AN APPRAISAL OF THE REGULATORY FRAMEWORK FOR ANTI-CORRUPTION IN NIGERIA

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ABSTRACT

This study explores the numerous regulatory frameworks that have been made with reference to anti-corruption in Nigeria. The aim of the study is to determine the adequacy of the current legal structures that are in place for the purpose of ensuring that corrupt practices are tackled to its barest minimum in Nigeria. The paper adopts the doctrinal methodology in its analysis. Essentially, it made use of several texts and well researched articles in its analysis. The study also reviewed the legal framework on anti-corruption in Nigeria such as the Independent Corrupt Practices Commission Act (ICPC Act) and the Economic and Financial Crimes Commission Act (EFCC Act). The study finds that Nigeria has a sociological background which has made corrupt practices to be embraced subtly by members of the public in carrying out their daily activities. Notably, it is not uncommon to witness cases of bribery before services are rendered. These acts have therefore become systemic and ingrained in the consciousness of Nigerians. No doubt, the agencies responsible for prosecution and enforcement have carried out numerous exercises to purge corrupt practices from the Nigerian system; this has however mostly been greeted with favouritism and selective prosecution. In view of the above, the paper recommends amongst others the establishment of specialized

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court to deal with issues of corrupt practices and a limitation on the powers of the President and Governors to grant state pardon.

KEYWORDS: Anti-graft laws; Corruption in Nigeria; Financial Crimes; Independent and Corrupt Practices Commission; Money Laundering Act

1.0 INTRODUCTION

Corruption is ingrained and has in fact eaten deep into the fabric of the Nigerian society such that is it now a generally held view that both the private and public sectors of the Nigerian economy is corruption ridden. It is therefore unsurprising that government after government has taken a stance against corruption yet the menace continues to grow stronger. Corruption is the scourge of most developing and to a considerable extent, developed countries.[3] The reputation of Nigeria in the international community has been severely damaged. Unfortunately, the country's reputation even within her borders is riddled with cases of corruption and injustice.

Corruption has been a bane in the development of Nigeria and its standing in the international community, this is why every regime and political dispensation in Nigeria pledges to combat corruption.[4] Even the coming into power of the military was on the basis of fighting corruption, which in doing so employed the gestapo style in fighting corruption by arbitrarily arresting, killing and imprisoning those perceived to be corrupt.[5] Such militant approach to fighting corruption was evident in the War Against Indiscipline, Bribery and Corruption (WAI) as set up by General Muhammadu Buhari in

[3]Ibidapo Bolu, (2016), "Nigeria: The Anti-Corruption Legal Framework And Its Effect On Nigeria's Development", accessed from https://www.mondaq.com/nigeria/white-collar-crime-anti-corruption-fraud/490434/the-anti-corruption-legal-framework-and-its-effect-on-nigerias-development on 10 September 2020.

[4]Sadiq, M. Y., Abdullahi, M. (2013), 'Corruption as the Bane of Nigeria's Development: Causes and Remedies'. International Journal of Economic Development Research and Investment, Vol. 4, No. 1. pp.83-93.

[5]Sheriff Folarin (2009), 'The Anti-Corruption War in Nigeria: A Critical Appraisal of the Role of the ICPC and EFCC', Nigerian Journal of Economic & Financial Crimes (NJEFC), Vol. 1., No. 2, p. 18.

1984.[6] During this military era and prior to 2000, there was no single commission responsible for the regulation of corruption and financial crimes. The investigation, prevention and prosecution of corruption were left for the police and the Ministry of Justice.

Following the labelling of Nigeria as the second most corrupt nations in the world by Transparency International,[7] the Olusegun Obasanjo civilian administration in 1999 vowed to purge Nigeria of corruption and corrupt practices.[8] This, for the first time in Nigeria, led to the enactment of the Independent Corrupt Practices and other Related Offences Commission Act (ICPC Act) of 2000, [9]as a Commission for the regulation of corruption cases specifically within the public service. The ICPC was established as an independent [10] corruption regulator with the power to investigate and prosecute corruption cases, but only upon the receipt of a petition to that effect.[11] The fact that the ICPC was to rely on petitions only before investigating corruption cases was problematic and cast doubt on its independence. As a result of this lacuna and the high rise of corruption and financial crimes cases, the Economic and Financial Crimes Commission was established in 2004 pursuant to the EFCC Act with the responsibility to investigate, prevent, and prosecute economic and financial crimes with or without a petition.[12] This paper among other objectives seeks to evaluate the effectiveness, challenges and prospects of the ICPC and the EFCC Acts in combating corruption in Nigeria.

[6]Ibid.
[7]Nigeria was ranked 144th out of 146 countries in the 2018 corruption index by the Transparency International and has declined even since then.
[8]Sadiq M.Y., Abdullahi M. (2013), Ibid, p. 22.
[9] ICPC Act 2000, Cap. C31, Laws of the Federation, (LFN) (2004)
[10] Section 3 (14) ICPC Act 2000.
[11] Section 27 of the ICPC Act 2000.
[12]Salisu Ahmed Kabiru (2019), 'An Appraisal of Legal and Institutional Framework of Corruption Eradication in Nigeria' (Journal of Management and Economic Studies, Vol 1, Iss. 6, 2019. Pp. 1-9) p. 5

2.0 CORRUPTION IN NIGERIA: A SOCIOLOGICAL BACKGROUND

Corruption is a gross violation of the citizens' human right. In fact, the World Bank avers that corruption "is the abuse of public office for private gains."[13] Public office is abused for private gain when an official accepts, solicits or extorts a bribe. It is also bribery to circumvent public policies and processes for competitive advantage and profit. Public office can also be abused for personal benefit even if no bribery occurs, through patronage and nepotism, the theft of state assets or the diversion of state revenue.[14] It would be wrong to think that corruption is peculiar to the Nigerian society. It is simply an anti-social behaviour that exhibits itself differently in each society but eats the society to the ground and even beneath it.[15] However, before the legal framework of anti-corruption in Nigeria can be analysed, it is important to take a quick trip down memory lane to explore the history and possible factors that have led to this current situation, perhaps we will be able to fully ascertain how we got here.

The history of corruption in Nigeria can be traced as far back as the early pre-colonial times. Some have also attributed the cause of this deep corruption to socio-cultural, political and economic aspects of the Nigerian life.[16] The autocratic and authoritarian rule of the British is believed to have created an enabling environment to breed corruption.[17] Stories of their arbitrary

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[13] World Bank, (2020), Anticorruption Fact Sheet, accessed from https://www.worldbank.org/en/news/factsheet/2020/02/19/anticorruption-fact-sheet on 25th October, 2022.

[14] http://www1.worldbank.org/publicsector/anticorrupt/corruptn/cor02.htm accessed 8 September 2020

[15] Melisa Santos, (2015), "A History of Corruption in Nigeria from 1979-2015", accessed from https://www.projecttopics.org/a-history-of-corruption-in-nigeria-from-1979-2015.html/amp on 10 September, 2020.

[16] Ahmed, I.K., Olajide, O.E., Eunice, S., (2016), "History of Corruption and National Development: The Case of Nigeria", accessed from https://www.semanticscholar.org/paper/History-of-Corruption-and-National-Development%3A-The-Ahmed-Olajide/006d9a7d9224a625251de08daef93113ba8ac54e on 10 September, 2020.

[17] Ibidapo Bolu, (2016), "Nigeria: The Anti-Corruption Legal Framework and its Effect on Nigeria's Development", accessed from https://www.mondaq.com/nigeria/white-collar-crime-anti-corruption-fraud/490434/the-anti-corruption-legal-framework-and-its-effect-on-nigerias-development on 10 September 2020.

encroachment on the land of the indigenes also paint this picture. The colonialists aided and abetted corruption and used missionaries and monopoly trading firms to usurp the Nigerian people's sovereign powers thereby becoming kings who sat on thrones of deceit.

Trading as at then involved two parties, one with considerably more power than the other. There were unequal terms of trade between the colonialists and the Nigerian workers; including below subsistence wages, exorbitant taxation and exclusive monopoly of rights of exploitation granted to British and other European firms over Nigeria's mineral and other natural resources.[18] Unfortunately not much has changed since then with the new reality of neo-colonialism. Nigeria seems only to be a sovereign state in name as the trading powers remain unequal because Nigeria has given it up at the altar of corruption.

These left structures of corruption in the wake of the exit of "the white man." The British colonial masters gradually transferred formal authority to rule to their "…Nigerian surrogate bourgeoisie..." [19] during this period of decolonisation, the colonialists succeeded in maintaining status quo "...in securing their acquiescence in the retaining, even consolidating and enhancing of the existing structures accumulation under which foreign monopoly capital dominated all key sectors of the economy export-import trade, extractive and manufacturing industries, banking, insurance, shipping, etc." [20] These Nigerians were put in "key" positions as directors, representatives, etc. in the major foreign businesses. These affiliations and partnerships were largely honorary and powerless. All of these contributed to the inherence of corruption in the Nigerian society.

These high-ranking Nigerians took "kickbacks" dating as far back as the decolonisation era when executors of public policies took for themselves at least ten percent more to execute duties they were already paid salaries to

[18]Ejovi, A., Charles, M., (2013), "Corruption in Nigeria: A Historical Perspective", Research Humanities and Social Sciences Journal, Vol. 3, No. 16, p 19.
[19] Dudley B.J., (1973), "Instability and Political Order: Politics and Crisis in Nigeria", Ibadan. University Press p21.
[20] Dudley B.J., (1973), "Instability and Political Order: Politics and Crisis in Nigeria", Ibadan. University Press, p21.

do.[21] A notable case was the investigation of Nnamdi Azikwe, Nigeria's first Head of State, by the Foster-Sutton Tribunal during his time as premier of the Eastern Region.[22] Public officials were supposed to relinquish holdings in private business as soon as he/she assumes office but it was believed that Mr Azikiwe did not cut off his ties with the defunct African Continental Bank and even went further to advance the interest of the bank.[23] Some people have argued that it was part of the game plan of the colonial government to tarnish the image of Dr Nnamdi Azikiwe.

