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INEFFECTIVENESS OF ANTI-CORRUPTION INSTITUTIONS AND INTER-AGENCY COLLABORATION: EVIDENCE FROM NIGERIA

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ABSTRACT

Corruption is a topical issue in global arena as it affects every continent of the world. Indeed, both the developed and the developing countries alike are affected by the scourge of corruption. In particular, corruption in Nigeria remains endemic given that it permeates every facet of life. The country has continued to maintain an unenviable record as one of the most corrupt countries among the comity of nations. The failure of Nigeria to attain a modicum of development has largely been attributed to corruption. Major impacts of corruption in Nigeria include, but are not limited, to underdevelopment, high rate of criminality, kidnapping, terrorism, sundry insecurity and abject poverty. This paper aims to re-assess the collaborative roles of anti-corruption agencies such as the Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices and (Other Related Offences) Commission (ICPC) among others, in curbing corruption in the country. In attaining this specifically, the paper reviews the various activities and challenges of these agencies in combating corruption, and concludes that in spite of the efforts made by these anti-graft agencies, the country still ranks top on the global corruption index. Therefore, this study recommends that, barring any pressure both within and outside the political arena, a more collective, co-ordinated and effective interagency collaboration by anti-corruption agencies can substantially curb corruption. To achieve this, an independent body should be established to monitor and report the performance index of these agencies on corruption-related cases in Nigeria.

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1. Introduction

There is an increasing worldwide concern over corruption currently. Essentially, corruption is the scourge of most under-developed, developing, and to a considerable extent, developed countries.¹ Corruption is a key impediment to the process of economic development. This is why it deserves a critical attention in a country's developmental agenda. This greater recognition that corruption can have a serious adverse impact on development has been at the front-burner in many developing countries including Nigeria.² In a recent research paper on 150 high level officials from 60 third world countries, the respondents ranked public sector corruption as the most severe problem confronting their developmental process.³ Countries in Africa, Asia, Latin America and the Pacific regions are also very worried about this ugly trend.⁴ Nigeria also ranks among the world's most complex and dynamic corruption landscapes globally.⁵ This is because high-profile corruption scandals make daily headlines, embarrassing and demoralizing hardworking Nigerians and also paint the country in a very negative spot light globally. Indeed, Nigeria epitomises a classic case of corruption in the under-developed countries. The steady stream of high-level corruption cases has strained the capacity and tested the integrity of Nigeria's anti-corruption agencies for more than two decades. Often repeated but

¹ D Kaufmann, 'Research on Corruption: Critical Empirical Issues' In: Jain, A.K. (eds) *Economics of Corruption. Recent Economic Thought Series*. (Springer, Boston, MA 1998) <<https://www.doi.org/10.1007/978-1-4615-4935-2>> last accessed 10 October 2024

² Arvind Jain 'Corruption: A Review' (2001) 15 *Journal of Economic Surveys* 71-74.

³ *Ibid*

⁴ M Ladan, *Money Laundering, Terrorism, Corruption, Human Trafficking in Nigeria* (Lambert Academic Publishing 2016) 23

⁵ T Aver and W. Orban, 'Judiciary and Democracy, Issues in Contemporary Nigerian Society' (2014) *Global Journal of Arts, Humanities and Social Sciences* 93

worn-out narratives paint these investigating and prosecutorial anti-corruption agencies as anaemic, clumsy and easily politicised or captured. It is estimated that corruption accounts for more than 20 percent of her GDP and could reach 37% by 2030 if this ugly trend is not critically addressed.⁶

As a governance challenge, corruption in Nigeria has been identified as one of major constraints militating against private sector development but it is often widely and erroneously perceived as a public sector problem. This misconception has thrived in time past because most corruption conversations are in the public sector context, and corporate anti-corruption measures and strategies are often designed towards mitigating public sector corruption.⁷ This perception has endured over the years despite evidence that private sector actors are essential participants in many corruption acts.⁸ For instance, in a 2007 survey of more than 5,400 companies in 40 countries, almost one-third of these corporate activities appeared to have suffered asset misappropriation in form of corruption-related acts.⁹

Similarly, in the first half of 2024 alone, Nigeria has had to bid a begrudging farewell to some high impact corporate giants like Diageo (a company that purportedly lost a whopping sum of ₦61 Billion); Glaxosmithkline including Microsoft among others on corruption.

⁶ 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 30 September 2024

⁷ NA Antonikova, 'Private sector corruption in international trade: The need for heightened reporting and a private right of action in the foreign corrupt practices act' (2015) 11 *International Law & Management Review* 93–124.

⁸ 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. See Shikaleke Emonena, 'The Trajectory of Public-Private Sector Corruption in Nigeria: What Should Be Done Differently?' *Nigerian Lawyer* (November 8 2021) <<https://www.thenigerialawyer.com/the-trajectory-of-public-private-sector-corruption-in-nigeria-what-should-be-done-differently/>> accessed 10 October 2024.

⁹ Ibid.

Frequent energy crisis caused majorly as a result of corrupt officials significantly increased the cost of doing businesses forcing these multi-national entities to migrate to other countries with less corrupt and more enabling business environment.¹⁰ All these corporate migrations have a scathing implication, directly or indirectly on the employment index of the country, and, a resultant effect on the national economic development.¹¹ While there are anti-corruption regimes¹² including the collaboration of various anti-graft institutions in Nigeria, however, corruption cases have continued to be on the increase.¹³

Beyond this introduction, part two of the paper is the conceptual clarification. Part three unveils the major anti-corruption regimes in Nigeria. Part four dwells on the collaborations of anti-corruption agencies to address the impact of corruption. Specifically, external pressure that may impede the smooth operations of these inter-agency co-operations will be examined. The last part concludes and summarises the paper.

