

**TOPICAL LEGAL ISSUES
ON ELECTION AND
GOOD GOVERNANCE
IN NIGERIA**

ESSAYS IN HONOUR OF
CHIEF AWA U. KALU, SAN, FNIALS

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COMBATING CORRUPTION IN NIGERIA: A CRITIQUE OF THE LEGAL AND INSTITUTIONAL FRAMEWORK

Kenneth I. Ajibo

1. Introduction

Corruption is endemic in Africa which continues to ravage every facet of societal life. There is no doubt that the effect of corruption on the socio-economic development of any nation impacts negatively by distorting the even distribution of resources among the population.⁴⁹³ In 2018, it was estimated that more than one in every four people across 35 African countries paid bribes to access public resources.⁴⁹⁴ Nigeria has a fair share of this as it has been consistently downgraded on the Corruption Perception Index (CPI) given the humongous corruption in the country.⁴⁹⁵ Nigeria is the 154th least corrupt nation out of 180 countries according to the 2021 corruption perception index reported by Transparency International

⁴⁹³ J Dahiru, 'Reassessing the Role of Anti-Corruption Agencies in Combating Corruption in Contemporary Nigeria' (2011) 1(5) *ABUJPIL* 163.

⁴⁹⁴ The Corruption Perception Index (CPI) is an index which ranks countries by their perceived levels of public sector corruption, as determined by experts and opinion surveys. The 2020 CPI draws on 13 surveys and expert assessments to measure public sector corruption in 180 countries and territories, giving each a score from zero (highly corrupt) to 100 (very clean). See <http://www.transparency.org/cpi2020> > (Accessed 20 April 2023).

⁴⁹⁵ Ibid.

(TI).⁴⁹⁶ Similarly, a leading professional service firm, PricewaterhouseCoopers (PwC) has further contended that corruption could cost Nigeria up to 37% of her Gross Domestic Products (GDP) by 2030 if this ugly trend is not dealt with drastically.⁴⁹⁷

The above notwithstanding, global treaties have been drafted and codified to combat corruption at both the international and regional levels.⁴⁹⁸ In Nigeria, several institutions and a large body of legislations exist, aimed at addressing the problem of corruption.⁴⁹⁹ Despite these laudable regimes, corruption still remains a major challenge as it has eaten very deep into the fabric of the country. Furthermore, the public perception is that the specific anti-corruption agency in the country lacks the requisite independence to carry out its functions, given the influence from the ruling political class.

The paper is divided into five parts. Part one is the introduction and conceptual clarifications. Part two examines

⁴⁹⁶ Nigeria is the 154th least corrupt nation out of 180 countries, according to the 2021 Corruption Perceptions Index reported by Transparency International. See <<http://www.transparency.org/cpi2021>> (Accessed 20 March 2023).

⁴⁹⁷ PwC, 'Impact of Corruption on Nigeria' 2017 <<https://www.pwc.com/ng/en/publications/impact-of-corruption-on-nigerias-economy.htm>> (Accessed 12 May 2023)

⁴⁹⁸ UN Convention against corruption (7 October 2003) UN Doc A/158/422 (Nigeria ratified this instrument in December 2004). See OECD Convention on combating bribery of foreign public officials in international business transactions (agreed by members of the organisation for economic co-operation and development (OECD) in 18 December 1997) 37 ILM 1.9; African Union Convention on Preventing and Combating Corruption (11th July 2003) 43 ILM (which came into force on 6th August 2006). Nigeria ratified this AU convention in October 2006.

⁴⁹⁹ Some of these institutions include but are not limited to: the Independent Corrupt Practices Commission (ICPC), the Economic and Financial Crimes Commission (EFCC). The legal regimes include: the Constitution of Federal Republic of Nigeria 1999 (as amended); the Criminal Code Cap C Laws of the Federation (LFN) 2004; the Money Laundering Prohibition Act, LFN 2004; the EFCC Act 2004, the ICPC Act Cap C31 LFN 2004.

the impacts of corruption in Nigeria. Specifically, the corruption in electric power sector is examined. Part three discusses the legal and institutional regimes for fighting corruption in Nigeria. Part four examines the effectiveness of the EFCC as an anti-corruption agency. In examining this, the issues and challenges confronting the agency in the fight against corruption are analysed. The paper attempts to suggest practicable approaches needed to strengthen the agency for quality delivery of its mandate to the Nigerian people. It will also proffer practicable solution regarding the inefficiency in the power sector which is fuelled by corruption. The last part concludes and provides further suggestions on ways forward.

Defining corruption: conceptual clarification

A precise definition of corruption that will be acceptable to all disciplines remains largely illusory. Nevertheless, the World Bank defines corruption as the use of public office for private gain.⁵⁰⁰ This definition focuses on corruption in the public sector with respect to public officials, civil servants or politicians. However, moving away from the public-office-centred definition, the Organisation for Economic Co-operation and Development (OECD) considers corruption as the abuse of a public or private office for personal gain.⁵⁰¹ Similarly, Transparency International (TI) defines corruption as the abuse of entrusted power for private gain.⁵⁰²

⁵⁰⁰ See <<https://www.worldbank.org>> (last accessed 12 May 2023).

⁵⁰¹ See <<https://www.stats.oecd.org/glossary/detail.asp?ID=4773>> (last accessed 24th April 2023).

⁵⁰² In January 2020, Transparency International's Corruption Perception Index (CPI) gave Nigeria a low ranking of 146 out of 180 countries surveyed despite measures in

The reference to 'private office' and 'entrusted power', as opposed to 'public office' or 'public power', represents important advances because they cover types of corruption that do not exclusively involve politicians, bureaucrats or public power. For example, investors and boards of directors can entrust power to a company's Chief Executive Officer (CEO) or Chief Financial Officer (CFO), and when such a figure accepts a bribe, embezzles funds, demands sexual favours, or makes harmful decisions based on a conflict of interest, corruption has occurred. It should not matter whether the power that they have abused was technically public or private. In addition, the Black's Law Dictionary further sees 'corrupt' as having an unlawful or depraved motive; especially influenced by bribery.⁵⁰³

At the municipal level, the 1999 Constitution of the Federal Republic of Nigeria established a code of conduct for public officers and made it a political objective for the state to abolish all forms of corrupt practices.⁵⁰⁴ The Criminal Code Act states that 'an offence of corruption is committed, where a public officer corruptly asks, receives or obtains any property or benefits'.⁵⁰⁵ The Independent Corrupt Practices and Other Related Offences (ICPC) Act defines corruption to include: bribery, fraud and other related offences.⁵⁰⁶ The Economic and Financial Crimes Commission (EFCC) Act empowers the

place to combat corruption. See <<https://www.transparency.org>> (last accessed 19 April 2023).

⁵⁰³ Bryan Garner, *Black's Law Dictionary* (9th edn, West Publishing Company).

⁵⁰⁴ See Sections 15, 66, 107, 172, 209, 318 and Part 1 of the fifth schedule, to the Constitution of the Federal Republic of Nigeria.

⁵⁰⁵ See Criminal Code Act 2004, s.98.

⁵⁰⁶ See ICPC Act 2004, s.2. The ICPC Act's definition of corruption in s.2 of the Act and other sections has been criticised as vague and scanty. See D Paul 'Law and Social Change: A Socio-Legal Analysis of Nigeria's Corrupt Practices and Other Related Offences Act 2000' (2001) 45(2) *Journal of African Law* 178-180.

Commission to investigate, prevent and prosecute offenders who engage in:

*Money laundering, embezzlement, bribery, looting, and any form of corrupt practices, illegal arms deal, smuggling, human trafficking and child labour, illegal oil bunkering, illegal mining, tax evasion, foreign exchange malpractices including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic waste and prohibiting goods.*⁵⁰⁷

Corruption is further seen as any form of reciprocal behaviour of transaction where the power or office holder can respectively inflate the inducement of each other by some rewards to grant illegal preferential treatment or favour against the principle and interests of a specific organisation or public within the society.⁵⁰⁸ Corruption could arise in both political and bureaucratic offices and can be petty or grand, organised or unorganised.⁵⁰⁹ Generally, the phenomenon of corruption in its ordinary connotation, means debasing, tainting, spoiling, making impure, defiling, perverting, dishonesty, or bribery.⁵¹⁰ The UNCAC defines bribery as:

⁵⁰⁷ See EFCC Act 2004, s.46. This wide range of enumeration of offences has been criticised among other over-reaching provisions of the Act.