The Ironsi regime tried to go after government officials that looted and misappropriated public funds; however, this zeal died with the Gowon coup that ended the Ironsi government and freed the politicians in detention. The military governments were also marred with allegations of corruption perhaps even worse than their civilian counterparts.[24]

There were allegations of corruption during the tenure of General Gowon who ruled at a time Nigeria experienced the wealth of the oil boom of the 1970s. General Murtala Mohammed declared his assets and asking all government officials to follow suit. He also probed past leaders and an investigation panel found ten of the twelve military governors that served under the Gowon regime guilty of corruption. The guilty ones were dismissed from the military and made to give up the proceeds of the corrupt practices.[25] General Murtala Mohammed was however assassinated six months into his regime.

The zeal died and his successor General Obasanjo did not continue this anti-corruption crusade and later transferred power to civilians under the presidency of Shehu Shagari. Under the Shagari Administration corruption

[21] Ibid at pg. 20.
[22]Sklar, R.L., (2004), (Report of the Foster-Sutton Tribunal of Inquiry) Nigerian Political Parties: Power in an Emergent African Nation 1st ed. Trenton, New Jersey: African World Press Inc.
[23]Rina Okonkowo, Corruption in Nigeria: A historical Perspective (1947-2002), available http://africanunchained.blogspot.com.ng/2007/09/corruption-in-nigeria-historical.html accessed on February 23, 2016.
[24] Michael Ogbeidi, (2012), Political Leadership and Corruption in Nigeria Since 1960: A Socio-economic Analysis, Journal of Nigeria Studies Volume 1, Number 2.
[25] Ibid at page 8.

resurfaced. Alhaji Umaru Dikko, a member of the Federal Cabinet and Minister of Transportation was alleged to have mismanaged at least ₦4billion of public funds meant for the importation of rice.[26]

On 31st December 1983, General Muhammadu Buhari led a coup that once again "rescued" the economy from the grip of the corrupt politicians under the Shagari government. This crusade was brutal with no respect for human rights or the rule of law. General Badamosi Babangida took over and put a stop to the anti-corruption crusade. Impunity became the order of the day and corruption reached an alarming state and it spread into virtually all government institutions. This went on through Babangida and Abacha's regime with the latter filled with wanton greed, impunity and total disregard for the well-being of Nigerians. It has been estimated that General Abacha and his family embezzled about USD 4 billion.[27]

The "second coming" of President Obasanjo in May 1999 was with an attempt to strengthen the existing anti-corruption laws which led to the establishment of two anti-corruption institutions: The Independent Corrupt Practices Commission (ICPC) and the Economic and Financial Crimes Commission (EFCC). The EFCC was established in 2003 and unlike the ICPC was set up to investigate people from all sectors and not just corrupt public officials.[28]

President Goodluck Jonathan's administration also had cases of massive corruption and administrative recklessness in all tiers of government. [29] The United Kingdom's Department for International Development reports that about $32bn was lost to corruption during the six-year administration of ex-President Goodluck Jonathan.[30] Opposition parties harped on these reports of corruption and sought to change the government

[26] Ibid at page 9.
[27] International Centre for Asset Recovery, 2009 available at https://www.baselgovernance.org/theme/icar/ accessed on 23 February 2016.
[28] Ibid at page 1.
[29] Ojo, J.S., (2016), Looting the Looters: The Paradox of Anti-Corruption Crusades in Nigeria's Fourth Republic (1999-2014).
[30] Accessed from https://saharareporters.com/2017/12/12/nigeria-lost-32bn-corruption-under-former-president-jonathan-%E2%80%93-dfid on October 25th, 2022.

using the mantra of "change". Anti-corruption was the ladder through which President Buhari made history by defeating the incumbent President Jonathan to clinch power. At the expiration of two terms almost eight years down the line and the promise is as certain as a hoax.[31]

3.0 LEGAL FRAMEWORK FOR ANTI-CORRUPTION IN NIGERIA

The key legislative and regulatory provisions include the following:[32]

1. NIGERIAN CONSTITUION

The Constitution of the Federal Republic of Nigeria 1999 (as amended), which contains the Code of Conduct for Public Officers in the 5th Schedule.

2. THE ICPC ACT

The Independent Corrupt Practices and other Related Offences Act 2000 specifically criminalises bribery, as well as attempted corruption, fraud, extortion and money laundering. It is believed that inefficiency of earlier statutory enactments was what birthed the legislation of the EFCC and ICPC Acts. [33] It also establishes criminal offences and imposes penalties. Its penalties apply to both individuals and corporate entities and may include fines and imprisonment for up to seven years. The Independent Corrupt Practices and Other Related Offences Act 2000 (ICPC Act) came into force on 13th June 2000 under the administration of President Olusegun Obasanjo. According to the Short Title to the Act, the purpose of the Act is:

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[31] "Bribery & Corruption 2020: Nigeria" accessed from https://www.globallegalinsights.com/practice-areas/bribery-and-corruption-laws-and-regulations/nigeria on 11 September, 2020.

[32]Kunle Obebe, Bode Adegoke, (2018), "Anti-Corruption and Bribery in Nigeria", accessed from https://www.lexology.com/library/detail.aspx?g=4fab7b2c-247c-496a-9793-777fac327c16 on 10 September, 2020.

[33]Nlerum S. Okogbule, (2006), "An Appraisal of the Legal and Institutional Framework for Combating Corruption in Nigeria", ISSN: 1359-0790 accessed from https://www.emerald.com/insight/content/doi/10.1108/13590790610641251/full/html on 11 September, 2020.

> The Act seeks to prohibit and prescribe punishment for Corrupt Practices and Other Related Offences. It establishes an Independent Corrupt Practices and Other Related Offences Commission vesting it with the responsibility for investigation and prosecution of offenders thereof. Provision has also been made for the protection of anybody who gives information to the Commission in respect of an offence committed or likely to be committed by any other person.[34]

The Commission through systematic study and review, education, public enlightenment, public mobilization and investigation and prosecution has the mandate to eradicate corrupt practices and other related offences. The ICPC is empowered to investigate, prosecute, monitor and ensure the transparency and corrupt-free public institutions, educate the public against corruption, assist other agencies in the fight against corruption, and advice the government on the required changes to make towards eradicating corruption.[35] The vision of the Commission is 'a Nigeria free from all forms of corruption and corrupt practices, while the mission is 'To rid Nigeria of corruption through lawful enforcement and preventive measures'.

Section 2 of the ICPC Act narrowly defined corruption to mean '*bribery, fraud and other related offences*'. It however went further to state that what will amount to corruption include '*use of one's office for pecuniary advantage; gratification; influence peddling; insincerity in advice with the aim of gaining advantage; less than a full day's work for a full day's pay; tardiness and slovenliness*'.

Section 3 (1) of the ICPC Act established and declared the Independent Corrupt Practices and Other Related Offences Commission as an independent body responsible for the implementation of the Act. The fact that the ICPC Board is appointed by the President and the Commission relies solely on petitions before carrying out investigations, has raised doubts about its independence and proactiveness. Section 3 (14) of the ICPC Act states 'in

[34]Short Title to the ICPC Act 2000.
[35]Salisu Ahmed Kabiru (2019), Ibid (n 9).

the exercise of its functions and duties, the Commission shall not be subject to the direction or control of anyone or authority'.

By section 5(1) of the ICPC Act, officers of the Commission have the same rights as Police Officers when investigating and prosecuting corruption cases. This power to prosecute cases just like the police has been challenged in court on whether a police officer is competent to prosecute a case before the court. In one of such cases, ***Federal Republic of Nigeria v. Osahon and 7 Others***[36], the Supreme Court while affirming the decision of the court in ***Olusemo v. COP***[37] held that by virtue of Section 174 of the 1999 Constitution of the Federal Republic of Nigeria (as amended), section 56(1) of the Federal High Court Act, and section 23 of the Police Act a police officer is qualified to prosecute a case without any express authority from the Attorney General of the Federation or State. Nevertheless, the debate over the prosecutorial power of the police seemed not to have ended with the decision of the Supreme Court in the Osahon Case. Section 106 of the Administration of Criminal Justice Act 2015 (ACJA) brought up the issue again by stating that only police officers who are legal practitioners are competent to prosecute cases in all courts which the ACJA applies.

This section 106 of the ACJA is similar to section 56 of the Federal High Court Act in the sense that the ACJA practically applies to federal courts. Therefore, section 106 is subject to the same interpretation given to section 56 of the Federal High Court Act, section 23 of the Police Act and section 174(1) of the 1999 Constitution in the Osahon's Case. Now that section 106 of the ACJA has been interpreted to be inconsistent with section 174(1) of the Constitution and section 23 of the Police Act, one will only but wonder what will happen to those States of the Federation who in the domestication of the ACJA had adopted section 106 as it is. In such cases, the supremacy of the Constitution will come into play, and the rule of interpretation which states that where a State's law is inconsistent with the provisions of an Act of the National Assembly in the same matter, the Act of the National Assembly will prevail to the extent of its inconsistency. Therefore, the issue

[36](2006) 1 All NLR, pt 374.
[37](19980 11 NWLR, PT. 75, P. 547

of the power of the police to prosecute has been settled, the officers of the ICPC can prosecute cases in any court in Nigeria.

On the duties of the commission, section 6 (a -f) provides that it shall be the duties of the commission to:

a. Receive and investigate complaints from members of the public on allegations of corrupt practices and in appropriate cases prosecute the offenders.
b. Examine the practices, systems and procedures of public bodies and where such systems aid corruption, direct and supervise their review.
c. Instruct, advice and assist any officer, agency or parastatal on ways by which fraud or corruption may be eliminated or minimized by them.
d. advice heads of public bodies of any changes in practices, systems or procedures compatible with the effective discharge of the duties of the public bodies to reduce the likelihood or incidence of bribery, corruption and related offences
e. Educate the public on and against bribery, corruption and related offences.
f. Enlist and foster public support in combating corruption.