2. Corruption: Conceptual Background

The definition of corruption varies from one society to another.¹⁴ Corruption is an anti-social behaviour committed by an individual or a group against both the legal and moral rules and from

¹⁰ F Gonzalo, 'Corruption and the Private Sector: A Review of Issues' (2014) <http://www.businessenvironment.org/dyn/be/docs/262/Corruption_and_the_Private_Sector_EPS_PEAKS_2013.pdf> accessed 20 October 2024

¹¹ Corruption contributes to divestment of international oil companies in Nigeria which affects the nation's development.

¹² See Independent Corrupt Practices and Other Related Offences (ICPC) Act 2000; Economic and Financial Crime Commission (EFCC) Act 2004 among others. The anti-graft institutions are: Independent Corrupt Practices and Other Related Offences Commission (ICPC); Economic and Financial Crime Commission (EFCC) among others.

¹³ J Dahiru, 'Reassessing the Role of Anti-Corruption Agencies in Combating Corruption in Contemporary Nigeria' (2011) 1(5) ABUJPIIL 163

¹⁴ See also BW Husted, 'Wealth, Culture, and Corruption' (1999) 30 Journal of International Business Studies 339.

which unjust or fraudulent benefits are obtained.¹⁵ This definition implies a link between law and morality. Even though, it is settled that a distinction exists between law and morality, it should be stated that the only moral wrong that can be punished is the one prescribed in a written law.¹⁶ According to the World Bank Group, corruption entails the 'abuse of public power for private gain.'¹⁷ The Transparency International (TI) describes this as an 'abuse of entrusted power for personal gain.'¹⁸ The International Monetary Fund (IMF) sees this as the 'abuse of public authority or trust for private gain.'¹⁹ The United Nations Development Programme (UNDP) defines corruption as a "misuse of public office, power or authority for private or personal benefit through bribery, extortion, influence peddling, nepotism, fraud, speed money or embezzlement."²⁰ According to Nye, corruption is '...behaviour which deviates from the formal duties of a public role because of private pecuniary or status gains; or violates rules against the exercise of certain types of private-regarding influence.'²¹ This definition is limited because it considers corruption as an offence committed by government or public servants only. It does not take cognisance of the fact that corruption is also prevalent in the private sector. However,

¹⁵ Segun Osoba, 'Corruption in Nigeria: Historical Perspectives' (1996) 23 *Review of African Political Economy* 371, 383

¹⁶ HA Brasz, 'The Sociology of Corruption,' in AJ Heidenheimer (ed), *Political Corruption* (1970) 41, 42.

¹⁷ See The World Bank Group, 'Helping Countries Combat Corruption' (2020) available at <<http://www1.worldbank.org/publicsector/anticorrupt/corruptn/cor02.htm>> last accessed 20 September 2024)

¹⁸ See Transparency International, 'How do we define corruption?' (2020) <<https://www.transparency.org/what-is-corruption#define> accessed> accessed 20 September 2024)

¹⁹ A Thomson, 'Beheading the Hydra: How IMF Fights Corruption' (2020) <<https://blogs.imf.org>> accessed 10 October 2024

²⁰ JC Kohler and A. Bowra, 'Exploring anti-corruption, transparency, and accountability in the World Health Organization, the United Nations Development Programme, the World Bank Group, and the Global Fund to Fight AIDS, Tuberculosis and Malaria' (2020) 16 (101) *Globalization and Health*, 1-10

²¹ JS Nye, 'Corruption and Political Development: A Cost-Benefit Analysis' (1967) 61(2) *The American Political Science Review* 417

any ideal definition of corruption should cover both the public and private sectors in order to be comprehensive.²² The Independent Corrupt Practices and Other Related Offences (ICPC) Act defines corruption to include: bribery, fraud and other related offences.²³

Corruption is further seen as any form of reciprocal behaviour of transaction where both 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 specific organisation or public within the society.²⁴ Generally, the phenomenon of corruption in its ordinary connotation, means debasing, tainting, spoiling, making impure, defiling, perverting, dishonesty, or bribery.²⁵ The United Nations Convention Against Corruption (UNCAC) defines bribery as:

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.²⁶

However, corruption goes beyond the giving and taking of bribe.²⁷ It encompasses any use of power by anybody for capricious or arbitrary

²² D Treisman, 'The Causes of Corruption: A Cross-National Study' (2000) 76 (3) *Journal of Public Economics* 399;

²³ ICPC Act 2004, s 2. The ICPC Act definition of corruption in s 2 of the Act and other sections has been criticised as vague and scanty. While the phrase 'and other related offences' can be used to bring in certain other offences apart from bribery and fraud, the phrase is not wide to include nepotism/favouritism and judicial corruption to mention just a few. 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.

²⁴ O Kayode, 'Corruption in Nigeria: An Appraisal' (2013) 19 *Journal of Law, Policy and Globalisation* 42-50.

²⁵ Bribery involves the improper use of gifts and favours in exchange for personal gain. This is also known as kickbacks.

²⁶ See UNCAC, Arts 15, 16 and 21.

²⁷ For instance, embezzlement and theft involve someone with access to funds or assets illegally taking control of them.

use or any other purpose foreign to which it is meant.²⁸ 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 peddling, and fraud.²⁹ 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'.³⁰ The implication of a number of these definitions remains that corruption is the wrongful desire of pecuniary gain or acquisition of any other advantage. 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 public or private.

From a legal standpoint, the Economic and Financial Crime Commission (EFCC) Act 2004 does not expressly define the word 'corruption' but the Act lists 'economic and financial crime' to include bribery and other corrupt malpractices among several others.³¹ Also, the Money Laundering Act 2022 does not define corruption but in creating the offence of money laundering, the Act provides that the offence is committed where a person is involved in bribery and corruption, extortion, human trafficking and forgery among several other acts.³²

Since the Independent Corrupt Practices and Other Related Offences (ICPC) Act 2000 and the EFCC Act 2004 were enacted, the criticism

²⁸ 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; a 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.

²⁹ Akeem Olajide Bello, 'United Nations and African Union Conventions on Corruption and Anti-Corruption Legislations in Nigeria: A Comparative Analysis' (2014) 22 *African J Int'l & Comp L* 308, 314.