⁵⁰⁸ O Kayode 'Corruption in Nigeria: An Appraisal' (2013) 19 *Journal of Law, Policy and Globalisation* 42-50.

⁵⁰⁹ Corruption ranges from small favours between a small number of people (petty corruption), to corruption that affects the government on a large scale (grand corruption), and corruption that is so prevalent that it is part of the everyday structure of society, including corruption as one of the systems of organised crime (systemic corruption).

⁵¹⁰ Bribery involves the improper use of gifts and favours in exchange for personal gain. This is also known as kickback.

*The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.*⁵¹¹

But corruption goes beyond the giving and taking of bribe.⁵¹² It encompasses any use of power by anybody capriciously or arbitrarily or for any other purpose foreign to that for which it is meant.⁵¹³ What can be gleaned from the above is that corruption encompasses abuses by government officials such as embezzlement and nepotism, as well as abuses linking public and private actors such as bribery, extortion, influence

⁵¹¹ See UNCAC, arts 15, 16 and 21.

⁵¹² For instance, embezzlement and theft involve someone with access to funds or assets illegally taking control of them. Fraud involves using deception to convince the owner of funds or assets to give them up to an unauthorised party. Examples include the misdirection of company funds into 'shadow companies' (and then into the pockets of corrupt employees), the skimming of foreign aid-money, scams, electoral fraud and other corrupt activity. Extortion and blackmail centre on the use of threats. This can be the threat of physical violence or false imprisonment as well as exposure of an individual's secrets or prior crimes. Favouritism, nepotism and clientelism involve the favouring of not the perpetrator of corruption but someone related to them, such as a friend, family member or member of an association. Examples would include hiring or promoting a family member or staff member who shares some common group to a role they are not qualified for. Electoral fraud involves illegal interference with the process of an election, either by increasing the vote share of a favoured candidate depressing the vote share of rival candidate, or both.

⁵¹³ Thus, a judgment given by a court, without considering the relevant factors is corrupted an academic certificate issued, and which is not a proper reflection of the student's academic strength is corrupted, contract awarded to a company by a body, knowing that the contractor lacks the ability to carry out the contract is corrupted. An admission obtained without the proper qualifications is corrupted. An undeserving favour obtained, to the detriment of another person is corrupted. Vote buying, hoarding of electoral or voting materials, electoral manipulation, alteration of electoral results, or imposition of electoral candidates, are all incidents of corruption of a political kind. Indeed, it is an all-embracing and all-pervasive phenomenon.

peddling, and fraud. In other words, corruption could include 'all the forms of improper or selfish exercise of power and influence attached to a public as well as private office'.⁵¹⁴ The implication of a number of these definitions remains that corruption is the wrongful desire of pecuniary gain or acquisition of any other advantage. Therefore, it can be argued that to be guilty of corruption, a wrongful desire for pecuniary gain or some other advantage(s) has to be established whether in the public or private sector.

2 Corruption in Nigerian context

Globally, corruption is a major issue in the quest for development. However, it seems to be a fundamental feature of governance in many developing countries including Nigeria. Corruption in Nigeria appears to be very much heightened given the structural informality which makes it hard for formal rules to be implemented.⁵¹⁵ For instance, Nigeria is often seen as a neo-patrimonial prebendalist state.⁵¹⁶ Patrimonialism is defined as a social and political order where patrons secure the loyalty and support of clients by granting benefits from their own or state resources.⁵¹⁷ Neo-

⁵¹⁴ Y AkinseyeGeorge, *Legal System, Corruption and Governance in Nigeria* (Lagos: New Century Law Publishers Ltd: 2000) 9.

⁵¹⁵ Ibid.

⁵¹⁶ Neopatrimonialism is a system of social hierarchy where patrons use state resources to secure the loyalty of clients in the general population. Similarly, prebendalism refers to political systems in which elected officials and government workers feel they have a right to a share of government revenues, and they use them to benefit supporters, co-religionists and members of their ethnic group. See D Beeker and VB Gool 'From Patronage to Neo-patrimonialism: Postcolonial Governance in Sub-Sahara Africa and Beyond' (Africa Studies Centre 2012).

⁵¹⁷ G. Erdmann and U. Engel, 'Neopatrimonialism Revisited-Beyond a Catch-All Concept' 2006

<http://www.gigahamburg.de/en/system/files/publications/wp16_erdmannengel.pdf> (last accessed 30 April 2023).

patrimonialism, on the other hand, gives rise to a 'hybrid' state.⁵¹⁸ The distinction between the public and private spheres exists at least formally, but in practice, real decision-making happens outside the formal institutions. Instead, decisions about policies and resources are made by powerful politicians and their cronies who are linked by informal, personal and clientelist networks that co-exist with the formal state structure. As such, neo-patrimonial states fail to guarantee the universal and fair distribution of public resources. This particular feature of the informality in governance seems to be one of the major implications of the social mechanism fuelling corruption in the country.⁵¹⁹ In other words, corruption in Nigerian politics is a feature of this informal structure which leads to uneven and poor resource distribution.

Corruption in Nigeria is further exacerbated by the presence of oil reserves. Despite her endowed resources critical to national development, the attainment of her potential among the comity of nations remains a far cry. With huge oil reserves, the culture of rent-seeking is deeply embedded in the system especially as oil remains a major revenue earner for the country. There is no doubt that the effect of corruption on the socio-economic development of any nation impacts negatively by distorting the even distribution of resources among the population.⁵²⁰ The implication of this is that the misapplication

⁵¹⁸ Ibid.

⁵¹⁹ The theory of prebendalism provides that state offices are regarded as prebends that can be appropriated by officeholders, who use them to generate material benefits for themselves and their constituents including their kin groups. See J Richard *Democracy and Prebendal Politics in Nigeria: The Rise and Fall of the Second Republic*, (Cambridge: 1987, Cambridge University Press).

⁵²⁰ The abundant resources made Nigeria to be declared as a "paradox" by the World Bank. The paradox is that, the poverty level in Nigeria contradicts the country's

of public funds by the corrupt elites has been a major cause of Nigeria's underdevelopment.

2.1 Impact of corruption

The negative impacts of corruption are so monumental that it could overwhelm a nation given that it creates serious developmental challenges including huge dysfunctional systems.⁵²¹ Politically, it weakens democracy, including good governance by destabilising the electoral processes and governmental procedures.⁵²² In other words, corruption in elections weakens the legitimacy of government, accountability and proper representation in policy formulations.⁵²³ Similarly, corruption engenders the breakdown of law and order leading to political disorder. Political corruption, such as the manipulation of the electoral process, could create political instability that could erode the ability of government to provide meaningful development in any nation.⁵²⁴ The manipulation of the electoral process could

immense wealth as the country still remains the 'poverty capital of the world' See <<https://www.worldbank.org>> (last accessed 20 April 2023).

⁵²¹ Combating corruption and abuse of public office/trust has been ongoing for decades, but has intensified with the return to democracy in 1999. Findings have shown that as at 2012, Nigeria is estimated to have lost over \$400 billion dollars to corruption since independence. Between 2013 and 2015, Nigeria lost about \$50 billion dollars to corruption and abuse of public office. This ranges from the \$15 billion dollars loss to massive fraudulent and corrupt practices in arms and defence equipment procurement (including misuse of ₦3 trillion defence budget since 2011 under the guise of fighting Boko Haram or counter-insurgency operations in the North-Eastern region of Nigeria. See M Ladan, *Money Laundering, Terrorism, Corruption, Human Trafficking in Nigeria* (Lambert Academic Publishing 2016).

⁵²² Ibid.

⁵²³ B Marong 'Toward a Normative Consensus against Corruption: Legal Effects of the Principles to Combat Corruption in Africa' (2002) 30 *Denver Journal of International Law and Policy* 23-30

⁵²⁴ Ibid.

create ill-feeling by the aggrieved political parties, thus creating political tension in the country.