The offences prohibited under the ICPC Act are 18 in number and can be found in Sections 8-25 of the Act. The offences include:

a. Accepting gratification – section 8
b. Gifting or accepting gratification through agent – section 9
c. Acceptor or giver of gratification to be guilty of notwithstanding that the purpose was not carried out – section 10
d. Counselling offences relating to corruption – section 11
e. Fraudulent acquisition of property – section 12
f. Fraudulent receipt of property – section 13
g. Penalty for offences committed through postal system – section 14
h. Deliberate frustration of investigation – section 15
i. Making false statements on returns – section 16
j. Gratification by and through agents; Definition of agent – section 17
k. Bribery of public officer – section 18
l. Using office or position for gratification – section 19

m. Forfeiture of gratification and other penalties – section 20
n. Bribery in relation to auctions – section 21
o. Bribery for giving assistance etc., in regards to contracts – section 22
p. Duty to report bribery transactions – section 23
q. Dealing with property acquired through gratification – section 24
r. Making false or misleading statement to the Commission – section 25
s. Attempt, abetting and conspiracy punishable as offences – section 26

The enforcement procedure of the ICPC as contained in Sections 27-42 of the ICPC Act include investigation, search, seizure and arrest. By virtue of Sections 27(1) and 2(3) of the ICPC Act, the power of investigation could be set in motion upon the receipt of complaint by the ICPC and there is reasonable ground to believe an offence has been committed as complained. By authority of Section 28 (1) of the ICPC Act, the ICPC may summon any person who may assist its investigation, or order any person to produce any necessary materials for the investigation or require any person to furnish it with a written statement capable of assisting the investigation. Such written statement when furnished to aid investigation shall be admissible in evidence during trial to the exclusion of any other law to the contrary.[38]Notably, a perceived shortcoming of the ICPC Act is the exclusion of the Federal High Court in its jurisdiction. Section 61(3) of the ICPC Act provides that the Chief Judge of a State or that of the Federal Capital Territory has the power to appoint or set up a judge or number of judges to hear and determine cases brought under the Act. This means that the prosecution of offences under the ICPC Act can only be done at the High Court of a State or that of the Federal Capital Territory.[39] While this is a major shortcoming, there have been advocacies for a more recent act to deal with the new realities of the corruption scene in Nigeria.

3. THE EFCC ACT

The Economic and Financial Crimes Commission Establishment Act 2004 (EFCC Act) establishes the Economic and Financial Crimes Commission

[38]Section 28(9) of the ICPC Act 2000.
[39]See also Section 26 (2) of the ICPC Act.

(EFCC) responsible for the prosecution of all economic and financial crimes in Nigeria.

The EFCC is saddled with the responsibility of investigating and prosecuting economic and financial crimes. The Act makes provisions for the powers, functions, composition, operation and other acts of the Commission. The offences created by the Act include offences of financial malpractices[40], offences relating to terrorism[41], offences relating to false information[42], and offences relating to economic and financial crimes[43].

The main difference between the ICPC and EFCC Acts is said to be in the intention of the EFCC to focus on economic and financial crimes such as advance fee fraud and money laundering, while the ICPC focuses on corruption in the public sector.[44] Nevertheless, the powers of the EFCC tends to overlap with that of the ICPC as the EFCC has the all-encompassing power to investigate everyone who appears to live above his means.[45]

The mandate of the EFCC as contained in Section 6(a-q) includes investigating and prosecuting economic and financial crimes.[46] Under Section 13 of the EFCC Act, the commission has the duty to investigate, prosecute and recover ill-gotten properties and money. Upon the recovery of proceeds of financial crimes, the Commission has the power to sell or otherwise dispose of the forfeited property.[47]Under Section 6 and by virtue of the special powers of the EFCC under section 7[48], the EFCC also has the

[40] Section 4 (1-3) of the EFCC Act.
[41] Section 15(1-3 of the EFCC Act.
[42] Section 16 (1-3) of the EFCC Act.
[43]Section 18 (1-2) of the EFCC Act.
[44]Salisu Ahmed Kabiru (2019), ibid (n. 9).
[45] Ibid (n. 9).
[46]Including advance fee fraud, money laundering, counterfeiting, illegal charge transfers, futures market fraud, fraudulent encashment of negotiable instruments, computer credit card fraud, contract scam etc.
[47]Section 31 of the EFCC Act.
[48]The special powers of the EFCC include causing investigation to be conducted as to whether any person, corporate body or organization has committed an offence under the Act or other law relating to economic and financial crimes; and causing investigation to be conducted into the properties of any person if it appears to the Commission that the person's life style and extent of the properties are not justified by his source of income.

power to coordinate and enforce the provisions of the other related statutes including the Money Laundering Act 2001, the Advance Fee Fraud and other Related Offences Act 1995, Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act,[49] Banks and Other Financial Institutions Act 1991(as amended), Miscellaneous Offences Act etc.[50]

In acknowledging the broad powers of the EFCC, the court in the case of *FRN v Sir Kingsley Ikpe & Anor*[51] stated that the EFCC has jurisdiction over corruption and financial offences created under the Criminal Code and the Penal Code by virtue of Section 7(2) of the EFCC Act.[52] In that case, the accused persons were charged of conspiracy to steal, stealing, forgery and uttering of documents, and the court equated them to dishonest and deliberate deception to gain advantage under section 7(2) of the EFCC Act 2004.

The offences under the EFCC Act are contained in Part IV and include offences relating to financial malpractices[53]; offences relating to terrorism in which its punishment is imprisonment for life upon conviction[54]; offences relating to false information punishable for a term not less than 2 years and not more than 3 years, and in the event of the offender being a public officer the punishment shall be not less than 3 years or not more than 5 years[55]; offences relating to economic and financial crimes punishable with not less than 2 years and not more than 3 years.[56]

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[49] It was promulgated as a decree in 1994 but is now cited as Cap F 2 Vol. 6 of Laws of the Federation 2004.

[50]Raimi, L.; Suara, I. B. and Fadipe A. O. (2013), 'Role of Economic and Financial Crimes Commission (EFCC) and Independent Corrupt Practices & Other Related Offences Commission (ICPC) at Ensuring Accountability and Corporate Governance in Nigeria' (Journal of Business Administration and Education, Vol. 3, Number 2, 2013; pp.105-122).

[51](2005) 2 QCC R155 at 190

[52]Reported in Suleiman IkpeChukwu Oji (2019) 'An Analysis of the Legal and Regulatory Framework for Combating Corruption and Financial Crimes in Nigeria' (Bi-Annual Journal of Public Law, Kogi State University) <https://www.researchgate.net/publication/334561227_AN_ANALYSIS_OF_THE_LEGAL_AND_REGULATORY_FRAMEWORK_FOR_COMBATING_CORRUPTION_AND_FINANCIAL_CRIMES_IN_NIGERIA> accessed 15 October 2020.

[53]Section 14(1) (a-b) of the EFCC Act 2004.

[54]Section 15(1) of the EFCC Act 2004.

[55]Section 16(1) of the EFCC Act 2004.

[56]Section 18(1) (a-b) EFCC Act 2004.

The EFCC Act provides for the agency, the power to freeze accounts of people suspected to engage in fraudulent activities. This is provided for in Section 34 of the Act.

The EFCC under the authority of the EFCC Act 2004 have adopted a method of prosecuting high profile corruption cases called Plea Bargain.[57]Section 14(2) of the EFCC Act lays the basis for the practice of plea bargain thus:

Subject to the provision of Section 174 of the Constitution of the Federal Republic of Nigeria 1999 (which relates to the power of the Attorney-General of the Federation to institute, continue or discontinue criminal proceedings against any persons in any court of law), the Commission may compound any offence punishable under this Act by accepting such sums of money as it thinks fit, not exceeding the amount of the maximum fine to which that person would have been liable if he had been convicted of that offence.

Plea bargain is a method of prosecution whereby the EFCC enters an understanding with the person under investigation or facing trial so that the person will surrender a certain portion of the looted fund or property to the EFCC on the ground that EFCC will give him a lighter landing in the form of lesser penalty or imprisonment terms. According to Section 494 (1) of the Administration of Criminal Justice Act 2015, it is a process:

> *"In which the defendant and the prosecution work out a mutually acceptable disposition of the case, including the plea of the defendant to a lesser offence than that charged in the complaint or information and in conformity with other conditions imposed by the prosecution, in return for a lighter sentence than that for the higher charge subject to the Court's approval".*[58]

In a nutshell, plea bargain means the defendant pleading guilty and agreeing to surrender the proceeds of crime in exchange for the prosecution charging him with a lesser offence. This method of prosecution has largely been

[57]See section 14(2) of the EFCC Act 2004.
[58] Section 494 (1) of the Administration of Criminal Justice Act 2015

condemned as capable of favouring highly placed individuals[59]. The principle of plea bargain was first adopted in the case of *Federal Republic of Nigeria v Emmanuel Nwude & Anor*[60]. It has also been utilized in host of other cases[61]. The use of plea bargain in prosecutions by the EFCC has always been adjudged to be illegal until the coming into effect of the Administration of Criminal Justice Act 2015 (ACJA). The ACJA in Section 270(1-18) makes provision for the use and condition for the application of plea bargain by a prosecutor, and renders the plea bargain agreement binding with option for the defendant to pull out of the bargain if the court decides to impose the maximum punishment order than agreed.[62] A person tried under plea bargain is said to have been tried on the merit and avails the defendant a defence of double jeopardy if subsequently an attempt is made to try him on the same offence again.[63] A judgment arising from a plea bargain trial is final with no right of appeal unless where there is allegation of fraud during the trial.[64]

Unlike the position under the ICPC Act, the EFCC Act by virtue of Section 19 confers jurisdiction over matters arising from the Act to the High Court of the State or the Federal Capital Territory High Court and that of the Federal High Court. This position is better as it allows the EFCC to speedily dispense with their cases.