³⁰ Y Akinseye-George *Legal System, Corruption and Governance in Nigeria* (Lagos: New Century Law Publishers Ltd: 2000) p.9.

³¹ EFCC Act 2004, s 46

³² Money Laundering Act 2022, ss 15-22. This Act repealed the Money Laundering (Prohibition) Act 2011.

regarding the limitation of the legal definition of corruption relating only to the public sector is no longer tenable. This is because whereas the ICPC Act 2000 relates to public-sector corruption, the EFCC Act 2004 relates to economic and financial crimes committed within the public and private sectors. From the foregoing, while there is no definite definition of corruption in Nigeria, the country's focus in combating corruption relates to corruption-related acts contained in legislations such as the ICPC Act 2000, the EFCC Act 2004 and perhaps the MLA 2022 together with other corruption-related offences under the Criminal Code and Penal Code.³³

Types of Corruption

The United Nation (UN) classifies corruption as grand or petty corruption and active or passive corruption.³⁴ Grand corruption is defined as corruption occurring at the highest levels of government in a way that requires significant subversion of the political, legal and economic systems. Such corruption is commonly found in countries with authoritarian or dictatorial governments but could also be seen in those countries with fledgling democracy which do not have adequate institutions to police corruption-related acts. Grand corruption speaks of impunity and willful neglect of the law as found among political office holders who appear not to bother about the consequences of disobeying the law because they are aware that nothing will be done against them.³⁵ Corruption in this category is usually found among the Politically Exposed-Persons (PEP).³⁶

Also, corruption is either individual or institutional.³⁷ Individual corruption promotes personal interest.³⁸ An example of this is when

³³ They include bribery, extortion, corrupt malpractices and economic and financial crimes.

³⁴ UNCAC, Arts 15, 16 and 21

³⁵ *Ibid*

³⁶ Petty corruption occurs at a smaller scale and takes place at the implementation end of public services when public officials meet the public. For example, in many small places such as registration offices, police stations, state licensing boards and many other private and government sectors.

³⁷ Dennis Thompson, *Two Concepts of Corruption* (Edmond J Safra Working Papers, No 16, 2013) 2

³⁸ *Ibid*

agents extort money from clients.³⁹ Institutional corruption favours an institution or its officials who subvert the rules in the institution because of what is offered by an individual who wants to circumvent rules or the due process.⁴⁰ Institutional corruption may refer to instances of embedded corruption in which corruption-related act is accepted as normal and no longer frowned upon by most of the people in the state.⁴¹ Corruption could arise in both political and bureaucratic offices and can be petty or grand, organised or unorganised.⁴² The implication of the above is that there seems to be no clear-cut classification of corruption given the overlap of corruption being individualised or institutional, petty or grand.

Resource Curse Theory: Conceptual Clarification

Corruption is more evident in some countries than others because nations with less prevalence of corruption are able to manage this social problem than others through legal regimes, requisite scrutiny, checks and balances that help to minimise corrupt opportunities.⁴³ In public sector corruption, the monopoly over the distribution and allocation of natural resources rights allow economic opportunities to be exploited for corrupt purposes.⁴⁴ The resource curse theory is based on data indicating that countries endowed with valuable natural resources - especially oil, gas, and other minerals face a specific set of socio-economic issues, including but not limited to inhibited economic development and a greater incidence of armed conflict as

³⁹ *Ibid*

⁴⁰ *Ibid*

⁴¹ *Ibid*

⁴² 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 (institutional), including corruption as one of the symptoms of organised crime (systemic corruption).

⁴³ PD. Pahida and OO. Akangbe, 'Corruption as a bane for under-development in Nigeria: Issues and challenges' (2013) (15) *International Affairs and Global Strategy*, 76-83.

⁴⁴ <<https://resourcegovernance.org>> last accessed 10 October 2024.

well as monumental corruption.⁴⁵ The validity or otherwise of this assertion is still in question and remains at best inconclusive.

However, the theory of natural resource curse stresses that given the profitable nature of the minerals which include but not limited to oil, gas among others especially in developing countries, there is high propensity to generate the kind of political and private incentives that favour rent-seeking leading to institutional or state capture.⁴⁶ Similarly, natural resource sectors are highly vulnerable to corruption given the significant revenues streams generated by resource exploitation, management and trade. Indeed, research shows that many resource-rich countries suffer from poor governance and systemic corruption.⁴⁷ With huge oil reserves in Nigeria, for instance, the culture of rent-seeking is deeply entrenched in the system especially as the oil remains a major revenue earner for the country. Essentially, there is a linkage between resource curse theory and the concept of corruption especially in the developing countries such as in Nigeria.

Another conceptual argument that has been advanced as the cause of corruption is the low level of wages paid to civil servants and other employees in private sectors in many emerging economies. For instance, low wages and the resulting poverty in the public and private sectors are also believed to contribute to corruption in some countries such as in Nigeria.⁴⁸ The poverty index is higher in a corruption-ridden environment.⁴⁹ Arguably, when the basic need of a common man

⁴⁵ As an economy, Nigeria is not exempted from problems of microeconomic stability, growth and infrastructural deficit. Oil revenue and successive oil booms have only led to wasteful spending, corruption and what many have referred to as the concept of natural resource curse.

⁴⁶ *Ibid*

⁴⁷ *Ibid*

⁴⁸ Evidently, a report by Brookings Institute crowned Nigeria 'the poverty capital of the World' with more than 71 million Nigerians living in extreme poverty. *Businessday*, 'Nigeria: How do we expect 'world poverty capital' to be safe? *Business Day* (July 19 2022) at <<http://www.businessday.ng/opinion/article>> accessed 11 October 2024.