Corruption has the potential to usher in institutional breakdown in the polity leading to loss of confidence in the system; the end product is that citizens resort to self help in order to ensure their survival which can no longer be guaranteed due to institutional corruption.⁵²⁵ The spill-over of this could take various forms such as banditry, kidnapping, armed robbery, prostitution and others.⁵²⁶ Similarly, in the judiciary, corruption undermines the rule of law and erodes public confidence in the administration of justice.⁵²⁷

More strikingly, corruption weakens the institutional capacity of government.⁵²⁸ This is because institutional safeguards are disregarded, resources are siphoned off and officials are hired or promoted without regard to performance. Corruption also weakens economic development by enabling considerable distortions and inefficiency. In the private sector, corruption increases the cost of business through the price of illegal payments, the management cost of negotiating with officials, and the risk of breached agreements or detection.⁵²⁹ While it may be argued that corruption reduces the costs of contracting by cutting red tape, emerging consensus provides that availability of bribes induces officials to contrive new rules and delays. This means that where corruption inflates the cost

⁵²⁵ I Idenyi 'Towards Giving Impetus to the Current Fight against Corruption & Economic Crimes in Nigeria' (2009) 2 *CJPPL* 1-2

⁵²⁶ *ibid.*

⁵²⁷ P Alenjandro 'Combating Corruption under International Laws' (2014) 10 *Duke J of Comp & Int'l* 345.

⁵²⁸ O Olujobi 'Legal Framework for Combating Corruption in Nigeria - The Upstream Petroleum Sector in Perspective' (2017) 3(25) *Journal of Law and Economics* 956.

⁵²⁹ *Ibid.*

of business, it also distorts the playing field, shielding firms with connections from competition and thereby sustaining inefficient firms.⁵³⁰ Corruption also generates economic distortions in the public sector by diverting public investment away from education and into capital projects where bribes and kickbacks are more noticeable. Officials may balloon the technical complexity of public sector projects to conceal corrupt enrichment, thus further distorting the investment climate.⁵³¹

Corruption is also attributed to the major reason for brain drain in Nigeria. For instance, Nigerian intellectuals and professionals are forced by the economic situation in the country, induced largely by corruption to seek 'greener pasture' in more stable countries overseas.⁵³² The implication of this is the loss of highly skilled manpower and the transfer of same to her competitors. This is in addition to the wasted funds deployed in training of these fleeing categories of citizens. The result of this brain drain is that the economy suffers since these experts are not available for the development of the economy especially in the area of research and development.

2.2 Corruption in electricity power sector

The power supply crisis in Nigeria has been a longstanding complication in the Nigerian Electricity Supply Industry (NESI).⁵³³ In the early part of the last decade, the federal

⁵³⁰ *Ibid.*

⁵³¹ F Gonzalo 'Corruption and the Private Sector: A Review of Issues' <http://www.businessenvironment.org/dyn/be/docs/262/Corruption_and_the_Private_Sector_EPS_PEAKS_2013.pdf> (accessed 20 April 2023).

⁵³² E Rotimi et al 'Analysis of Corruption & Economic Growth in Nigeria' (2013) 4(4) *Afro Asian Journal of Social Sciences* pp 1-19

⁵³³ The Electric Power Sector Reform Act 2005 Chapter E7 Laws of the Federation of Nigeria 2004 (EPSRA) is the primary legislation that governs the NESI and the NESI value chain (including electricity generation, transmission, distribution, supply and trading). The EPSRA also established the NERC which is responsible for

government of Nigeria began a wave of reforms in the power sector.⁵³⁴ The generation and distribution arms of the industry were privatised, followed by the establishment of regulatory bodies and agencies to execute the government's power sector road map.⁵³⁵ Despite these reforms, the NESI still faces the huge challenge of satisfying the power demand which is so desperately needed to meet the Federal Government's colossal target to achieve 20 gigawatts (GW) of available electricity capacity.

Indeed, after a decade, it can be argued that the access to electricity expanded by about 13 percent, connecting millions more Nigerians to the national grid. At the same time, however, data from a World Bank enterprise survey revealed that power outages in firms in a typical month remain high despite increased access.⁵³⁶ Several factors are driving the poor performance of the power sector. The non-commercial viability of the sector is a major constraint. Tariffs are often difficult to collect from the end-users. For instance, in 2015 and

licensing and regulating persons engaged in the generation, transmission, system operation, distribution and trading of electricity. The NERC has issued several regulations and guidelines regulating the NESI.

⁵³⁴ A number of reforms were necessary because of the crucial role of power supply in national building and development. These reforms started with the deregulation of the NESI, which began with the privatisation of the National Electric Power Authority (the state-owned monopoly responsible for the generation, transmission and distribution of electricity in Nigeria). The reforms then continued with the unbundling and privatisation of the NESI to create semi-autonomous commercial subsectors. See <<https://www.guardian.ng/opinion/corruption-is-nigerias-power-sector-demon>> (last accessed 7 April 2023).

⁵³⁵ *The Nigerian Electricity Regulatory Commission* (NERC) is an independent regulatory body with authority for the regulation of the electric power industry in Nigeria. The Commission makes regulations prescribing all matters which are required or necessary to be prescribed for carrying out or giving effect to the Electric Power Sector Reform Act 2005.

⁵³⁶ Specifically, outages rose from more than 25 in 2007 to roughly 33 as of 2014. Moreover, power outages occur more than 320 days per year. See <<http://www.worldbank.org-press-release2017/04/22>> (last accessed 5 April 2023).

2016 alone, the electricity distribution companies (DISCOs) complained of losing US\$1.4 billion to non-payment of energy bills as most customers were not willing to pay for the service because the power supply was sporadic.⁵³⁷ In 2015, after a fact-finding mission, a member of the Nigerian parliament claimed that Brazil generated 12,000 Megawatts of electricity with \$12 billion but Nigeria is unable to generate 4,000 Megawatts after spending close to \$16 billion.⁵³⁸ What could explain this but corruption at the highest level of government? Ultimately, corruption in the power sector has reached an alarming proportion. It heavily bleeds government investments in energy sector and stifles efforts that are designed to boost the availability of electricity in the country.

Corruption might exist in the public sector but through the power of robust institutions, it can be prevented from destroying the systems. Sadly enough, those with the mandates to build the institutions are known to be the primary beneficiaries of the current status quo, which points to misaligned incentive structures that may be at the root of the problem in the absence of adequate checks and balances. Moreover, it has been argued that it is harder for an oil-rich country to build strong institutions decades after it discovered oil, pointing to the age-old resource curse and its implications for the power sector.⁵³⁹ However, since government intervention creates corruption avenues, rents for bureaucrats, and misallocation of resources, full privatisation of the power sector might be one of the ways out of the problem.⁵⁴⁰ In other

⁵³⁷ Ibid.

⁵³⁸ See <https://www.guardian.ng/opinion/corruption-is-nigerias-power-sector-demon> (last accessed 7 May 2023).

⁵³⁹ Ibid.

⁵⁴⁰ Ibid.

words, Nigeria must find a way out of this situation if it must extricate itself from the iron grip of energy poverty.

3. Regimes for anti-corruption agencies in Nigeria: Overview

The legal regimes for combating corruption in Nigeria stem from the 1999 Constitution which provides that 'the State shall abolish all corrupt practices and abuse of power.'⁵⁴¹ However, several legislations aimed at curbing corruption exist in the country.⁵⁴² They are divided into general and specific legislations. The general legislations include the Penal & Criminal Codes. However, the embarrassing rate of corruption has made Nigeria to move beyond the general legislations to emphasise more on specific anti-corruption laws because it has continually brought Nigeria into negative global spotlight.

3.1 Criminal and Penal Codes

While the Criminal Code and the Penal Code may have provisions prohibiting corruption in Nigeria, it seems that both Codes focus more on corruption in the public sector which invariably neglects the private sector that forms the engine room for growth in every economy.⁵⁴³ However, the offences of extortion by public officers are provided for in the

⁵⁴¹ See CFRN 1999 (as amended), s.15(5).