[59] Samuel E. Idhiarhi (2016) 'A Synoptic Appraisal of the Practice and Procedure for Plea Bargaining Under the Administration of Criminal Justice Act 2015' (African Journal of Law and Criminology (AJLC) Volume 6 Number 1 (2016) 12-24).
[60](2006) 2 EFCSLR 145.
[61]Adopted in the cases of D.S.P. Alamieyesigha, Lucky Igbinedion, Cecilia Ibru , John Yakubu etc. as cited in Samuel E. Idhiarhi (2016), ibid (n 33).
[62]Section 270(15) of the ACJA 2015.
[63]Section 270(17) of the ACJA 2015.
[64]Section 270(18) of the ACJA.

4. THE ADVANCE FEE FRAUD AND OTHER FRAUD OFFENCES RELATED ACT 2006

The Advance Fee Fraud and other Fraud Offences Related Act 2006[65]provides that it is an offence for anyone by false pretence and with the intent to defraud to:

i. Obtain property from any other person for him or herself or for any other person; or
ii. Induce another person to deliver property to a third party.
iii. This is true regardless of whether the property was obtained or its delivery was induced through a contract which was made under false pretence.

5. MONEY LAUNDERING PROHIBITIONS ACT

On 17 May 2022, the President of the Federal Republic of Nigeria, Muhammadu Buhari assented to the Money Laundering (Prevention and Prohibition) Bill, 2022. The Money Laundering (Prevention and Prohibition) Act 2022 (the "Act") repealed the Money Laundering (Prohibition) Act 2011 (the "2011 Act").

This assent came as part of the intensified efforts towards implementation of the Financial Action Task Force (FATF) recommendations on anti- money laundering and combating the financing of terrorism (the FATF Recommendations) in Nigeria. Incidentally, this would be the fourth reform of Nigeria's anti-money laundering legal regime – starting from 2003, its respective amendments in 2004, 2011 and now, 2022.

One major objective of the Act is expanding and strengthening the existing legal and institutional framework for combating and preventing Money Laundering. The Money Laundering Prohibition Act [66] prohibits the laundering of the proceeds of a crime or any criminal or illegal activity, and provides for appropriate penalties for money laundering infringements.

[65] Advanced Fee Fraud and Other Related Offences Decree No. 13 of 1995 Act CAP A6, Laws of the Federation of Nigeria 2004.
[66] Money Laundering (Prohibition) (Amendment) Act No. 11 2011

Some of the notable provisions are:

i. **Threshold on transactions:** The Act keeps the previous threshold value on cash payment transactions i.e. N5, 000,000 (five million naira) for individuals and N10,000,000 (ten million naira) for corporate bodies, the Money Laundering Act 2022 criminalises any attempt at breaking up transactions in a bid to side-step the threshold value stated in the Act.

ii. **Attorney-client privilege:** it was settled by the Court of Appeal in ***CBN vs. Registered Trustees of the NBA*** **(NBA Case)**[67] that legal practitioners are excluded from the definition of designated non-financial institutions as contained in the Money Laundering Prohibition Act, 2011. The Court held that Section 25 of the repealed Act which purports to extend the definition of Designated Non-Financial Institution (DNFIs) to include legal practitioners is inconsistent with Section 192 of the Evidence Act 2011 which though entrenches counsel-client privileged communication, however imposes an obligation on legal practitioners to disclose any such communication made in furtherance of any illegal purpose.

As it stands, the Money Laundering Act 2022 has legislatively sought to once again impose disclosure obligations on legal practitioners and notaries. The Act provides to the effect that attorney-client privilege does not apply to the following transactions – purchase or sale of property, purchase or sale of any business, managing client money, securities or assets, opening or management of bank, savings or securities accounts, creation or management of trust companies or similar structures or any proceeds from an unlawful act.[68] Another implication of this provision within the MLA 2022 is that the CBN appeal to the Supreme Court would appear to have been overtaken by legislative events.

iii. **Inclusion of New Categories of Businesses as Designated Non-Financial Business and Profession (DNBP)**: Under the repealed Act, certain categories of business entities were defined as

[67] (unreported) Appeal No. CA/A/202/2015.
[68] Section 13, Money Laundering Act, 2022.

Designated Non-Financial Institution (**DNFI**). However, the Act changes the nomenclature to Designated Non-Financial Business and Profession (DNBP) and notably expands the categories of businesses that qualify as DNBP to include: businesses involved in the hospitality industry, mechanized farming equipment, farming equipment and machineries, precious metals and precious stones, real estate, estate developers, estate agents and brokers, notaries, mortgage brokers, practitioners of mechanized farming, trust and public service providers, and pools betting.

The implication of the foregoing is that businesses within the newly included categories which hitherto had no mandatory compliance obligations on anti-money laundering now bear compliance obligation under the Act as it relates to – amongst others- verifying the identity of customers (using reliable, independent source documents and data/information), undertaking elaborate due diligence and risk mitigation measures in its dealings with customers as well as complying with relevant reporting obligations in respect of suspicious transactions.[69]

iv. **Introduction of new terminologies:** under the repealed act, luxury dealers were recognised as Designated Non-Financial Institutions however under the Act, high value dealers have been included. On the contrary, this term is not defined under the Act and there remains an ambiguity as to the parameters within which a business will be considered as a "high value dealer"[5].

v. **International transfers of funds, securities, and cash:** The transfer of funds, securities or cash exceeding $10,000 to and from a foreign country by a corporate body must be reported to the Central Bank of Nigeria, the Securities and Exchange Commission and the Economic and Financial Crimes Commission within 1 day from the date of the transaction.[70] The 2011 Act had provided to the effect that such transfers be reported within 7 days.[71]

[69] Section 4 of the Money Laundering Act 2022.

[70] Section 4(1)(d) of the Money Laundering Act.

[71] Denton acas law, (2022), highlights of the money laundering prevention and prohibition act 2022 accessed from

vi. **Periodic reports on money laundering:** The Attorney General shall prepare and submit a Nigerian Money Laundering Strategy Report to the President every two years. The Nigerian Money Laundering Strategy Report shall contain contributions from competent authorities.[72]

vii. **Special Control Unit against Money Laundering ("SCUML"):** Historically, the EFCC as the designated Financial Intelligence Unit (**FIU**) in Nigeria, has always been charged with the responsibility of coordinating the various institutions involved in the fight against money laundering and enforcement of all laws dealing with economic and financial crimes in Nigeria (both for financial institutions and non-financial institutions). [73] The Act statutorily recognises the SCUML, which had been set up by the Federal Government in 2005 under the Federal Ministry of Industry, Trade, and Investment. The SCUML is responsible for the supervision of non-designated financial businesses and professions in their compliance with the provisions of the Act.

viii. Enhanced KYC Requirement for Proxies/Agents and Politically Exposed Persons: A politically exposed person is defined by the Act to include individuals who are or have been entrusted with prominent public functions domestically or by a foreign country. For example, Heads of States or Government, senior politicians, senior government officials, judicial or military officials, senior executives of State-owned corporations and important political party officials and Financial Institutions are mandated to take reasonable measures to establish the source of wealth and funds of customers and beneficial owners identified as Politically Exposed Persons (PEPs)[74] or their beneficiaries and conduct on-going monitoring of the relationship.[75]

ix. **Jurisdiction and Place of Trial:** While there are divergent judicial views on the interpretation of Section 45 of the Federal High Court

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https://www.dentonsacaslaw.com/en/insights/articles/2022/june/6/highlights-of-the-money-laundering-prevention-and-prohibition-act-2022 on October 26th, 2022.

[72] Section 30 of the Money Laundering Act, 2022.

[73] Section 4(1)(d) Money Laundering Act 2022.

[74] Section 4 (8) and (9) of the Money Laundering Act 2022.

[75] Section 4(9), Money Laundering Act 2022.

Act on the appropriate judicial division of the Federal High Court for the trial of charges within its substantive jurisdiction,[76] the Act has now laid it to rest. The Federal High Court located in any part of Nigeria regardless of the location where the offence is committed shall have jurisdiction to try offences under the Money Laundering Act 2022 or any other related enactment; and to hear and determine proceedings arising under the Act.[77]

x. **Jurisdiction over Persons:** Contrary to the erstwhile position under the repealed Act – that only citizens of, or persons residents in Nigeria, or in transit or has link within Nigeria or dealing with or on behalf of the Government of Nigeria can be prosecuted for money laundering in Nigeria, the Money Laundering Act 2022 has expanded its scope of coverage to include where the alleged offence was committed— (a) in Nigeria ; (b) on a ship, vessel or aircraft registered in Nigeria; (c) by a non-citizen of Nigeria if the person's conduct would also constitute an offence under a law of the country where the offence was committed ; or (d) outside Nigeria where the alleged offender is in Nigeria and not extradited to any other country for prosecution.[78]

xi. **Casinos**: Casinos are obligated to forward records of financial transactions by customers to the Special Control Unit against Money Laundering. Casinos under the Act include internet and ship-based casinos.

xii. **Virtual assets:** Following the development and use of digital currencies and assets, the Act refers to funds as including virtual assets. The Act further defines virtual assets to mean digital

[76] Ibori v. Federal Republic of Nigeria (2009) 3 NWLR (Pt. 1128) 94 and Abiola v. Federal Republic of Nigeria (1995) 1 NWLR (Pt. 382) 203.

[77] Muyiwa Balogun et al, (2022), Nigeria: Money Laundering (Prevention and Prohibition) Act 2022: Enhanced Anti-Money Laundering Regime in Nigeria. Accessed from https://www.mondaq.com/nigeria/money-laundering/1218416/money-laundering-prevention-and-prohibition-act-2022-enhanced-anti-money-laundering-regime-in-nigeria#:~:text=The%20Money%20Laundering%20(Prevention%20and%20Prohibition)%20Act%2C%202022%20(,of%20money%20laundering%20in%20Nigeria on 26th October, 2022.