⁴⁹ Emmanuel Obuah, 'Combating corruption in Nigeria: The Nigerian Economic and Financial Crimes EFCC' (2010) 12 *African Studies Quarterly* 17, 24.

cannot be met, the poor often becomes desperate to make ends meet which tempts one to engage in corrupt practices.⁵⁰ In other words, when there is poor remuneration and compensation in the system, it breeds unsatisfied workers.⁵¹ These workers become easily swayed leading them to engage in illegal acquisitions of compensation in form of corruption. In the same vein, the structure of a country's public service may affect the level of corruption in the country, as corruption may thrive where merit is compromised when hiring into the system. This is because it places a burden on the system and increases the cost at which the services are delivered. For example, a study conducted in 35 developing nations found that applying merit at the time of hiring into the public service tends to affect the effectiveness of the country's public service.⁵²

From cultural standpoint, acts regarded as giving of gifts in one environment may be considered as a bribe or corrupt act in another environment given the cultural dichotomy.⁵³ For instance, in African culture with particular reference to Nigeria, the notion of gift presentation is deeply embedded between a leader and a subject. There is uncertainty as to the clear interpretation of a gift, particularly when it is given to a person in anticipation of goodwill directly or indirectly.⁵⁴ Arguably, the giving of gifts is a traditional practice which is done to fulfil societal obligations between the two broad levels in society. For example, leaders give gifts to subjects as part of their duty to show their positions as patrons, while subordinates give gifts to their leaders as an expression of loyalty.⁵⁵ This dual classification of people into leaders and subordinates exists among Nigerian tribes,

⁵⁰ Daniel Jordan Smith, 'Kinship and Corruption in Contemporary Nigeria', (2001) 66 (3) *Ethnos: Journal of Anthropology* 344, 345

⁵¹ *Ibid*

⁵² James Rauch and Peter Evans, 'Bureaucratic Structure and Bureaucratic Performance in Less Developed Countries' (2000) 75 *Journal of Public Economics* 49

⁵³ *Ibid*

⁵⁴ Yemi Akinseye-George, *Legal System, Corruption and Governance* (New Century Law Publishers Limited 2000) 10

⁵⁵ Monday Ekpo (ed) *Bureaucratic corruption in sub-Saharan Africa: Toward a search for causes and consequences* (University Press of America 1979) 173-182

with the subordinates looking up to the leader for sustenance and advancement on the social ladder.⁵⁶ However, caution should be exercised against equating bribe and gift-giving in the public service given that public servants usually stipulate the amount to be paid as bribe which is a corruption-related act but this is usually absent with gifts, since it is assumed that gifts are made voluntarily.

On the flip side, this may not clearly explain the position among the public servants, as festive periods in Nigeria are seen as an avenue among many Nigerians to convey or demand bribes which are given in the form of gifts.⁵⁷ While it can be argued that both may be related given that the recipient of a gift and/or bribe may not carry out the illegal act if anything goes wrong, there are some dissimilarities between these two acts. First, in determining whether an act is a gift or a bribe, it may be necessary to find out if a *quid pro quo* exists. Ordinarily, a *quid pro quo* is absent in a gift but in extreme circumstances, it may be implanted in the exchange.⁵⁸ Second, the relationship between the parties helps one to determine how to categorise the act. The existence of a personal relationship between parties may obfuscate the exchange as a gift. Similarly, the absence of a personal relationship would mean that the exchange is a bribe.⁵⁹ The difficulty is that the existence of a relationship does not however completely exclude a gift from being a bribe especially where the recipient is an agent who has something to offer.

Effect of Corruption

Corruption weakens the institutional capacity of government.⁶⁰ This is because institutional safeguards are disregarded, resources are siphoned off and officials are hired or promoted without regard to performance. Corruption has the potential to usher in institutional

⁵⁶ *Ibid.*

⁵⁷ Paul Ocheje, 'Law and Social Change: A Socio -Legal Analysis of Nigeria's Corrupt Practices and Other Related Offences Act, 2000' (2001) 45 *Journal of African Law* 173, 176;

⁵⁸ Johann Lambsdorff and Bjorn Frank, 'Bribing versus gift-giving-An experiment' (2010) 31(3) *Journal of Economic Psychology* 347

⁵⁹ *Ibid*

⁶⁰ O Olujobi 'Legal Framework for Combating Corruption in Nigeria - The Upstream Petroleum Sector in Perspective' (2017) 3(25) *Journal of Law and Economics* 956.

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.⁶¹ The spill-over of this could take various forms such as banditry, kidnapping, armed robbery, prostitution among others.⁶²

Corruption also weakens economic development by enabling considerable distortions and inefficiencies. 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.⁶³ While it may be argued that corruption reduces the costs of contracting by cutting red tape, however, emerging consensus shows that availability of bribes induces officials to contrive new rules and delays. This means that where corruption inflates the cost of business, it also distorts the playing field, shielding firms with connections from competition and thereby sustaining inefficient firms.⁶⁴ Corruption also generates economic distortions in the public sector by diverting public investment away from education 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.⁶⁵

While obtaining the exact figure on the economic implication of corruption is difficult, a 2016 report from the International Monetary Fund (IMF) estimated the cost of bribery alone to be around \$1.5 to \$2 trillion per year.⁶⁶ This represents a total economic loss of approximately 2% of global GDP.⁶⁷ Beyond huge economic loss,

⁶¹I Idenyi, 'Towards Giving Impetus to the Current Fight against Corruption and Economic Crimes in Nigeria' (2009) 2 *CJPPL* 1-2.

⁶²*Ibid.*

⁶³*Ibid.*

⁶⁴*Ibid.*

⁶⁵F 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 September 2024.

⁶⁶<<https://www.imf.org/en/publication>> (last accessed on 10 August 2024).