⁵⁴² These include but are not limited to the Independent Corrupt Practices Commission (ICPC) Act 2000, Economic and Financial Crimes Commission (EFCC) Act 2004, Money Laundering (Prohibition) Act 2004 (Amended 2011), Public Procurement Act, 2007, Fiscal Responsibility Act 2007, Code of Conduct and Tribunal Act 1989 (now part of the 1999 Constitution), Failed Banks (Recovery of Debts & Financial Malpractices) in Banks Act 1994, Advance Fee Fraud Act 2004, Nigerian Extractive Industries Transparency Initiative Act No. 69 2007, Cyber Crimes Act 2015, among others.

⁵⁴³ The Criminal Code provides for official corruption and judicial corruption. See sections 98 and 116 of the Criminal Code Act 2004. See the Penal Code Act on bribery and corrupt influence.

Criminal Code.⁵⁴⁴ The definition encompasses a public servant taking advantage of his/her position to extort money from any person.⁵⁴⁵ It involves the offence of judicial corruption with respect to 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.⁵⁴⁶ The provisions of the Criminal Code on corruption can be criticised given that it is unable to deal effectively with both private and official corruption coupled with its failure to make provisions for restitution and/or forfeiture of corruptly acquired property or money. The effect of this shortcoming in the Code, especially with respect to the private sector, could lead the courts to acquit an obviously dishonest accused.

3.2 Public Procurement Act

The Act is another legislation that seeks to guard against corruption in Nigeria.⁵⁴⁷ The Act covers all aspects involved in public sector procurement including the procurement of goods and services. The Act established the National Council on Public Procurement (The Council) and the Bureau of Public Procurement (The Bureau) as the regulatory authorities responsible for the monitoring and oversight of public procurement, setting standards, harmonising existing government policies and practices and developing a legal

⁵⁴⁴ Ibid, s.404 (1) (a) – (d).

⁵⁴⁵ Ibid sections 89 to 111 are under Chapter 11(Disclosure of official secrets and abstracting document) and Chapter 12 (Corruption and abuse of office) of the Act.

⁵⁴⁶ The offence carries 14 years of imprisonment if convicted. See Ibid, s.114.

⁵⁴⁷ See the Public Procurement Act (PPA) No. 14 of 2007.

framework and capacity for public procurement in Nigeria.⁵⁴⁸ The Act thus ensures that procurement is organised and laid down methods and policies are strictly followed. For instance, section 53(1) of the Act empowers the Bureau to review and recommend for investigation any matter related to the conduct of procurement process by any Ministry or Agency of Government, if it considers such investigation desirable so as to detect or prevent the violation of any of the provisions of the Act.⁵⁴⁹ Transparency in public procurement processes including the enforcement of the Public Procurement Act to the letter is suggested to reduce corruption in public-private sector transactions.

3.3 ICPC Act

Previous regimes in Nigeria have made audacious effort to reverse the ugly trend of corruption through a number of legislative enactments including the creation of specific anti-corruption agencies (ACAs). The most progressive attempt to fight this ugly phenomenon could be seen during the regimes of President Olusegun Obasanjo, with the setting up of the Independent Corrupt Practices Commission (ICPC).⁵⁵⁰ The Act seeks to prohibit and prescribe punishment for corrupt practices and other related offences. It establishes an

⁵⁴⁸ Ibid, section 6(1)(e) of the PPA empowers the bureau to 'debar any supplier, contractor or service provider that contravenes any provision of this Act and regulations made pursuant to the provisions of this Act.

⁵⁴⁹ Corruption can still occur through deliberate violations of procurement rules or through legitimate deviations from the rules. Transparency in public procurement process including the enforcement of the Public Procurement Act to the letter is suggested to reduce corruption in public-private sector contracts.

⁵⁵⁰ Established pursuant to the Corrupt Practices and Related Offences Act 2000, which was repealed and replaced with the Corrupt Practices and Related Offences Act Cap C Laws of the Federation of Nigeria 2004.

independent corrupt practices and other related offences commission (ICPC), vesting it with the responsibilities of investigating and prosecuting offenders. The legislation also vests the commission with exhaustive anti-corruption mandates within the sphere of public office corruption. The ICPC Act defines corruption to include: bribery, fraud and other related offences. The definition has been criticised for being too vague and scanty. For instance, the phrase 'and other related offences' is not specific in scope which may give one a room to labour in a guess work.⁵⁵¹

3.4 EFCC Act

The Economic and Financial Crimes Commission (EFCC) was established to fight corruption.⁵⁵² The authorities conferred on these anti-corruption agencies (ACAs) appeared to be far-reaching with over-lapping functions. The EFCC is conferred with a broader mandate than the ICPC to investigate and prosecute corrupt officials including private persons in respect of all laws relating to economic and financial crimes. Similarly, the EFCC Act further mandates the Commission to seize, recover and repatriate any corrupt money within and outside

⁵⁵¹ See ICPC Act 2004, s.2. See D Paul 'Law and Social Change: A Socio-Legal Analysis of Nigeria's Corrupt Practices and Other Related Offences Act 2000' (2001) 45(2) *Journal of African Law* 178-180.

⁵⁵² The EFCC was set up pursuant to the Economic and Financial Crimes Commission (Establishment) Act, 2004. The Act mandates the EFCC to combat financial and economic crimes. The Commission is empowered to prevent, investigate, prosecute and penalise economic and financial crimes and is charged with the responsibility of enforcing the provisions of other laws and regulations relating to economic and financial crimes, including: The Money Laundering Act 1995; The Money Laundering (Prohibition) Act 2004; The Advance Fee Fraud and Other Fraud Related Offences Act 1995; The Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act 1994; The Banks and other Financial Institutions Act 2020.

the territory of Nigeria.⁵⁵³ Despite the ambitious powers to carry out these extant duties, the agency is seen by many as an appendage to every elected government readily willing to do its biddings. Indeed, the public perception is that the Commission lacks the independence to carry out its functions given the influence from the ruling political class.

The anti-corruption agency strategies in most emerging nations have often failed given the level of meddlesomeness by high ranking politicians in corruption cases. A recent example with high level of political interference is the Halliburton scandal involving a conglomerate company Siemens AG and Halliburton.⁵⁵⁴ In this case, following the bribery allegation in Halliburton its foreign employees of the conglomerate were swiftly tried in other jurisdictions and adequate fine was paid in lieu of imprisonment. However, Nigerian officials allegedly implicated in the same saga receiving millions of US dollars were neither investigated nor prosecuted.⁵⁵⁵ Similarly, a number of former state governors and federal ministers are currently undergoing one form of investigation or facing prosecution for gross misappropriation of public funds.⁵⁵⁶ Studies indicate that a few of these prosecutions against these ex-governors and former ministers are stalled at interlocutory stages with little or no progress

⁵⁵³ EFCC Act 2004, s.5.

⁵⁵⁴ Following the allegation of bribery in Halliburton, its former subsidiary, Kellogg Brown & Root (KBR) pleaded guilty and accepted to pay a fine. See *United States of America v Kellogg Brown & Root LLC*, <<https://www.justice.gov/sites/default/files/criminal.fraud/legacy/2011/02/16/02-11.09kb.plea.agree.pdf>> (last accessed 10 May 2023).

⁵⁵⁵ KR Hope, *Corruption and Governance in Africa* (Palgrave MacMillan).

⁵⁵⁶ E Leke 'Another ex-governor found guilty of corruption' *The Eagle* (12 June 2018) <<https://www.theeagleonline.com.ng/breaking-another-ex-governor-found-guilty-of-corruption/>> (last accessed 20 April 2023).

regarding the conclusion of the substantive aspect of the cases.⁵⁵⁷ It is on record that where investigation and prosecution may possibly lead to conviction, suspects usually defect to the ruling party for possible protection.⁵⁵⁸

Agreed that under the Nigerian laws, a person is presumed to be innocent until found guilty.⁵⁵⁹ However, one expects that any person seeking to occupy a coveted position in Nigeria should be above-board in all ramifications, and this standard should be enforced by the EFCC to demonstrate zero tolerance corruption. Unfortunately, EFCC has failed to confront these politicians with their pending cases. Perhaps, it can be argued that the apparent inability to successfully conclude pending corruption related cases leads many to conclude that the entire fight to stem the tide of corruption remains unserious.