[78] Section 23(2) of the Money Laundering Act 2022

representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes but does not include digital representation of fiat currencies, securities and other financial assets.

xiii. **Administrative Fines:** The Act empowers any supervisory and regulatory authorities to impose - for any breach of any requirement such administrative sanctions as may be prescribed in a regulation made by the Attorney-General of the Federation under the Act.

xiv. **Punishment for money laundering offences**: Under the 2011 Act, a person who commits the offence of money laundering is liable to imprisonment for a period of not less than 7 years or a fine of not less than 100% of the proceeds of the offence or both. The Act has now provided that such a person is liable to imprisonment for a period not less than 4 years or a fine of not less than five times the value of the proceeds of the offence or both. The liability of a fine of not less than five times the value of the proceeds also applies to corporate bodies guilty of money laundering offences.

6. MISCELLANEOUS OFFENCES ACT

The Miscellaneous Offences Act[79] creates a number of offences with strict penalties in the event of a breach by any individual or corporate entity.

7. CODE OF CONNDUCT ACT

The Code of Conduct for Public Officers,[80] as contained in the 1999 Constitution, can be found in the Fifth Schedule to the 1999 Constitution of the Federal Republic of Nigeria. It performs oversight functions on the activities of public officers. It also establishes a disciplinary mechanism through the Code of Conduct Tribunal.

[79] Miscellaneous Offences Act CAP M17, Laws of the Federation of Nigeria 2004.
[80] Code of Conduct Act, CAP C 15, Laws of the Federation of Nigeria 2004.

8. THE NIGERIAN EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE ACT

The Nigerian Extractive Industries Transparency Initiative Act[81]ensures, monitors and reviews transparency and accountability in the reporting and financial disclosure of extractive companies.

9. THE FREEDOM OF INFORMATION ACT 2011

The Freedom of Information Act 2011[82] gives every Nigerian the right to access information within the control of public institutions in Nigeria.

10. THE FISCAL RESPONSIBILITY ACT 2010

The Fiscal Responsibility Act 2010[83] establishes the Fiscal Responsibility Commission, which has the power to:

i. Compel any person or government institution to disclose information relating to public revenues and expenditure; and
ii. Initiate an investigation into whether any person has violated the act. If the commission is satisfied that the person has committed punishable offence under the act, it will forward a report of the investigation to the Attorney General of the Federation.

11. PUBLIC PROCUREMENT ACT

The Public Procurement Act[84] is another legislation aimed at guiding against corruption in Nigeria. 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 and the Bureau of Public Procurement as regulating authorities responsible for the monitoring and oversight of public procurement, setting standards, harmonizing existing government policies and practices, developing legal framework and capacity for public procurement in Nigeria. Section 53(1) particularly empowers the

[81] CAP N159, Laws of the Federation of Nigeria 2004.
[82] CAP A2, Laws of the Federation of Nigeria 2004
[83] CAP 40, Laws of the Federation of Nigeria 2014.
[84] No. 14 of 2007

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.[85]

There is also The Penal Code[86]which generally sets out the offences and penalties under criminal law in the northern part of Nigeria, the Criminal Code[87]which generally sets out the offences and penalties under criminal law in the southern part of Nigeria and the Administration of Criminal Justice Act, which was signed into law in May 2015. The ACJA 2015 as it is frequently referenced has 495-sections divided into 49 parts. The aim of the ACJA is to merge provisions of the two major criminal procedure laws in Nigeria while also providing new sections that help fill up gaps observed over the course of several decades. The overall aim is to enhance the efficiency of the justice delivery system[88].

Nigeria is also a party to two international anti-corruption conventions that apply in Nigeria the United Nations International Convention against Corruption[89] and the African Union Anti-corruption Convention[90]

Apart from all these listed, the National Assembly also has investigative powers pursuant to section 88 of the 1999 Constitution (as amended) which it occasionally exercises over issues of alleged corruption. The powers of investigation are essentially for the purpose of correcting defects in laws within the legislative competence of the National Assembly and to "expose corruption, inefficiency or waste in the execution or administration of laws

[85]Onuigbo, R.A., Eme, O., (2015), "Analysis of Legal Frameworks in Fighting Corruption in Nigeria: Problems and Challenges, DOI: 10.12816/0019016 accessed from https://www.researchgate.net/publication/304274369_Analyses_of_Legal_Frameworks_for_Fighting_Corruption_in_Nigeria_Problems_and_Challenges on 11 September, 2020.
[86] CAP P3, Laws of the Federation of Nigeria 2004.
[87] CAP C28, Laws of the Federation of Nigeria 2004.
[88] "The Administration of Criminal Justice Act, 2015 (ACJA" accessed at https://lawpavilion.com/blog/the-administration-of-criminal-justice-act-2015-acja on 11 September, 2020.
[89]Available at https://www.unodc.org/unodc/en/corruption/ratification-status.htmlsigned on December 9, 2003 and ratified on December 14 2004
[90]signed on December 12 2003 and ratified on September 26 2006.

within its legislative competence and in the disbursement or administration of funds appropriated by it."[91]

In recent times, this power has been called to question as it has proved ineffective. Some dubious individuals would also rush to court so as to plead "sub judice" and avoid the use of these investigative powers. In 2018, the Attorney General of the Federation served a court order restraining the National Assembly from continuing its investigation.[92]

12. THE ADMINISTRATION OF CRIMINAL JUSTICE ACT 2015

Prior to the enactment of the Administration of Criminal Justice Act in 2015 the criminal code in section 98 contained provisions against corruption. It is established that antics and technicalities often employed by litigants/counsel in corruption cases constitute impediment to speedy trial of indicted individual in courts. The judgment under review (***Olisah Metuh v. FRN***) validates the constitutionality of proscription of stay of proceedings and remedied the unwholesome attitude of litigants/counsel to deliberately delay/frustrate criminal proceedings. It is concluded that the innovative insertion of prohibition on stay of proceedings in the Administration of Criminal Justice Act (ACJA) and Economic and Financial Crime Commission (EFCC) Act mechanisms put in place to check delay in prosecuting crime of corruption, and therefore, does not infringe on the fundamental right of an accused person to fair hearing.[93]

The principle of fair hearing is sacrosanct in the adjudication of cases. Fair hearing requires that a person should not be judged for the action or omission he has been accused of unless he has been given sufficient notice of the court proceedings, given opportunity to present his case and also given opportunity to answer the case presented by the other party. The right to fair hearing is

[91] Section 88(2) Constitution (as amended)

[92] Accessed from https://www.pulse.ng/news/local/maina-malami-blocks-senate-investigation-into-reinstatement-scandal/z0krjzt on 22 October, 2019.

[93] Ibrahim Imam, Yusuf O. Abdulhamid, (2020), Prohibition of Stay of Proceedings in Criminal Litigations under ACJA/EFCC Acts and Speedy Dispensation of Justice: Olisah Metuh V FRN (2017) 5–7 MJSC 83, African Journal of Legal Studies.

one of the fundamental human rights guaranteed in the 1999 Constitution of Nigeria under section 36 (1).

Even though these provisions are intended to safeguard the rights of defendants, some defendants have taken advantage of them to stall the trial of their case by wilfully absenting themselves from court proceedings. In some recent high profile anti-corruption cases namely the cases against *Colonel Sambo Dasuki* and *Mr. Abdulrasheed Maina*, the defendants refused to appear in court for a certain period which led to a stall in their trial for corruption. When he was arrested and extradited back to Nigeria, he continued to appear in the case against him until judgment was given in October 2021. *Mr. Abdulrasheed Maina* was found guilty of three counts of money laundering and was sentenced to several years of imprisonment.

When anti-corruption cases are stalled due to the absence of defendants, it has repercussions on the anti-corruption war. These repercussions include the issue of the preservation of evidence, the uncertainty of witnesses willing to testify after a long period, elevation of the Judge to a higher court which leads to the proceedings starting afresh and ineffective deterrence of others when the corrupt accused person is able to evade justice. Because of the various delay tactics employed by defendants who abscond on bail, the Administration of Criminal Justice Act 2015 (ACJA) makes provisions for trial in absentia under Section 352 (4).[94]

In ***Destra investments v. FRN***,[95] the SC held that a trial court may defer the determination of a preliminary objection to jurisdiction until the time of delivering judgment on the substantive matter. Thus upholding and expanding section s.396 (2), ACJA. Section 396(7) has also been utilised to ensure that Judges who have been elevated or transferred during the pendency of a trial, continue to sit and dispose of such trial. This has helped

[94] Trial In Absentia Of Corruption Cases Under ACJA, The Juritrust Center for Socio-Legal Research and Documentation AKA Juritrust Centre (JCSLRD) Accessed from http://www.juritrustcentre.org/index.php/information/in-brief/101-trial-in-absentia-of-corruption-cases-under-acja

[95] (2018) 8NWLR (pt.1621) 335.

in preventing such trials from being conducted De Novo. This position was given judicial approval in ***Orji Uzor Kalu v FRN***.[96]

Some of the Key Improvements in the Criminal Justice Sector[97] include:

i. adoption of improved versions of the ACJ Law by about 24 States;
ii. improvement in the attitude of the Judiciary towards the anti-corruption fight.
iii. Establishment by the Former Chief Justice of Nigeria of Corruption Cases Trial Monitoring Committee (COTRIMCO);
iv. Designation of specialized courts for speedy trial of corruption cases.
v. Award of punitive costs against senior lawyers once considered untouchable: In ***Abubakar v. Usman[98]*** the Supreme Court awarded N1m costs against a senior advocate.
vi. An upsurge in the number of financial crimes and corruption cases concluded: The EFCC has recorded 1,192 convictions between 2015 to 2019 which is a whopping 110% increase from the number of convictions secured between 2010 to 2014.

some of the high-profile cases concluded include:

I. Joshua Dariye: sentenced to 14 years in prison for diverting N1.162 billion meant for state ecological fund.
II. Jolly Nyame: sentenced to prison for 14 years for criminal breach of trust, 2 years for criminal misappropriation, 7 years for Gratification and 5 years for obtaining by dishonesty.
III. Joseph Nwobike: Senior lawyer sentenced to 1 month in prison, on grounds of perversion of justice.
IV. Bala Ngilari: Former governor of Adamawa was convicted in a record time of 7 months and sentenced to 5 years in prison for Procurement fraud.