⁶⁷<<https://www.panamapapers.sueddeutsche.de/articles/56febf0a1bb8d3c3495adf4/>> Last accessed 10 October 2024.

there is economic inefficiency to consider as result of corruption. For instance, when jobs or contracts are given to people or companies who offer bribes or share a personal connection, this occurs to the detriment of competition. The result is that more qualified candidates and firms are turned down. The more widespread such practices are, the more inefficient the economy becomes. This can occur when international economic and humanitarian initiatives are derailed as funds disbursed from loans and aid are embezzled or given to inferior contractors who have won their bids through corrupt means particularly through kickbacks, bribery, nepotism among others.⁶⁸

According to the World Bank, more than 50% of the population of the oil-rich country lives in extreme poverty and underdevelopment as result of corruption.⁶⁹ In Nigeria, for example, an infamous bribery case, involving the international oil company Shell, deprived the Nigerian people of over \$1.1 billion as the money went to corrupt officials rather than the national budget.⁷⁰ This example is just a tip of the iceberg among several instances of corruption in Nigeria, but it does show that when political and economic systems are enlisted in the service of corrupt actors, it impoverishes the citizens leading to wealth being redistributed to the least needy sources.⁷¹

Similarly, corruption undermines the rule of law and erodes public confidence in the administration of justice system.⁷² In essence, when

⁶⁸ *Ibid*

⁶⁹ *Ibid*

⁷⁰ Damning evidence shows oil giant Shell took part in a vast bribery scheme that robbed the Nigerian people of over a billion dollars. The world's fifth biggest company took part in a scheme which deprived Nigeria and its people of \$1.1 billion in a murky deal for access to one of Africa's most valuable oil blocks, known as OPL 245. <<https://www.globalwitness.org/en/campaigns/oil-gas-and-mining/shell-knew>> accessed 20 October 2022

⁷¹ The abundant resources made Nigeria to be described as a "Paradox" by the World Bank. The paradox is that, the poverty level in Nigeria contradicts the country's immense wealth and it still remains the "poverty capital of the world" <<https://www.worldbank.org>> accessed 30 September 2024.

⁷² P Alenjandro 'Combating Corruption under International Laws' (2014) 10 *Duke J of Comp & Int'L* 345.

corruption pervades the justice system, people can no longer count on prosecutors and judges to do their jobs. The powerful may escape the justice system. Equally, citizens especially those with few resources or few powerful allies, may be unfairly accused of crimes, deprived of due process, and wrongly imprisoned.⁷³ Under corrupt situation, funding for education, health care, poverty relief, and elections including political parties' operating expenses can become a source of personal enrichment for party officials, bureaucrats and contractors. A key result of all the instances above is a state of unequal opportunity in which advantages arise only for those within a corrupt network.

3. Anti-Corruption Regimes Tn Nigeria: An Overview

Given the need to curb the negative impacts of corruption in Nigeria, a number of measures have been put in place to minimise corruption. These measures include the promulgations of laws which criminalise corrupt practices and the establishment of institutions with specific mandates to combat corruption.

The Constitution of Federal Republic of Nigeria

The legal regimes for combating corruption in Nigeria stem from the 1999 Constitution (as amended) which provides that 'the State shall abolish all corrupt practices and abuse of power.'⁷⁴ Numerous legislations exist aimed at curbing corruption in the country.⁷⁵ They are divided into general and specific legislations. The general legislations include the Penal Code and the Criminal Code. However,

⁷³<<https://www.unodc.org/e4j/en/anti-corruption/module-1/key-issues/effects-of-corruption.html>>accessed 10 October 2024.

⁷⁴ CFRN 1999 (as amended), s₁₅(5); T Tyler, 'Reducing corporate criminality: The role of values' (2014) 51 *American Criminal Law Review* 267–291

⁷⁵ ICPC Act, 2000, EFCC Act, 2004, MLA, 2022 (as 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.

the embarrassing rate of corruption has made Nigeria to move beyond the general legislations above to emphasise more on specific anti-corruption laws because it has continually brought Nigeria into a negative global spotlight.

The Criminal and Penal Code Acts

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.⁷⁶ However, the offences of extortion by public officers are provided for in the Criminal Code.⁷⁷ The definition encompasses a public servant taking an advantage of his/her position to extort money from any person.⁷⁸ 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.⁷⁹ Similarly, the offence of extortion in section 291 of the Penal Code is committed as intentionally putting another in fear of any injury to that person or any other and thereby dishonestly induces the person so put in fear to deliver to any person any property or document of title or anything convertible to valuable property. Also, section 98b of Penal Code covers cases where any person apart from the public officer, corruptly asks for, receives or obtains a bribe for himself or any other person or corruptly agrees or attempts these, on account of anything already done or omitted to be done by a public official in connection with his duties. Arguably, the provisions of the Criminal Code and the Penal Code on corruption can be criticised in view of the fact that both codes are unable to deal effectively with both private and official corruption coupled with failure to make provisions for restitution and/or forfeiture of corruptly acquired property or money. The effect of these

⁷⁶ The Criminal Code provides for official corruption and judicial corruption. Sections 98 and 116 of the Criminal Code Act, 2004. The Penal Code Act Chapter 36 on bribery and corrupt influence.

⁷⁷ Criminal Code Act, s 404(1)(a)–(d).

⁷⁸ *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.

⁷⁹ The offence carries 14 years of imprisonment if convicted. The Criminal Code Act, s 114.

weaknesses in the codes, especially with respect to the private sector, could lead the courts to acquit an obviously dishonest accused.

The ICPC Act 2000

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 regime of President Olusegun Obasanjo, with the setting up of the Independent Corrupt Practices Commission (ICPC).⁸⁰ Established pursuant to the Independent Corrupt Practices and Other Related Offences Act 2000, the Act seeks to prohibit and prescribes punishment for corrupt practices and other related offences.⁸¹ It establishes an Independent Corrupt Practices and Other Related Offences Commission (ICPC), vesting it with the responsibilities of investigation and prosecution of offenders. The legislation also vests the commission with exhaustive anti-corruption mandates with power and responsibility to investigate and prosecute offenders within the sphere of public office corruption.

The EFCC Act 2004

The EFCC Act established the Economic and Financial Crimes Commission (EFCC) to fight corruption in Nigeria.⁸² The main purpose of the EFCC Act was to establish an institution with the mandate to investigate all forms of financial crimes as well as the co-ordination and enforcement of all economic and financial crimes in Nigeria.⁸³ The EFCC is conferred with broader mandates unlike 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 the

⁸⁰ 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.