Furthermore, corruption has been identified as one of the biggest governance challenges militating against private sector development, but it is often widely and erroneously perceived as a public sector problem. Most corruption conversations are on the public sector context, and corporate anti-corruption measures and strategies are often designed towards mitigating public sector corruption. This perception has endured over

⁵⁵⁷ M Khan et al, *Anti-corruption in adverse contexts: strategic approach* (School of Oriental and African Studies 2017) <[https://www.eprints.soas.ac.uk/23495/1/Anti-Corruption%20in%20Adverse%20context%20\(1\).pdf](https://www.eprints.soas.ac.uk/23495/1/Anti-Corruption%20in%20Adverse%20context%20(1).pdf)> (last accessed 19 April 2023).

⁵⁵⁸ The general perception in Nigeria remains that had Dariye and Nyame defected to the ruling party at the earliest stages of their prosecution they may not have been convicted. See Y Alli, 'Conviction of Nyame and Dariye shows EFCC not selective', *The Nation* (June 2018) <<https://www.thenationonline.net/conviction-of-nyame-dariye-shows-efcc-not-selective/1>> (last accessed 20 April 2023).

⁵⁵⁹ Constitution of Federal Republic of Nigeria (CFRN) 1999 (as amended), s.36 (5).

the years despite evidence that private sector actors are essential participants in many corrupt acts, and there are in multiple forms including those which are primarily driven by the private sector.⁵⁶⁰ In a recent study of 40 grand corruption scandals in Nigeria, it was discovered that over 80 percent of the acts were transactional and *quid-pro-quo* kinds of exchange involving multinational firms or their local agents and public officials.⁵⁶¹ But very few private sector corruption cases are ever brought before judges in the Nigerian courts.⁵⁶² In the rare cases in which corporate malfeasance is investigated, the cases tend to be extremely high profile.⁵⁶³ The next section of this paper examines the collaborative mandate of EFCC in its quest to minimise the pervasive nature of corruption, which has battered the nation's image both locally and internationally.

⁵⁶⁰ See Olusegun Sotola, 'Reducing Corruption: Is the Private Sector Doing Enough?' *Business Day* (May 12 2020) <<https://businessday.ng/opinion/article/reducing-corruption-is-the-private-sector-doing-enough?>> (last accessed 30 April 2023).

⁵⁶¹ See Voice of America, 'Nigeria Bans Siemens over Bribery Scandal' *Voice of America* (November 01 2009) <<https://www.voanews.com/a/a-13-2007-12-06-voa27/351581.html>> (last accessed 10 May 2023).

⁵⁶² See African Business, 'Time to Crackdown on Private Sector Corruption' *African Business* (July 2nd 2019) <<https://african.business/2019/07/economy/time-to-crack-down-on-private-sector-corruption/>> (last accessed 20 April 2023).

⁵⁶³ Bribery is not the only form of corruption which may occur in the private sector. Embezzlement by a company's own employees, corporate fraud, and insider trading can be very damaging to enterprises too. As the size of a firm increases, controlling the actions of its employees is increasingly more difficult. In a 2007 survey of more than 5,400 companies in 40 countries, almost one-third reported has suffered asset misappropriation. See Shikaleke Emonena, 'The Trajectory of Public-Private Sector Corruption in Nigeria: What Should Be Done Differently?' *Nigerian Lawyer* (November 30th 2022) <<https://thenigerianlawyer.com/the-trajectory-of-public-private-sector-corruption-in-nigeria-what-should-be-done-differently/>> (last accessed 25 April 2023).

3.5 EFCC as an anti-graft agency: Inter-agency collaboration

The EFCC is a creation of statute with bold mandate but its power has been whittled down by political influence.⁵⁶⁴ Nevertheless, from the liberal and open-ended definition of 'economic and financial crime,' the agency is vested with power to co-ordinate and collaborate with other law enforcement agencies (LEAs).⁵⁶⁵ The collaborative mandate can be seen from the multidisciplinary and multi-agency composition of the Commission which comprises the Chairman,⁵⁶⁶ the Secretary of the Commission⁵⁶⁷ and other 16 ex-officio members drawn from 16 (LEAs).⁵⁶⁸ The mandate of

⁵⁶⁴ L Lawson, 'The politics of anti-corruption reform in Africa' (2009) 47(1) *Journal of Modern Studies* 73-100

⁵⁶⁵ S.46 of the EFCC Act defines the phrase 'economic and financial crimes' to mean the 'non-violent criminal and illicit activity committed with the objectives of earning wealth illegally either individually or in a group or organised manner thereby violating existing legislation governing economic activities of the government and its administration. It includes any form of fraud, narcotic drug trafficking, money laundering, embezzlement, bribery, looting and any form of corrupt malpractice, illegal arms deals, smuggling, human trafficking and child labour, illegal oil bunkering and mining, foreign exchange malpractices including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic wastes and prohibited goods.

⁵⁶⁶ The Chairman is the Chief Executive and Accounting Officer of the EFCC who must be a serving or retired member of any government security or law enforcement agency not below the rank of Assistant Commissioner of Police or equivalent and possessing not less than fifteen (15) years cognate experience.

⁵⁶⁷ The Head of the Secretariat of the EFCC is subject only to the supervision and control of the Chairman.

⁵⁶⁸ The Governor of the CBN; representative of the Federal Ministries of Foreign Affairs, Finance, and Justice; the Chairman of National Drug Law Enforcement Agency; the Directors General of the National Intelligence Agency and Department of State Security Service, the Registrar General of Corporate Affairs Commission, the Director General of Securities and Exchange Commission, the Managing Director of the Nigeria Deposit Insurance Corporation, the Post Master General of the Nigeria Postal Services, the Chairman of the Nigerian Communications Commission, the Controller General of the Nigerian Customs Services, the Controller General of the Nigerian Immigration Services, Inspector General of the Police and/or their respective representatives. See EFCC Act, s.2.

the agency is further bolstered by the emergence of the Special Control Unit on Money Laundering (SCUML) and the Nigeria Financial Intelligence Unit (NFIU).⁵⁶⁹ The key roles of SCUML and NFIU cover the receipt, analysis and dissemination of financial intelligence to other law enforcement agencies (LEAs).⁵⁷⁰ A further mandate includes the urgent need to tackle corruption in order to attain a paradigm shift from the earlier rhetoric on anti-corruption crusade. This will require a more robust and thorough legislative and institutional framework.⁵⁷¹

Moreover, the EFCC Act vests the commission with exhaustive and far-reaching anti-corruption functions which include - investigating financial crimes and adopting measures for the identification, tracing, freezing, seizure and confiscation of the proceeds of terrorist activities and economic and financial crimes.⁵⁷² In carrying out these

⁵⁶⁹ The NFIU was previously a unit within the EFCC but became an independent ACA in 2018 separate from EFCC. See NFIU Act 2018.

⁵⁷⁰ Others include report of suspicious transaction and currency transactions to sister agencies. See NFIU Act 2018, s.2.

⁵⁷¹ The intense pressure from the international community on developing countries such as Nigeria made it necessary to establish effective and strong mechanisms to tackle corruption. The Group of Industrialised Nations' (G7) meeting in 1989 set up the Financial Action Task Force (FATF) on money laundering which by 2001 had blacklisted Nigeria as a non-cooperative country. One of the recommendations of FATF was the establishment of the ACA to function as a financial intelligence unit that possessed sufficient statutory enforcement powers. Similarly, the creation of EFCC was as a result of the terrorist attack on the United States on 9 September 2001, which intensified pressure from the US and UN on developing countries such as Nigeria to establish mechanisms geared towards tackling the financing of terrorism. It was against this background that the regime of President Olusegun Obasanjo came up with a multi-faceted anti-corruption strategies which saw the emergence of EFCC, the Office of Due Process in the Presidency and ICPC. See E Obuah, 'Combating Corruption in Nigeria: Economic and Financial Crimes Commission' (2010) 12(1) *African Studies Quarterly* 17-44.