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[96] CA/L/1043C/2018.

[97] ROLE OF THE JUDICIARY IN THE FIGHT AGAINST CORRUPTION IN NIGERIA IN CONTEXT OF THE ACJA 2015 By Professor Yemi Akinseye-George, SAN, FCIArb. President, Centre for Socio-Legal Studies (CSLS) Presented at MacArthur Roundtable on the Judiciary @ Abuja- June 28, 2019.

[98] (2017) 12 NWLR (Pt.1587) 36 at 52.

V. Calistus Obi: Former DG of NIMASA was sentenced for conspiracy, conversion and money laundering to the tune of N136 million.

According to the Chairman of the EFCC, Ibrahim Magu, the Nation has successfully traced and recovered $2.9 billion or N738.9 billion from looters between May 2015 and October 2017. These feats can be credited to the ACJA.

13. CRIMINAL CODE ACT

The general aim of criminal law is punishment of offenders. Therefore, offenders are punished in line with the extant laws. This is the situation that is applicable under the Criminal Code Act that is applicable to the southern states of Nigeria. The Act specifically criminalises corrupt practices. Thus, a look at chapter 12 of the Act with particular emphasis on sections 98 through 111 concerns itself primarily with corruption and abuse of office. It therefore suggests strongly that the Criminal Code Act is an existing law that penalises acts that are considered to be corrupt within the southern states. These acts include but are not limited to official corruption which involves giving of bribes, extortion by public officers, abuse of office and false certificates by public officers.

14. PENAL CODE

The Penal Code came into force on September 30, 1960, in the Northern Region of Nigeria, a predominantly Moslem area. Islam was introduced into Northern Nigeria during the fourteenth century. This was probably influenced by the fact that the Muslims dominated the region. Prior to the passage of the Penal Code, Northern Nigeria experienced a plurality of criminal law regimes. The native courts applied customary law which in the Muslim communities was Islamic law. In the non-Islamized communities, criminal law was a reference to those rules of custom generally held to be binding.[99] It is interesting to point out that as it relates to corrupt practices, the Penal Code is silent and has no direct reference as seen under the Criminal

[99] Essien, Victor L.K. (1983) "The Northern Nigerian Penal Code: A Reflection of Diverse Values in Penal Legislation," NYLS Journal of International and Comparative Law: Vol. 5 : No. 1 , Article 5 p.88

Code Act. Thus, where matters relating to corruption are considered, reference may be made to other applicable legislation in this regard.

4.0 EFFECTIVENESS OF LEGAL FRAMEWORK AND ENFORCEMENT

The most obvious problem of the ICPC and EFCC, judged by their acts of omission and commission, is that they appear to lack complete independence. The ICPC is slow to act and cannot in the strict sense of things prosecute; while the EFCC seems more effective and can prosecute but rarely achieves convictions.[100]

Another problem seems to be the politicisation of these commissions. Due to its close proximity with the presidency, there is a tendency for their powers to be used as tools to "witch-hunt" and victimise their political rivals.

The EFCC is said to have performed very low in terms of preventing corruption and ensuring public office accountability, in the sense that there have been cases of embezzlement and corruption by public officials without any investigation or prosecution.[101] Over the years, there have been huge sums of money mapped out for the revitalization of the nation's refineries with nothing to show for the money so expended. In 2004, the Transparency International reported that about $300 million (Three Hundred Million US Dollars) had been claimed to have been spent on the nation's four refineries with no evidence of such huge expenditure, and yet the EFCC or even the ICPC has not indicted anyone so far. The lofty provision of the ICPC and EFCC Acts are bedevilled with a lot of challenges which we shall now highlight hereunder.

One of the challenges impeding the full implementation of the ICPC Act is the issue of Federalism. The Nigerian Federation is divided into Federal, State and Local Government by section 2 of the 1999 Constitution, with their powers assigned to them by sections 4-6 of the Constitution. As a result of

[100]Ibidapo Bolu, (2016), "Nigeria: The Anti-Corruption Legal Framework and its Effect on Nigeria's Development", accessed from https://www.mondaq.com/nigeria/white-collar-crime-anti-corruption-fraud/490434/the-anti-corruption-legal-framework-and-its-effect-on-nigerias-development on 10 September 2020.
[101]Raimi, L.; Suara, I. B. and Fadipe A. O. (2013), ibid (n 25).

this clear division, the power of the ICPC to investigate and prosecute State and Local Government officials has met constant resistance from people who argue that the Commission should focus on federal offences.[102]

Another challenge facing the actualisation of the aim and objectives of the EFCC and the ICPC is the issue of delay in dispensing cases in court, and also lack of diligent prosecution on the side of the EFCC and ICPC. There are many corruption cases pending in various courts in Nigeria and there have been allegations of the court not being able to dispense with corruption cases as quickly as possible.[103]The ICPC in 2001 charged two immigration officers for extortion of money from foreigners, the trial court acquitted and discharged the accused persons, and the ICPC appealed to the Court of Appeal.[104]Till this moment, the case is still pending at the Court of Appeal since 2005. A more recent example of lack of proper diligence in the prosecution of corruption cases is manifest in the case of *Damijay Integrated Services Limited v. Economic and Financial Crimes Commission &Ors*.[105] In that case, the EFCC while investigating the financial transactions of the Applicant, acting upon the intelligence report received from the office of the National Security Adviser, got a court order to freeze the account of the Applicant with Access Bank PLC. The interim order of the Court Freezing the account of the Applicant was to last for 45 days within which the Applicant should be arraigned, and if after 45 days, the accused person was not arraigned the EFCC may apply for the extension of the interim order but only if they could show evidence of the progress of their investigation. The EFCC did not arraign the accused person until after the expiration of the duration of the interim order, and without seeking for extension of the order, the Commission went ahead and arraigned the Applicant. While the suit was

[102]*A. G. Ondo State &Ors v. A. G. Federation &Ors* (2002) 9 NWLR (pt. 772) p.1; *A. G. Rivers State V. Speaker Rivers State House of Assembly & 37 Ors* – Suit No. PHC/114/2014; *A. G. Ekiti State v. Economic and Financial Crimes Commission & 17 Ors* – Suit No. FHC/AD/CS/32/16; *A. G. AkwaIbom State v. The Speaker AkwaIbom State House of Assembly & 13 Ors* – Suit No. FHC/UY/CS/20/17/

[103] Published by Punch on Sun., 27 Nov. 2011, ICPC: Its Achievements and Challenges <https://www.latestnigeriannews.com/news/106270/icpc-its-achievements-and-challenges.html> accessed 05 October 2020.

[104]*Prince Okoro & Anor. V. ICPC (Charge No. HAB/ICPC/1/2001.*

[105] SUIT NO: FCT/HC/CV/187/2020. (Unreported, delivered on the 13th of October 2020).

pending, the Applicant brought a fundamental right enforcement action under Section 43 and 44 of the 1999 Constitution of the Federal Republic of Nigeria, as amended, against the EFCC over the unlawful freezing of his account. Hence, the court ordered the EFCC to unfreeze the account of the Applicant and to also allow the Applicant deal with his money in the account as he may lawfully do, stated thus:

> in ***GTB v. ADEDAMOLA & ORS (2019) LPELR-47310(CA)*** it was held that the Economic and Financial Crimes Commission has no powers to give direct instructions to Bank to freeze the Account of a Customer, without an order of Court, so doing constitutes a flagrant disregard and violation of the rights of a customer.

It has also been expressed that the independence of the ICPC is politically influenced, as was seen in the recent discovery that National Youth Service Corp certificate the Minister of Finance in the President Buhari Administration (Kemi Adeosun) was forged.[106]In that case, the ICPC was alleged to have dropped investigation into the matter on the ground of avoiding duplicity and giving room for another agency which had taken up the matter to carry out their investigation.[107] At this point one is poised to inquire as to which other agency could have primacy above the ICPC in the prosecution of an allegation of forgery against a public official especially when the issuing agency (NYSC) has issued a public statement certifying that the certificate was forged.

Another political interference in the affairs of the EFCC is seen in the power of the Attorney General of the Federation to enter a *nolle prosequi*. In 2003, a Permanent Secretary of the Ministry of Defence was arraigned with four others for the embezzlement of N420 Million, and while the case was going on, the then Attorney General of the Federation, Chief Kanu Agabi (now a Senior Advocate of Nigeria), entered a *nolle prosequi* on behalf of the

[106]Fikayo Owoeye, (Nairametrics, September 18, 2018): Nigerian React as ICPC Stops Kemi Adeosun's Investigation. <https://nairametrics.com/2018/09/18/icpc-stops-kemi-adeosuns-investigation/> accessed 06 October 2020.
[107]Ibid.

accused persons, thereby setting them free.[108] This attitude and flagrant exercise of the power of *nolle prosequi* is a set-back on the fight against corruption.

