrupt Practices within the Judiciary in Latin America*." In Claus Ott and Georg VonWaggenheim, eds., *Essays in Law and Economics* V. Amsterdam: Kluwer Press.

Buscaglia, Edgardo. (1995). "Stark Picture of Justice in Latin America." The Financial Times, March 21, p. A 13.

Buscaglia, Edgardo, and Maria Dakolias. (1999). "Comparative International Study of Court Performance Indicators: A Descriptive and Analytical Account." Legal and Judicial Reform Unit Technical Paper. The World Bank.

Buscaglia, Edgardo, and Maria Dakolias. (1996). A Quantitative Analysis of the Judicial Sector: The Cases of Argentina and Ecuador. World Bank Technical Paper No 353. Washington D.C.: World Bank.

Buscaglia, Edgardo, Maria Dakolias, and William Ratliff. (1995). Judicial Reform in Latin America: A Framework for National Development. Essays in Public Policy. Stanford: Hoover Institution.

Buscaglia, Edgardo, and Thomas Ulen. (1997). "A Quantitative Assessment of the Efficiency of the Judicial Sector in Latin America." International Review of Law and Economics 17, no 2.

Bussani, Mauro, and Ugo Mattei. (1997). "Making the Other Path Efficient: Economic Analysis and Tort Law in Less Developed Countries." In Law and Economics of Development, ed. Edgardo Buscaglia, William Ratliff, and Robert Cooter. Greenwich, Conn.: JAI Press.

Cooter, Robert. (1996). "The Rule of State Law and the Rule-of-Law State: Economic Analysis of the Legal Foundations of Development." *In Law and Economics of Development*, ed. Buscaglia, Ratliff, and Cooter.

de Soto, Hernando. (1989). *The Other Path*. New York: Harper and Row.

Gambetta, Diego. (1993). *The Sicilian Mafia*. Cambridge, Mass.: Harvard University Press.

Homans, George C. (1974). *Social Behavior: Its Elementary Forms*. New York: Harcourt Brace Jovanovich.

Klitgaard, Robert. (1991). *Adjusting to Reality: Beyond State versus Market in Economic Development*. San Francisco: ICS Press.

Langseth, Petter and Oliver Stolpe (2001), “*Strengthen the Judiciary Against Corruption*” International Yearbook for Judges. Australia.

Rose-Ackerman, Susan. (1997). "*Corruption and Development*." Manuscript.

Rose-Ackerman, Susan. (1978). *Corruption: A Study in Political Economy*. New York: Academic Press.

Smith, Adam. (1978). *Lectures on Jurisprudence*. Oxford, Eng.: Oxford University Press.

**Journals**

Andvig, Jens Christopher. (1989). "KorrupsjoniUtviklingsland" (Corruption in developing countries). *Nordisk Tidsskrift for PolitiskEkonomi (Northern journal in political economy)* 23: 51-70.

Becker, Gary. (1993). "Nobel Lecture: The Economic Way of Thinking about Behavior." *Journal of Political Economy* 108: 234-67.

Becker, Gary, and George, Stigler. (1974). "Law Enforcement, Malfeasance, and Compensation of Employees." Journal of Legal Studies 3: 1-18.

Buscaglia, Edgardo. (1997a). "Corruption and Judicial Reform in Latin America." *Policy Studies Journal* 17(4): 273-95.

Leiken, Robert S. (1996), "Controlling the Global Corruption Epidemic." *Foreign Policy* 5: 55-73.

Macrae, J. (1982). "Underdevelopment and the Economics of Corruption: A Game Theory Approach." *World Development* 10(8): 677-87.

Mauro, Paolo. (1995). "Corruption and Growth." *Quarterly Journal of Economics* 110: 681- 711

Ratliff, William, and Edgardo Buscaglia. (1997). "Judicial Reform: The Neglected Priority in Latin America." *Annals of the National Academy of Social and Political Science* 550: 59-71.

Shleifer, A., and R. W. Vishny. (1993). "Corruption." *Quarterly Journal of Economics* 108: 599-617.