⁵⁷² EFCC Act 2004, s.6.

statutory functions, the commission is to collaborate with government agencies both within and outside Nigeria.⁵⁷³ In furtherance of the collaborative mandate entrenched in the EFCC Act, Nigeria's anti-corruption campaign has experienced synergies between the EFCC and other LEAs and ACA such as CBN and NDIC, including co-operation in the implementation of the banking reforms which necessitated the prosecution of infractions committed by former bank executives.⁵⁷⁴ Related to this is the power given to the commission to compound offences which by implication has introduced the doctrine of plea bargaining under the Nigerian criminal justice system.⁵⁷⁵ The concept of plea bargaining is further entrenched in the Administration of Criminal Justice Act 2015.⁵⁷⁶

A further mandate to carry out seizure and forfeiture of assets is contained in the Act.⁵⁷⁷ This has also been sanctioned by the court in *Ukiri v EFCC*.⁵⁷⁸ In this case, the court held that the

⁵⁷³ Ibid; other mandates include – the power to identify and determine, the whereabouts and activities of persons suspected of being involved in economic and financial crimes, movement of proceeds or properties derived from the commission of economic, financial and other related crimes; the exchange of personnel or other experts; establishment and maintenance of a system for monitoring international economic and financial crimes in order to identify suspicious transaction and persons involved; maintaining data, statistics, records and reports of persons, organisations, proceeds, properties, documents or other items involved in economic and financial crimes, among others.

⁵⁷⁴ For instance, the trials of both the former Managing Director of Oceanic Bank, Cecilia Ibru (who entered plea bargaining with EFCC) and Mr Akingbola, the then Managing Director of the defunct Intercontinental Bank Plc.

⁵⁷⁵ See EFCC Act 2004, s.14 (2); *Romrig (Nig) Ltd v FRN* (2015)3NWLR (Pt 1445)62.

⁵⁷⁶ Plea bargaining is an agreement in a criminal case between the prosecutor and defendant whereby the defendant agrees to plead guilty to a particular charge in return for some concession from the prosecutor.

⁵⁷⁷ EFCC Act, sections 28, 29 and 30.

⁵⁷⁸ (2018) 1 NWLR (Pt 1599)155.

EFCC has no total or arbitrary power of its own to attach and cause forfeiture of any asset or property to the Federal Government even when the necessity demands that they attach the assets with requisite speed. In other words, the commission must apply for an order of court sanctioning the seizure of the asset. Such application for seizure can only be made where allegation of corruption is so certain and real to serve as ground for indictment. The essence of the interim order of forfeiture is to prevent the asset from being carried away so as to frustrate the prosecution of the offender and recovery of the asset.

Similarly, the prosecutorial and enforcement functions of the commission have long been recognised by the Supreme Court in a plethora of cases.⁵⁷⁹ Indeed, the apex court is of the view that no person can challenge in court the power of the EFCC to prosecute and enforce economic and financial crimes.⁵⁸⁰ Furthermore, such prosecutorial and enforcement functions extend to the provisions of other laws and regulations relating to economic and financial crimes.⁵⁸¹ The enforcement function is very robust and exceeds that of public sector corruption vested on the Code of Conduct Bureau

⁵⁷⁹ See generally *Aloo v FRN* (2018) 10 NWLR (1627) 284; *Olagunju v FRN* (2018) 10 NWLR (Pt 1627) 272.

⁵⁸⁰ See *Ugo-Ngodi v FRN* (2018) 8 NWLR (Pt 1620); *Danfulani v EFCC* (2016) 1 NWLR (1493) 223; *Shema v FRN* (2018) 10 NWLR (Pt 1628) 399.

⁵⁸¹ See the Money Laundering Act 1995, Money Laundering (Prohibition) Act 2004, the Advance Fee Fraud and other Fraud Related Offences Act 1995, the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act 1994, the Bank and Other Financial Institutional Act 2020, the Miscellaneous Offences Act and any other law or regulation relating to economic and financial crimes. See EFCC Act, sections 6 and 7.

(CCB) and the Independent Corrupt Practices Commission (ICPC).⁵⁸²

The implication of the above is that the EFCC enjoys both enforcement and prosecutorial powers in respect of both public and private-sector crimes. Arguably, it has the widest collaborative functions, with the vast composition of its Board which comprises representatives of around 16 LEAs with strategic mandates to combat economic and financial crimes.

3.6 International Conventions and Treaties

The role of international conventions and treaties in fighting against the ugly trend of corruption should be stressed.⁵⁸³ Treaty with other countries has helped a lot in apprehending fleeing offenders. The UN Convention against Corruption is an existing multilateral treaty.⁵⁸⁴ Under the Convention, State

⁵⁸² Established pursuant to the 3rd and 5th Schedule of the Constitution. The CCB was established to maintain a high standard of morality in the conduct of government business and to ensure that public officers conform to the highest standards of morality in the conduct of government business relating to receiving, examining and retaining the copies of asset declaration by public officers. The remit of the CCB's jurisdiction is largely on public office corruption. Similarly, ICPC was established pursuant to the Corrupt Practices and Other Related Offences Act 2000, which was repealed and replaced with the Corrupt Practices and Related Offences Act Cap C Laws of the Federation of Nigeria 2004. The legislation also vests the commission with an exhaustive anti-corruption mandate within the sphere of public office corruption.

⁵⁸³ Treaties Nigeria has entered into with the United Kingdom and other countries have helped a lot in apprehending fleeing offenders. The then Nigerian President Umaru Yar'Adua made a call for a similar treaty with Germany. This call may not be unconnected with the allegation of bribery involving a German Company 'Siemens and some top Nigerian officials. See Voice of America, 'Nigeria Bans Siemens over Bribery Scandal' *Voice of America* (Washington DC, November 1 2009)

<<https://www.voanews.com/a/a-13-2007-12-06-voa27/351581.html>> (last accessed 27th April 2023).

⁵⁸⁴ UN Convention against corruption (7 October 2003) UN Doc A/158/422 (Nigeria ratified this instrument in December 2004).

parties are required to criminalise corrupt activities like money-laundering, corruption, obstruction of justice, among others. The treaty adopts legislation and an administrative system in order to provide for extradition, mutual legal assistance and investigative co-operation, including prevention and other measures.⁵⁸⁵ Nigeria is also a signatory to the African Union Convention on Preventing and Combating Corruption which aims to reduce the level of corruption in the continent of Africa.⁵⁸⁶

Next, the paper examines a number of constraints on the anti-graft agency's effectiveness in combating corruption and how the commission can be improved for efficient delivery of its mandate to the Nigerian people.

4. Effectiveness of EFCC as an anti-corruption agency: challenges and solutions

The EFCC sits at the nucleus of the Nigerian anti-corruption efforts as the collaborating and co-ordinating agency with some over-lapping jurisdictions.⁵⁸⁷ With the power to collaborate and co-ordinate the statutory functions of other ACAs, the commission is strategically placed to effectively

⁵⁸⁵ The United Nations Convention against Corruption is the only legally binding universal anti-corruption instrument. The Convention's far-reaching approach and the mandatory character of many of its provisions make it a unique tool for developing a comprehensive response to a global problem. The vast majority of United Nations Member States are parties to the Convention. United Nations, 'United Nations Convention against Corruption' <<https://www.unodc.org/unodc/en/corruption/uncac.html>> (last accessed 30 April 2023).

⁵⁸⁶ African Union Convention on Preventing and Combating Corruption (11 July 2003) 43 ILM. (which came into force on 6th of August 2006). Nigeria ratified this convention in October 2006.

⁵⁸⁷ N Ikpeze, 'Fusion of anti-corruption agencies in Nigeria: critical appraisal' (2013) 1(1) *Journal of Sustainable Development Law and Policy* 148-167.

combat economic and financial crimes. However, the reality is that these agencies undermine the collaborative efforts of one another within the anti-corruption architecture. Indeed, inter-agency conflict can be seen among these law enforcement bodies. Perhaps, this could be due to each agency's perceived need to protect its own jurisdiction in order to maintain its supposed relevance in the fight against corruption.