The fight against corruption seems to be difficult against political office holders because of the Immunity Clause in the Constitution.[109] The 1999 Constitution of the Federal Republic of Nigeria (as amended) in section 308 confers immunity against legal proceedings on certain political office holders.[110] The political office holders protected by the immunity clause are the President and the Vice-President and Governors and their Deputies of States. This provision has made it practically impossible to go after such political office holder in the event of alleged corrupt practices until after they have left office. According to Femi Falana, the retention of immunity clause in the Constitution means Nigeria is not serious to fight corruption at all level.[111] Since these political office holders cannot be prosecuted when they are in office, they will have ample opportunity to plan their escape from law enforcement agencies and use the corrupt proceeds to bribe their way out of prosecution. This manifestly led to the unsuccessful prosecution of James Ibori, a former Governor of Delta State, for corruption and related offences, but who nevertheless later pleaded guilty over the same offence and was convicted in the United Kingdom.[112]

Difficulty in accessing information in certain government agencies and the lack of accountability by those agencies is another challenge bedevilling the fight against corruption by the ICPC and the EFCC. The anti-graft agencies most times find it difficult to get the necessary information.

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[108]Raimi, L.;Suara, I. B. and Fadipe A. O. (2013), Ibid, (n 25).

[109]In the case of Joshua *Dariye v EFCC*, the court upheld the defense of immunity clause raised by the accused person and the case was dismissed for want of jurisdiction.

[110]1999 Constitution of the Federal Republic of Nigeria (as amended) C23 LFN 2004.

[111]Femi Falana, 'Official Corruption and Immunity in Nigeria' Premium Times (7 July 2016). See also Transparency International, ''When Immunity Becomes a License to Break the Law" (29 April 2013) <https://www.transparency.org/news/feature/when_immunity_becomes_a_licence_to_break_the_law> accessed 16 October 2020.

[112]Nnamdi Ikpeze (2013), 'Fusion of Anti-Corruption Agencies in Nigeria: A critical Appraisal' (Afe Babalola University: Journal of Sustainable Development Law and Policy, Vol. 1, Iss. 1 (2013) pp. 148-167) p.159.

Lack of political will and abuses of office are problems that rear its head in the fight against corruption. It has been stated that Nigeria has enough laws and regulations to wipe out corruption but the will to implement them is the problem.[113] Abuse of office is a cankerworm that has eaten deep in the fight against corruption. Recently, the suspended EFCC Chairman, Ibrahim Magu, was alleged to have compromised the fight against corruption by taking bribes and re-looting the recovered loot by the EFCC.[114] This reckless abuse of office if established to be true is capable of eroding every confidence the populace once had on the anti-graft war.

State pardon under Section 175(1) (a) of the 1999 Constitution is a slap on the fight against corruption when persons convicted of embezzlement and other corruption cases are pardoned.

It is not just the pardon but the accumulation of all the acts of the Nigerian government in aiding corruption. Evidently, it is on record that the federal government openly opposed the trial of Chief Ibori in the United Kingdom. In fact, in utter breach of the provisions of the Mutual Legal Assistance Treaty between Nigeria and the United Kingdom, the then Attorney-General of the Federation, Chief Michael Aondoakaa SAN rejected the request to make relevant documents available for the trial in the United Kingdom on the ground of sovereignty. In particular, Chief Aondoakaa refused to entertain the request of the UK Metropolitan Police and made under bilateral mutual assistance to Nigeria on the grounds that the request was not made by the Home Office.[115]

The request was to question Chief Ibori about his involvement in corruption and money laundering that occurred in the United Kingdom. Aondoakaa said: "I think Nigeria, as a sovereign nation, deserves some respect. They (the

[113]Ibid. p.160.

[114]Chike Olisah, 'Magu Probe: New Facts Suggest Case is About Re-Looting of Previously Stolen Funds' (Nairametrics, 11th July 2020) <http://www.nairametrics.com/2020/07/11/magu-probe-new-facts-suggest-case-is-about-re-looting-of-previously-stolen-funds> accessed 16 October 2020.

[115] Femi Falana, (2020), How FG Frustrated Ibori's Trial in the UK, accessed from https://www.thisdaylive.com/index.php/2021/03/26/how-fg-frustrated-iboris-trial-in-the-uk/ on October 26th, 2022.

Metropolitan Police) knew they were wrong; otherwise, why did they write through the Home Office requesting mutual assistance to quiz a prominent Nigerian… I cannot compromise the sovereignty of this country, if they make incompetent requests I will turn them down 20 times. Any request from Metropolitan Police would be refused by this office, period."[116]

The government also aids by stalling or stopping prosecution. But for the sudden removal of Mallam Nuhu Ribadu as Chairman of Economic and Financial Crimes Commission (EFCC), Dr. Bukola Saraki, who was governor of Kwara State, would have been charged to court alongside his father, a very prominent Nigerian who was Senate Leader in the Second Republic, for alleged bank fraud.[117]

Saharareporters.com reported that the 30-count charge against the Sarakis had already been prepared and the EFCC was about going to court when the Federal Government announced the sudden removal of Ribadu as the EFCC chairman. Attempt by his successor Ibrahim Lamorde, to arraign the Sarakis in court based on the charge was also aborted by the Umaru Yar'Adua administration which also removed Lamorde and posted him to Ningi, a remote part of Bauchi State as police area commander.

Sahara reporters revealed that the Sarakis would have been arrested and arraigned before a federal high court in Lagos in January for allegedly looting Societe Generale Bank Nig. Ltd., if not for the removal of the two top EFCC officials. Dr. Olusola Saraki was alleged to have looted GBN vault to aid the victory of two of his children in their quest to become elected officials both at state and national levels.

In 2005 the CBN revoked the operating license of the bank when it failed to meet the guidelines as revealed in the report released. Some of the charges filed against the Sarakis include

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[116] Kolawole Olaniyan, (2014), Corruption and Human Rights Law in Africa, Oxford: Hart, p 15

[117] Sahara Reporters, (2008), Bank Fraud: The Sarakis' Trial Aborted. Accessed from https://saharareporters.com/2008/07/03/bank-fraud-sarakis%E2%80%99-trial-aborted On October 26th, 2022.

"That you, Dr. Olusola Saraki while being a Director of Societe Generale Bank Nig. Plc, between 2002 and 2003 in Lagos State in the Lagos Judicial Division of the Federal High Court and having personal interest in the grant of a loan facility amounting to N210,000,000 (Two hundred and ten million naira) granted by the Societe Generate Bank Nig. Plc to People Democratic Party, Kwara State Chapter, failed in your duty to declare the nature of your said interest to the board of directors of the said Societe Generale Bank Nig. Plc and you thereby committed an offence punishable under section 18(11) of the Banks and other Financial Institutions Act cap B3, Laws of the Federation of Nigeria, 2004." And then proceeds to list out the 30 charges.

This state pardon is capable of encouraging political office holders or other persons with high political influence to go on with impunity as there will likely be a state pardon on the way. In order for confidence in the fight against corruption to be solidified, the grant of state pardon should not be available to anyone convicted of corruption or other related offences.

Pursuant to the powers to exercise the prerogative of mercy vested in the President of the Federal Republic of Nigeria in Section 175 (1—6) of the 1999 Constitution of the Federal Republic of Nigeria, and following a meeting of the country's Council of State, Joshua Dariye and Jolly Nyame, governors respectively of the central and north-eastern states of Plateau and Taraba from 1997 to 2007 were pardoned along with 157 other convicts.[118]

Dariye was convicted by a High Court of the Federal Capital Territory in 2018 and sentenced to fourteen years in prison for "systematic looting" and "diverting public funds to the tune of N1.126 billion" after being found guilty on fifteen out of the twenty-three charges preferred against him by the Economic and Financial Crimes Commission (EFCC). Although an appeal court would later commute his prison term from fourteen to ten years, the Supreme Court of Nigeria ultimately upheld his conviction in March 2021.

[118] Ebenezer Obadare, (2022), State Pardon for Former Governors Puts Nigeria's Anticorruption Drive in Jeopardy, https://www.cfr.org/blog/state-pardon-former-governors-puts-nigerias-anticorruption-drive-jeopardy

An ordained reverend, Nyame was similarly found guilty on twenty-seven of the forty-one charges of "money laundering, criminal breach of trust, and misappropriation of funds" to the tune of N1.64 billion brought against him by the EFCC and sentenced to fourteen years in prison in May 2018. While his total jail term was slashed by two years upon appeal, the Supreme Court in February 2020 affirmed the judgment of the lower courts.

The effect of pardon amounts to the nullification of punishment or consequences of a crime and conviction. The person is fully restored as if he never committed the offence in the first place. It is perhaps for this reason that Justice John Marshall in ***US v. Wilson***[119] describes a state pardon "as an act of grace". The President of Nigeria grants pardon as a prerogative or an act of discretion to correct perceived injustice, wrongful punishment or judicial excesses and this could be a tricky point given the salience of the doctrine of separation of powers.

In this regard, perhaps the most controversial pardon granted so far in contemporary Nigerian history would be that of Chief DSP Alamieyeseigha who escaped from the arms of the law in the United Kingdom, only to return to a heroic welcome and the subsequent nullification of all the sins he was alleged to have committed against the people of Bayelsa State. The pardon that was granted him by the Jonathan administration in 2013 was seen as an act of affront by both local and foreign analysts. 'Alams', as he was known, was accused of having corruptly enriched himself with the resources of Bayelsa state.

Mike Ozekhome(SAN) in an informed commentary on the matter argues that the crux of the matter is that "granting pardon to people convicted of corrupt practices, whether still serving or having served, may be construed as tacit approval of such corrupt practices." It has been reported that even the officials of the anti-corruption agency, the EFCC and their lawyers are alarmed and demoralized. The agency reportedly spent 11 years and millions

[119] 32 U.S. (7 Pet.) 150 (1833).

of Naira on the investigation and prosecution of the two former governors, and now both men are free.[120]

In the same vein, anti-graft agencies are commonly used as "houseboys" sent on errands to witch-hunt political rivals. An example is the case of the Bauchi state governor, Bala Mohammed.[121] The ruling APC also has a history of using anti-graft agencies to witch-hunt defectors. For instance, on August 7, 2018, two weeks after defecting from the APC to the People's Democratic Party, Benue State Governor Samuel Ortom accused the EFCC of freezing the state's bank accounts. Responding, Ortom had asked a series of questions, "Why am I being investigated by the EFCC? My records are there. But so far, I am the only governor in Nigeria whose security vote is being investigated by the EFCC.