⁸¹ Ibid

⁸² EFCC Act 2004, s 2

⁸³ According to the Act, economic crimes are those non-violent criminal and unlawful acts carried out by individuals, group of people or organisations with the intent and objective of acquiring financial resources illegally

territory of Nigeria.⁸⁴ 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 Code of Conduct Bureau Act

First established in 1979, the CCB Act lacked a solid legal foundation until 1999 when the National Assembly passed The Code of Conduct Bureau and Tribunal Act. While this agency is less dynamic than its sister agencies, the CCB is a governmental watchdog with significant unrealised potential on execution of its mandates. It also has a narrower anti-corruption mandate which investigates majorly suspected violations of the code of conduct for public officials enshrined in Nigeria's constitution.⁸⁵

International Conventions and Treaties on Corruption

The role of international conventions and treaties in fighting against the ugly trend of corruption should be stressed.⁸⁶ Treaty with other countries has helped a lot in apprehending fleeing offenders. The UN Convention against Corruption (UNCAC) is an existing multilateral treaty which came into force on 14 December 2005.⁸⁷ Under the Convention, State parties are required to criminalise corrupt activities

⁸⁴ EFCC Act 2004, s.5.

⁸⁵ Four decades later, the CCB's primary function is to gather asset declarations made by all public office-holder from the President down to the lowliest functionary-at prescribed intervals during their careers.

⁸⁶ The 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 also 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. 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 30 July 2024.

⁸⁷ UN Convention against Corruption (7 October 2003) UN Doc A/158/422 (Nigeria ratified this instrument in December 2004).

like money-laundering, corruption, obstruction of justice, among others. The treaty adopts legislations and administrative systems in order to provide for extradition, mutual legal assistance and investigative co-operation, including prevention and other measures.⁸⁸ Also, Nigeria is 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.⁸⁹ The next section of this paper examines the collaborative mandates of anti-corruption institutions in its quest to minimise the pervasive nature of corruption, which has battered the nation's image both locally and internationally.

Inter-Agency Collaboration of Anti-Graft Agencies

The EFCC is a creation of statute with bold mandates to collaborate with other anti-graft agencies but its power has been whittled down by political influence.⁹⁰ Nevertheless, from the liberal and open-ended definition of 'economic and financial crime,' the agency is vested with power to co-ordinate and collaborates with other law enforcement agencies (LEAs).⁹¹ The collaborative mandates can be seen from the multidisciplinary and multi-agency composition of the Commission

⁸⁸ 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 makes 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>> accessed 10 October 2024.

⁸⁹ African Union Convention on Preventing and Combating Corruption (11 July 2003) 43 ILM. (which came into force on 6 August 2006). Nigeria ratified this convention on October 2006.

⁹⁰ L Lawson, 'The politics of anti-corruption reform in Africa' (2009) 47(1) *Journal of Modern Studies* 73-100

⁹¹ 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.

which comprises the Chairman,⁹² the Secretary of the Commission⁹³ and other 16 ex-officio members drawn from 16 (LEAs).⁹⁴ The mandate of the agency is further bolstered by the emergence of the Special Control Unit on Money Laundering (SCUML) and the Nigeria Financial Intelligence Unit (NFIU).⁹⁵ The key roles of SCUML and NFIU cover the receipts, analysis and dissemination of financial intelligence to other law enforcement agencies (LEAs).⁹⁶ 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 requires a more robust and collaborative efforts including thorough legislative and institutional framework among the anti-graft bodies to fight corruption.⁹⁷

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

⁹² 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.

⁹³ The Head of the Secretariat of the EFCC is subject only to the supervision and control of the Chairman.

⁹⁴ 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. EFCC Act, s.2.

⁹⁵ The NFIU was previously a unit within the EFCC but became an independent ACA in 2018 separate from EFCC. NFIU Act 2018.

⁹⁶ Others include report of suspicious transaction and currency transactions to sister agencies. NFIU Act 2018, s.2.

⁹⁷ E Obuah, 'Combating Corruption in Nigeria: Economic and Financial Crimes Commission' (2010) 12(1) *African Studies Quarterly* 17-44.

and economic and financial crimes.⁹⁸ In carrying out these statutory functions, the commission is to collaborate with government agencies both within and outside Nigeria.⁹⁹ In furtherance of the collaborative mandate entrenched in the EFCC Act, Nigeria's anti-corruption campaign has experienced some level of synergies between the EFCC and other LEAs and ACA such as CBN and NDIC, including co-operating in the implementation of the banking reforms which necessitated the prosecution of infractions committed by former bank executives.¹⁰⁰ 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.¹⁰¹ In practice, the concept of plea bargaining is further entrenched in the Administration of Criminal Justice Act 2015.¹⁰² The implication of the above is that the EFCC has both enforcement and prosecutorial powers in respect of both public and private-sector in its collaborative efforts. Similarly, it enjoys the widest collaborative functions, with the vast composition of its Board which comprises representatives of numerous LEAs with strategic mandates to combat economic and financial crimes.

⁹⁸ EFCC Act 2004, s 6.

⁹⁹ The aspects of the 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.

¹⁰⁰ 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 former Intercontinental Bank Plc.

¹⁰¹ EFCC Act 2004, s 14(2); *Romrig (Nig) Ltd v FRN* (2015)3NWLR (Pt 1445)62.

¹⁰² 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.

Collaborative Efforts and Challenges of Anti-Graft Agencies

The EFCC sits at the centre of the Nigerian anti-corruption initiatives as the collaborating and co-ordinating agency with some over-lapping jurisdictions vis-a-vis other department and agencies.¹⁰³ With the power to collaborate and co-ordinate the statutory functions of other ACAs, the commission is strategically placed to effectively 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.¹⁰⁴ Inadequate co-ordination coupled with generally poor collaboration by ACAs is further worsened by the converging roles on enforcement jurisdictions with respect to public-sector corruption.¹⁰⁵ 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), and the overlapping jurisdictions amongst the EFCC, NPF, ICPC, and CCB on public-sector corruption.¹⁰⁶ The problem with this is that jurisdictional overlap gives room for abuse of legal process by an unscrupulous complainant.