Similarly, evidence of poor co-ordination of functions is noticeable among these agencies. For example, in 2018 the ICPC had to apply for withdrawal of the corruption case against the former Governor of Plateau State and Senator for Plateau North in the National Assembly Mr Jonah Jang following the revelation that the EFCC had a pending suit against Mr Jang regarding the same case.⁵⁸⁸ Inadequate co-ordination coupled with poor collaboration by ACAs is further worsened by converging roles with respect to public-sector corruption.⁵⁸⁹ An instance of this can be seen especially in the relationship between the EFCC, the Special Fraud Unit and the Financial Malpractice Unit of the Nigerian Police Force (NPF) including the overlapping jurisdictions amongst the EFCC, ICPC, NPF and CCB on public-sector corruption regarding corrupt crimes.⁵⁹⁰

The problem with this is that jurisdictional overlap gives room for abuse of legal process by an unscrupulous complainant. For example, in *Diamond Bank Plc v Opara*⁵⁹¹ and *EFCC v*

⁵⁸⁸ See also the list of high profile cases on the official EFCC website <<http://www.efccnigeria.org/efcc/>> (last accessed 20 April 2023).

⁵⁸⁹ With respect to public sector corruption, there is an overlap in the enforcement jurisdiction of ICPC, EFCC and CCB.

⁵⁹⁰ EFCC Act 2004, s.7 (2) (b) and Advanced Fee fraud Act Cap A6 LFN 2004.

⁵⁹¹ (2018) 7 NWLR (Pt 1617) 92.

Diamond Bank,⁵⁹² the complainant filed a petition of financial fraud at the FMU and went further to file another petition at the EFCC for the same offence. The court strongly criticised the attitude of the petitioner for the abuse of legal process given the multiplicity of complaints before the NPF and the EFCC.⁵⁹³ Such practices impede the effectiveness and efficacy of anti-corruption agendas as it can lead to double jeopardy for the accused that is being investigated and prosecuted by different ACAs for the same alleged offence.

Again, the overlapping prosecutorial powers of ACAs and the Attorney General (AG) may lead to political interference in the prosecution of corruption cases by the EFCC given the fact that the AG as the Minister of Justice is a political appointee of the president. This was particularly noticeable during the regime of ex-president, late Musa Yar' Adua who had appointed Mr Kaase Aodoakaa as AG of the Federation.⁵⁹⁴ Also, the trial of politically exposed persons (PEPs) in Nigeria has seen limited progress.⁵⁹⁵ Indeed, this is not surprising

⁵⁹² (2018) 8 NWLR (1620) 61.

⁵⁹³ Also, 'forum-shopping' by complainants between EFCC and NPF depending on sum involved in order to have the case heard for favourable judgement have been condemned by the court. See *Ahmed v FRN* (2009) 12 NWLR (1159).

⁵⁹⁴ During Aondoakaa's tenure, there was substantial rivalry between the Office of the AG and EFCC regarding the prosecution of some ex-governors for corruption charges where the AG had previously acted as a private attorney. See O Ogbu 'Combating Corruption in Nigeria: critical appraisal of the laws, institutions and the political ill' (2008) 141 *Annual Survey of International and Comparative Law* 99-149.

⁵⁹⁵ For the record, of all the number of former governors allegedly standing trials for various political corruption charges, only few cases have been successfully prosecuted and few persons convicted in recent times. Both Dariye and Nyame were ex-governors convicted of corruption charges. However, the general perception is that had Dariye and Nyame defected to the ruling party, All Progressives Congress (APC), at the earliest stages of their prosecution, they would not have been convicted. See Y Alli 'Conviction of Nyame and Dariye shows EFCC not selective'. *The Nation* (10th December 2018).

given that these powerful and influential figures have more than enough resources to fight back.

Furthermore, the leadership of EFCC suffers from political capture. The lack of independence is traceable from the institutional architecture. For example, the key officers of the Commission – the Chairman and Secretary are appointed by the President subject to confirmation by the Senate. Similarly, the President has the power to remove the Chairman of the EFCC where the President is convinced that it is not in the interest of the Commission or public that the person remains in the office. It is argued that as long as the appointing power remains with the President, it is unthinkable to expect the commission to be independent in the anti-corruption fight given the tendency to be captured by the political class. Indeed, the commission will be unwilling to go against the President and most of his political associates in corruption charges for fear of being unceremoniously suspended or removed. This is why many Nigerians see the commission as a tool to settle scores with political enemies.⁵⁹⁶

Similarly, there were occasions where civil matters have been brought before the EFCC because the petitioner gives the complaint a criminal interpretation so as to bring it within the jurisdiction of the commission. The Nigerian Supreme Court has held that while the commission has power to carefully scrutinise all complaints in respect of financial crimes, such power does not extend to the investigation of disputes arising

⁵⁹⁶ <<https://www.thenationonline.net/conviction-of-niyame-dariye-shows-efcc-not-selective/1>> (last accessed 20 April 2023).
⁵⁹⁷ R Mordi 'Is Buhari's anti-corruption war selective?' *The Nation* (12th July 2016) <<http://www.thenationonline.net/buharis-anti-corruption-war-selective>> (last accessed 5 May 2023).

from contract or civil transactions.⁵⁹⁷ In other words, the EFCC is not a debt recovery agency and should never be used as so.

Moreover, there is currently a statutory provision for efficient administration of confiscated assets pending the final determination of the criminal suit.⁵⁹⁸ Essentially, the Proceeds of Crime Act (PCA) has been passed by the National Assembly and assented by the President. The Act is highly reputed to have sufficient provisions on administration and value preservation of seized and forfeited assets. However, it appears that a very little provision is made in the Act to protect federating state from whose resources or treasury, the forfeited amounts have been stolen. The near absence of the victim's protection of the federating state in the new Act can lead to exploitation of such state given that the forfeiture orders are made in favour of the Federation Account that benefits all states in the Federation.⁵⁹⁹ The paper argues that the Act should be amended to ensure that the victim state is not short-changed in the asset recovery process particularly when other federating states benefit from the disbursed funds from the Federation Account especially where they may not be the proximate and direct victims of the crimes.

Moreover, organisational and operational challenges equally militate against the efficient performance of the EFCC. The

⁵⁹⁷In *Diamond Bank Plc v Opara* (2018) 7 NWLR (Pt 1617) 92, the petitioner received a judicial reprimand because of deliberate reliance on EFCC as a debt recovery agency in a dispute arising from a simple contractual transaction.

⁵⁹⁸ EFCC Act conferred considerable power to the EFCC for the seizure and forfeiture of assets. See EFCC Act 2004, ss.28, 29 and 30. See *Ukiri v EFCC* (2018)1 NWLR (Pt 1599) 155.

⁵⁹⁹ EFCC Act and other forfeiture orders direct the forfeiture of assets to the Federation. See EFCC Act 2004, s.31 (1); Paragraph 6(6) of the Code of Conduct Bureau Standard Operation Procedure.

effectiveness of the commission requires continuous training and retraining of the professionally qualified personnel on the ever-changing nature of economic and financial crimes. Consistent training is essential because it provides officers with adequate skills and information on best international practices in law enforcement issues.⁶⁰⁰ To achieve this, funding of the commission needs to be reviewed. Insufficient funding will affect the efficient discharge of the commission's statutory mandates of investigation, arrest and prosecution of economic and financial criminals.

Furthermore, the usual delay in the Nigerian legal system militates against the fulfilment of the commission's mandates. Delay in criminal trial affects the expeditious administration of criminal justice. The Supreme Court in *Dasuki v Federal Republic of Nigeria*⁶⁰¹ pleaded with courts and litigants including their counsel to avoid any practice aimed at delaying the determination of cases. A further approach to reduce delay in the criminal justice system was introduced in the Administration of Criminal Justice Act (ACJA).⁶⁰² The ACJA provides that upon charging an accused person to court, the trial of the accused shall proceed from one day to another until the conclusion of the trial and where it is impracticable to proceed from one day to another, no party to the proceedings shall be entitled to more than five adjournments from arraignment of the accused person to the final judgement.⁶⁰³ The ACJA further states that where it is impracticable to

⁶⁰⁰ See EFCC, *Annual Report* (2015).

⁶⁰¹ (2018) 10 NWLR (Pt 1627) 320. Also, the court frowned at the use of frivolous appeals against interlocutory rulings by parties to delay trials.

⁶⁰² See ACJA 2015, s.396.

⁶⁰³ *Ibid*, sections, 396 -398.

conclude criminal proceedings after the parties have exhausted their five adjournments each, the interval between one adjournment to another shall not exceed seven days including weekends and in all cases, reasonable cost may be awarded against frivolous adjournment. While these provisions are commendable at least in principle, the reality is that considering the volume of case files in the courts including those pending in the various trial courts with no specialised division for corruption matters, these provisions remain very much doubtful to achieve expeditious trials in practice.

4.1 Decentralisation of energy options

The concept of decentralization of energy options (DEOPs) is based on holistic approach to sustainable energy policy for the developing countries such as in Nigeria. It advocates decentralization of the governance structure, multiplication of the means of production, availability of affordable options and devolution of governance, control and management responsibility.⁶⁰⁴

Nigeria's electricity is over centralized in structure and governance. Research shows that the Federal Government is directly in charge of the generation, distribution and transmission which have aided corruption in the sector for years.⁶⁰⁵ The top-down structure is greatly impeding the industry from growing and harnessing its potential. It has also

⁶⁰⁴ Y. Oke, 'Beyond Power Sector reforms: The Need for Decentralized Energy options ('DEOP') for electricity Governance in Nigeria' at: <https://www.unilag.edu.ng/opendocnew.php?%3Ddoc%26docname%3D18241%26docfile> (last accessed 8 May 2023).

⁶⁰⁵ Ibid.

influenced corruption, bureaucracy and other challenges facing the sector. It is submitted that a decentralized system is one of the remedies urgently required to reduce inefficiency and corruption in the power sector.

The state governments and the local governments must be fully integrated in the governance, control and management of the sector. The Constitution of the Federal Republic of Nigeria places power generation under the concurrent legislative list.⁶⁰⁶ The component states should be encouraged to build its electricity capacity unlike the present regime where the component states contribute less than 10% to the electricity consumption.⁶⁰⁷ Lagos, Rivers, Ogun, Ondo, Cross Rivers and Akwa Ibom are a few of the States in the Federation that have taken bold steps in investing in the sector, however, challenges such as the transmission and distribution are still limiting their participation due to centralized structure of the grid system called 'national grid'. This unnecessary bottleneck must be removed before any meaningful development can be attained. Achieving this would facilitate the process of closing the energy gap that has been confronting the sector for many years.

4.2 Power to legislate on corruption in Nigeria

Can the State legislate on corruption? This was the challenge the Nigerian apex court was made to face when the Corrupt Practices and Other Related Officers Act 2000 was enacted and

⁶⁰⁶ Concurrent Legislative List allows both the Federal government and the State government to legislate on the item in the list. See Second Schedule Part II, Concurrent Legislative List, Constitution of the Federal Republic of Nigeria (CFRN) 1999, sections 13,14,15

⁶⁰⁷ Ibid.

made to apply throughout Nigeria which was opposed by many states in the country. Consequently, the Government of Ondo State brought an action in the Supreme Court against the Attorney-General of the Federation and all the remaining thirty five states of Nigeria.⁶⁰⁸ Invoking the original jurisdiction of the Supreme Court, the Plaintiff prayed amongst others for a determination whether or not the Corrupt Practices and Other Related Offences Act 2000 is valid as a law enacted by the National Assembly and in force in every state of Nigeria including Ondo State. The main argument militating against the Act is that given that the States or Local Governments employ their staff, pay, promote, discipline and remove them from office, any crime arising from or incidental to their functions should be handled at the state level.⁶⁰⁹

In resolving the controversy, the Supreme Court held that based on the community reading of section 4(2) and section 15(5) of the 1999 Constitution (as amended) as well as items 60a, 67 and 68 in the Exclusive Legislative List of the said Constitution, the National Assembly is competent to legislate on corruption for the entire Federation. Specifically, section 4(2) of the Constitution empowers the National Assembly to make laws for the peace, order and good government of the Federation or any part thereof with respect to matters stated in the exclusive legislative list. Section 15(5) of the Constitution contains one of the fundamental objectives and directive

⁶⁰⁸ See *AG Ondo State v. A.G. Fed* (2002) 9 NWLR (Pt. 772) 222.

⁶⁰⁹ R Onuigbo and I Emu 'Analysis of Legal Frameworks for Fighting Corruption in Nigeria: Problems and Challenges' (2015) 5(3) *Kuwait Chapter of Arabian Journal of Business and Management Review* 10.

principles of state policy. The said section directs the State to abolish all corrupt practices and abuse of power.

Similarly, item 60a of the Exclusive Legislative List empowers the National Assembly to make laws for the realisation of the fundamental objectives and directive principles of state policy. Thus, the National Assembly can make laws for the abolition of all corrupt practices and abuse of power. On the meaning of state under section 15(5), the Supreme Court held that it includes state governments and consequently, they too have the competence to make laws on corruption. However, the implication is that where there is any conflict between the law lawfully made by the National Assembly and that made by State Houses of Assemblies, the former shall prevail.⁶¹⁰ While this decision has resolved the constitutionality of the Corrupt Practices and Other Related Offences Act, a number of suits have been instituted against the Federal Government in respect of the activities of the EFCC on grounds similar to those canvassed in *AG Ondo State v AG Federation and 35 others*.⁶¹¹

5. Conclusions and Recommendations

The legal regime for combating corruption in Nigeria stems from the 1999 Constitution which provides that 'the State shall abolish all corrupt practices and abuse of power.' However, several legislations aimed at curbing corruption exist in the

⁶¹⁰ See CFRN 1999 (as amended), s.4 (5).

⁶¹¹ They include *AG Abia State v AG Federation and 35 Ors* (2007) AL NLR, which arose from the freezing of certain accounts of the Abia State Government by the EFCC. Regrettably the Supreme Court did not pronounce on the merit of the suit as it was struck out for want of jurisdiction.

country. They are divided into general and specific legislations. The general legislations include the Criminal and Penal Codes. However, the embarrassing rate of corruption has made Nigeria to move beyond the general legislations to adopt specific anti-corruption laws because it has continually brought Nigeria into negative global spotlight. Both the EFCC and ICPC are a creation of statutes with bold and ambitious mandates but the powers of the EFCC have been whittled down by the political influence of the ruling class. The leadership of EFCC suffers from political capture. The lack of independence is traceable from the institutional architecture. The President has the power to appoint the Chairman. The president can remove the Chairman where he is convinced that it is not in the interest of the commission or public that the person remains in the office. As argued previously, as long as the appointing power remains with the President, it is unthinkable to expect the commission to be truly independent in its anti-corruption crusade. The commission will be unwilling to go against the President and most of his political allies in corruption charges for fear of being unceremoniously removed. This is why many Nigerians see the commission as a tool to settle scores with political enemies. To reduce this capture, it is recommended that the tenure of the EFCC Chairman and Secretary should straddle between two regimes of the President and Senate which shall be fixed for six-years with no option for renewal. This is to guard against the capture. Again, the 2003 amendment to the Corrupt Practices and Other Related Offences Act, which brought about changes in the appointment mechanism of the ICPC is worthy of emulation by the EFCC in order to reduce political capture. The National Assembly amended the ICPC Act to the extent

that its Chairman is no longer appointed by the President but through the recommendation of the National Judicial Council subject to confirmation by the Senate. Second, a framework for efficient collaboration and co-ordination of ACAs is necessary to eliminate or reduce the jurisdictional overlap which militates against the effectiveness of the EFCC. Third, specialised divisions in trial courts should be established to handle corruption cases. This will help to expeditiously administer justice on matters relating to economic and financial crimes. Fourth, the Proceeds of Crime Act should be amended to ensure that the victim state is not short-changed in the asset recovery process. Lastly, adequate funding should be provided to the EFCC to enable the commission to carry out its statutory mandates in terms of investigation, arrest and prosecution of economic and financial criminals in line with best international practices.