¹⁰³N Ikpeze, 'Fusion of anti-corruption agencies in Nigeria: A critical appraisal' (2013) 1(1) *Journal of Sustainable Development Law and Policy* 148-167

¹⁰⁴ The list of high profile cases on the official EFCC website <<http://www.efccnigeria.org/efcc/>> Last accessed 20 September 2024).

¹⁰⁵ With respect to public sector corruption, there is an overlap in the enforcement jurisdiction which is held by ICPC, EFCC and CCB.

¹⁰⁶ EFCC Act 2004, s 7(2) (b) and Advanced Fee fraud Act Cap A6 LFN 2004.

For example, in *Diamond Bank Plc v Opara*¹⁰⁷ and *EFCC v Diamond Bank*,¹⁰⁸ 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.¹⁰⁹ It is argued that such practices impede the effectiveness and efficacy of anti-corruption initiatives as it can lead to double jeopardy for the accused that is being investigated and prosecuted by different ACAs for the same alleged offence.

Under the Nigerian constitutional jurisprudence, the concept of double jeopardy provides that a person who has previously been tried for an offence and had either been acquitted or convicted shall not be re-tried for such an offence.¹¹⁰ 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 including the Minister of Justice is a political appointee of the president. This was particularly noticeable during the regime of ex-president, Musa Yar'Adua who had appointed Mr Kaase Aodoakaa as the AG of the Federation.¹¹¹

Inter-agency co-operation is improving but remains inadequate. Good inter-agency co-operation is widely regarded as a feature of effective anti-corruption law enforcement.¹¹² The EFCC ultimately sets the tone for inter-agency co-operation and greatly determines its scope and scale.¹¹³ The EFCC's perception that it should be playing a leading

¹⁰⁷ (2018) 7 NWLR (Pt 1617) 92.

¹⁰⁸ (2018) 8 NWLR (1620) 61.

¹⁰⁹ 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. *Ahmed v FRN* (2009) 12 NWLR (1159).

¹¹⁰ CFRN 1999 (as amended), s 36 (9).

¹¹¹ During Aondoakaa's tenure, there was substantial rivalry between the Office of the AG and EFCC in respect of prosecution of some ex-governors for corruption charges in respect to where the AG had previously acted as a private attorney. O Ogbu, 'Combating Corruption in Nigeria: A critical appraisal of the laws, institutions and the political will' (2008) 141 *Annual Survey of International and Comparative Law* 99-149.

¹¹² *Ibid*

¹¹³ EFCC Act 2004, s 46

role in anti-corruption law enforcement stems from the co-ordinating mandate mentioned in its establishing Act. However, prosecutors and investigators do not always work together effectively, especially during the early stages of a case when close co-operation can help ensure that prosecutions do not fail or flounder in investigative and prosecutorial duties.¹¹⁴

The EFCC's apparent reluctance to share information stems from its belief that section 6 (c), the agency's establishing Act, which states that it shall be responsible for 'the co-ordination and enforcement of all economic and financial crimes laws and enforcement functions conferred on any other person or authority,' makes all other anti-corruption agencies effectively subordinate to it. Indeed, the apparent unwillingness to collaborate in information exchanges with other anti-graft commissions is not unconnected with the EFCC's determination to protect its pre-eminent status including the idiosyncrasies and egos of its officials. Obviously, given that it is the best resourced and most dynamic agency, the EFCC arguably has the least to gain from greater co-operation and information sharing with other agencies. As a result, its officials believe that co-operation is beneficial occasionally rather than on systematic and strategic basis.¹¹⁵ Information exchange mainly takes place in response to specific, often urgent, requests. Such co-operation typically relating to ongoing investigations usually takes place at the very highest level or at the state directorate level.

Outside the EFCC, there appears to be a limited extent of inter-agency co-operation. Indeed, anti-corruption agencies are handicapped by turf wars, infighting and unnecessary competition. Limited information from the ICPC, CCB, police, or State Security Service occasionally passes to the EFCC.¹¹⁶ Such information is only shared either because those cases are outside their mandates or because other agencies feel the EFCC is better positioned given its resources to investigate and prosecute them.

¹¹⁴ Ogbu (n-111) above

¹¹⁵ Ikpeze (n 103) 23

¹¹⁶ <<https://www.statehouse.gov.ng>> accessed 10 October 2024

4. Reform and Recommendations

Effective collaboration, for instance, requires that the ICPC should pass certain cases that they believe are outside its mandates - such as those involving money laundering - to the EFCC for further investigation and prosecution.¹¹⁷ Similarly, it entails that both the ICPC and the EFCC should work together on information sharing both at the investigative and prosecutorial stages and such level of synergy should continue until judgement is obtained on political corruption cases and other financial and economic cases. The same collaborative approach should be extended to other anti-graft agencies alike. In contrast with other anti-corruption agencies, the ICPC has recently rejuvenated its collaboration and information sharing efforts.¹¹⁸ This sweeping cultural change at the commission has sent a strong signal to other anti-graft agencies that the ICPC is willing to partner with them.¹¹⁹ It is also seeking to formalise memoranda of understanding (MOU) that spell out the modalities for increased information sharing with other agencies such as the EFCC, CCB, Police, NFIU, Customs and Immigration.

Technical Unit on Governance and Anti-Corruption Reform – The TUGAR

President Obasanjo's government created TUGAR to give him a mechanism for assessing and enhancing the co-ordination of his government's anti-corruption efforts.¹²⁰ Skeletally staffed and

¹¹⁷ <<https://www.cpc.gov.ng/2019/05/15/icpc-advocates-synergy-amongst-anti-corruption-agencies/>> accessed 20 September 2024).

¹¹⁸ This change has been initiated by its current chairman who previously served as Executive Secretary of the Presidential Advisory Committee Against Corruption (PACAC).

¹¹⁹ <<https://www.icpc.gov.ng>> accessed 20 September 2024).

¹²⁰ TUGAR was set up by President Obasanjo in 2006 for the purpose of monitoring government anti-corruption initiatives, evaluate their structures and effectiveness, encourage co-operation through the IATT and enable reforms. TUGAR also serves as the secretariat for the Inter-Agency Task Team (IATT), an inter-agency co-ordinating body that brings together the heads of 21 different Nigerian government ministries, departments and

minimally funded within the office of the Presidency, TUGAR facilitates inter-agency co-ordination, co-operation and information sharing on corruption related issues.¹²¹ For several years, TUGAR has attempted to facilitate institutionalised information sharing agreements between governments entities involved in anti-corruption work but has since shifted its work toward encouraging ad hoc sharing on thematic areas of mutual interest. Attitudes toward interagency co-operation vary significantly by agency and depend on agencies' individual mandates and the personality of those involved in sharing information. Given the non-binding nature of this institution, it can be argued that not much has been achieved as corruption continued unabated.

The Presidential Advisory Committee against Corruption (PACAC)

Established by President Buhari in 2015, the PACAC has championed collaboration and the adoption of best practices by anti-corruption agencies, lending the President's personal imprimatur to its efforts.¹²² Both the TUGAR and the PACAC have played a leading role in promoting information sharing and better interagency co-operation. However, like TUGAR, it has also attempted to convene interagency roundtables on information sharing but has gained little traction in

agencies with anti-corruption roles. <<https://www.tugar.org.ng>> last accessed 20 September 2024.

¹²¹ TUGAR has relied on international donors to sustain its work. TUGAR also serves as the secretariat for the Inter-Agency Task Team (IATT). TUGAR chairs the Inter-Agency Task Team (IATT), an information sharing and collaboration forum attended by representatives of virtually every government entity with anti-corruption equities. Founded with nine participating entities, the IATT has since expanded to 21.

¹²² The PACAC was established with mandate to promote the reform agenda of the government on an anti-corruption effort, and to advise the government in the prosecution of war against corruption. Akin to a small, specialised think tank, PACAC is a seven-person advisory committee that has produced policy and procedural guidance - such as case management, asset forfeiture and plea bargain manuals - to support the work of Nigeria's anti-corruption agencies. <<https://www.pacac.org>> last accessed 20 September 2024

terms of performance.¹²³ These agencies should be strengthened in terms of finance and legislation to improve their performance.

Independent Commission

The paper recommends the establishment of a commission with a framework for efficient collaboration and co-ordination of ACAs to eliminate or reduce the jurisdictional overlap which militates against the effectiveness in discharging their statutory functions. The commission established under this framework is to monitor and report the degree of collaborative efforts of these anti-graft agencies which should be subject to annual review by the authorised independent body subject to approval by the National Assembly. The framework must have a legislative backing with clearly defined mandates and sufficient resources to monitor and review the performance metric of these anti-graft agencies. The legislative support is necessary to overcome the challenges suffered by both the TUGAR and PACAC given that they are non-binding in nature.

Second, the appointment and removal of the Chairman and Secretary of anti-graft agencies should be independent of the president to reduce the executive influence or state capture. For instance, it is a fact that 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

¹²³ The government also established a National Anti-Corruption Strategy and Action Plan for the period between 2017–2021. Despite having multiple regulatory agencies, the nation still ranked 154th (out of 180 countries) on Transparency International's Corruption Perceptions Index and continues to grapple with corruption scandals amid calls for fiscal transparency and accountability in governance. <<https://www.transparency.org/cpi2021>> last accessed 20 September 2024.

the office.¹²⁴ 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 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.¹²⁵

Third, it is recommended that the tenure of the EFCC Chairman and Secretary should be reformed and be made to straddle between two regimes of the President and the Senate which should be fixed for six-years with no option for renewal. This is to further guard against the potential for political capture.

Moreover, 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. It is recommended that the EFCC Act 2004 should be amended to incorporate this needed reform.

Furthermore, it is recommended that 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. The reform will substantially reduce delays in the judicial system, ensuring timely justice for corruption offences.

¹²⁴ Kenneth Ajibo, 'Combating Corruption in Nigeria: a Critique of the Legal and Institutional Framework' in Gozie Ogbodo and Somadina Ibe-Ojiludu (edn), *Topical Legal Issues on Election and Good Governance in Nigeria* (Enugu: Godfrey Okoye University Press 2023) Chapt 12.

¹²⁵ 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 September 2024.

Similarly, the concept of naming and shaming a convicted corrupt person should be incorporated as part of enforcement regimes in the Nigerian criminal justice system. Arguably, when a public or private official anticipates that he or she is likely to be publicly named and shamed for corruption if convicted such a person may be discouraged in engaging in corruption-related activities. By extension, this can go a long way in curbing the high incidence of corruption in Nigeria.

5. Conclusion

Nigeria's anti-corruption agencies do not co-operate particularly well, especially at the working level. This lack of interagency co-operation (if not a hostile or strained inter-agency relations) is a feature of Nigeria's sprawling government bureaucracy, similar to many other countries.¹²⁶ These agencies, whose missions and mandates somewhat overlap quietly compete with each other for political goodwill, dwindling budgetary allocations and professional talent. The situation may be the result of not only the inadequate capacities of existing institutions but also the lack of a co-ordinated approach and undue rivalry among the anti-corruption agencies. Even with major structural changes, such as the creation of permanent joint units or a rotational staffing system, interagency co-operation will remain an obstacle to more effective anti-corruption law enforcement. Increased burden sharing may be difficult for agency heads as they seek to maximise good publicity, presidential kudos, and personal prestige that come with big anti-corruption victories.¹²⁷ Inter-agency co-operation is improving but remains inadequate. To stem the tide of corruption in Nigeria, good inter-agency co-operation is widely regarded as a feature of effective anti-corruption law enforcement. This will also require greater political will and less interference from within or outside the anti-corruption institutions.

¹²⁶ <<https://www.ace.globalintegrity.org>> (last accessed 24 September 2024).

¹²⁷ *Ibid*