An Abuja-based development economist and political commentator, Dr. Juliana Ogunyinka, said via a telephone that…" Where was the EFCC when he (Ortom) was in the APC? Why wasn't he mentioned by the EFCC all this while, as the agency usually does?" She added, "I have been monitoring the plight of workers in Osun State, where their governor had been paying them half salaries, until recently when he started paying in full, apparently to woo the workers to vote for his party again in September 2018. "Why has such atrocity not been investigated by the EFCC? Despite the Paris Club refunds and the Federal Government's bailouts, why has the governor been paying half salaries?"

Meanwhile, Benue State seemed not to be the only opposition state on the EFCC's watch list, as the anti-graft agency, just a day after freezing the state's bank accounts, also reportedly froze that of Akwa Ibom State, another state led by the PDP. Incidentally, the oil-rich state's accounts were frozen

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[120] Reuben Abati, (2022), Dariye, Nyame and That Controversial State Pardon. Accessed from https://saharareporters.com/2022/04/19/dariye-nyame-and-controversial-state-pardon-reuben-abati On 27th October 2022.

[121] Hafsat Abdulhamid, (2022), "Bauchi: Gov Mohammed's anti-corruption commission tool to witch-hunt, intimidate opponents – APC alleges". Accessed from https://dailypost.ng/2022/10/13/bauchi-gov-mohammeds-anti-corruption-commission-tool-to-witch-hunt-intimidate-opponents-apc-alleges/

on the same day a former governor of the state and ex-Senate Minority Leader, Senator Godswill Akpabio, defected from the PDP to the APC, fuelling insinuations that the APC was having a grand plan to intimidate opposition state governments.[122]

National and international bodies also know how illogical the graft war in Nigeria can be. This comes a few months after President Muhammadu Buhari admonished EFCC to avoid being used for partisan politics or getting dragged into personal disputes.

The EFCC also complain about the interference of the government in their work. "We used to say our problem in our work against corruption is the judiciary but we see a lack of political will by the president," an EFCC official said.[123] The interference is enormous to the extent that politicians employ groups to advance this agenda. An example was that of a political movement in Kwara State- 'Maja Elders Forum' (MEF) which urged President Muhammadu Buhari to urgently intervene in the travail of the Senate President, Bukola Saraki who was being prosecuted by the Code of Conduct Tribunal over alleged false declaration of assets when he was governor of the state.[124]

The US government says the bulk of the Independent Corrupt Practices and Other Related Offences Commission (ICPC) and Economic and Financial Crimes Commission (EFCC) anti-corruption efforts are focused on low and mid-level government officials.[125]

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[122] "2019: APC, EFCC and witch-hunt of opposition state governments" accessed from https://punchng.com/2019-apc-efcc-and-witch-hunt-of-opposition-state-governments/

[123] Khadijat Kareem, (2022), Are Presidential Pardons Really Prerogatives of Mercy or Political Handouts in Nigeria's 4th Republic? Accessed from https://www.dataphyte.com/latest-reports/governance/are-presidential-pardons-really-prerogatives-of-mercy-or-political-handouts-in-nigerias-4th-republic/

[124] Abiodun Fagbemi, (2015), Kwara group seeks Buhari's intervention in trial of Saraki. Accessed from https://guardian.ng/features/kwara-group-seeks-buharis-intervention-in-trial-of-saraki/ on 26th October, 2022. Ilorin.

[125] U.S. Knocks Nigeria's Anti-graft Agencies For Focusing On Low Profile Cases After Buhari Warned EFCC Against Going After Top Politicians 2022 accessed from https://saharareporters.com/2022/04/14/us-knocks-nigeria%E2%80%99s-anti-graft-agencies-focusing-low-profile-cases-after-buhari-warned

Over the years, there have been clashes and conflict of interest or power tussle or even attempt to downplay the independence and reduce the powers of the anti-corruption agencies by various Attorneys-General of the Federation. Section 43 of the EFCC Act provides that "*The Attorney General of the Federation may make rules or regulations with respect to the exercise of any of the duties, functions or powers of the Commission under this Act".* It was on this basis that the then Attorney-General of the Federation, Chief Michael Kaase Andoakaa, made regulations trying to take over the trial of some ex-Governors that were under the prosecution by the EFCC. One of the ex-Governors standing trial, George Akume of Benue State, was said to be the Attorney-General's benefactor and the Attorney-General was once a defence counsel to the ex-Governor before his appointment as the Attorney-General.[126] Placing reliance on Section 43 of the EFCC Act, a one-time Attorney-General of the Federation had made regulations restricting and limiting the power of the EFCC to try any offence where the amount involved is N50 million and above without notifying the office of the Attorney-General of the Federation.[127]The most recent case of an attempt to undermine the independence of the anti-graft agencies and usurp their powers is the recent proposed amendment to the EFCC Act championed by the current Attorney-General of the Federation, Abubakar Malami, SAN, wherein he proposes that the Chairman of the EFCC should be appointed by the President on the recommendation of the Attorney General of the Federation.[128]In this same Bill[129], the Attorney-General of the Federation had proposed the establishment of the office of the Director-General of the EFCC to be appointed by the President on the recommendation of the Attorney General of the Federation. Under the new Bill, the Director General of EFCC will be

[126]Nnamdi Ikpeze (2013), ibid (n 57) p. 161.
[127]Ibid.
[128]Kunle Sanni, "Sagay Warns against Bill to Weaken EFCC Under Buhari" (Premium Times, 17th September 2020) <https://www.premiumtimesng.com/news/more-news/415222-sagay-warns-against-bill-to-weaken-efcc-under-buhari> accessed 16 October 2020.
[129]An Act to Repeal the Economic and Financial Crimes Commission (Establishment) Act, 2004 (Act No. 1 of 2004) and Enact the Economic and Financial Crimes Commission Act Which Establishes a More Effective and Efficient Economic and Financial Crimes Commission to Conduct Enquiries and Investigate All Economic and Financial Crimes and Related Offences and for other Related Matters.

in charge of the running of the daily affairs of the EFCC. This is an attempt to reduce the power of the EFCC Chairman, following the recent development where the EFCC Chairman, Ibrahim Magu, accused the Attorney-General, Abubakar Malami, of the Federation of killing and stifling the anti-corruption effort of President Mohammadu Buhari's administration.[130]

The fact that there is no asset recovery law in the fight against corruption is problematic. That could explain why the former EFCC Chairman was accused of re-looting recovered loots. Other reasons for underperformance include: inefficiency of the judiciary, lack of societal cooperation, poor staff training, plea-bargaining, lack of diligent prosecution, enormous charge lists, immunity for certain officials leading to loss of evidence and systemic disorder, etc.

5.0 RECENT CHANGES IN THE ENFORCEMENT OF ANTI-CORRUPTION REGULATIONS

The whistle blower policy in its FAQs defines whistle blower as - a person who voluntarily discloses to the federal government of Nigeria through the federal ministry of finance a possible misconduct or violation that has occurred, is ongoing or is about to occur with specific concerns which are in the public interest.

There is no definite law on whistle blowing in Nigeria at 2022. By 'definite law', we mean that Nigeria does not have a comprehensive law that offers protection to whistle-blowers.[131] There is however a bill to that effect which scaled the second reading in October 2016.[132]It is hoped that a whistle-blower

[130] Punch, 6th September 2020, "FG Weakens Power of EFCC Chairman, Creates Director General in New Bill" <https://www.punchng.com/fg-weakens-power-of-efcc-chairman-creates-director-general-in-new-bill/> accessed 16 October 2020.

[131] Ejemen Ojobo, (2022), An Overview of the Effectiveness of the Nigeria Whistleblowing Framework, The Global South Dialogue on Economic Crime Network. Accessed from https://gsdec.network/7750/an-overview-of-the-effectiveness-of-the-nigeria-whistleblowing-framework/ on 25th October, 2022.

[132] "7 Things to Know about Nigeria's Whistle Blower Policy", (2019), accessed from https://lawpadi.com/7-things-know-nigerias-whistle-blower-policy on 11 September, 2020.

protection legislation will when it comes into existence improve investigations into allegations of bribery and corruption in Nigeria.

There is s.64(1) of the Independent Corrupt Practices and other Related Offences Act which provides for the protection of whistle-blowers' identity when reporting on offences under the Act. The protection of whistle-blowers was again reiterated in s.39 of the Economic and Financial Crimes Commission (Establishment) Act of 2004. Again, s.27 of the Freedom of Information Act of 2001 protects Public Officers or Person acting on behalf of a Public Institution from civil and criminal proceedings. As we can see, so far, the protection of whistle-blowers has been fragmented across different legislations. However, formal attempts have been made to create something more comprehensive. These formal attempts can be seen in the proposed Whistle-blowers Protection Bills of, 2008, 2011, 2015 which sought to offer broader protections to whistle-blowers, sadly, these Bills were never passed into law.[133]

There is however a policy which was approved by the Federal Executive Council in December 2016. The policy was created by the Federal Ministry of Finance for whistle-blowers. It provides that such whistle blowers are entitled to 2.5%-5.0% of amount recovered by the government. There are some conditions to this. These include; the giving of information not previously known to the government or which the government could not have got from some external source. The recovery must have occurred due to the information provided by the whistle-blower.

An informant is distinguished from an accomplice and a whistle blower may only be an informant not an accomplice. It does not provide the informant with immunity and so if during investigations, such is uncovered to be an accomplice same can be charged on the same offence he/she has reported. Many have clamoured for a better legal framework that grants protection to whistleblowers.

[133] Ejemen Ojobo, (2022), An Overview of the Effectiveness of the Nigeria Whistleblowing Framework, The Global South Dialogue on Economic Crime Network. Accessed from https://gsdec.network/7750/an-overview-of-the-effectiveness-of-the-nigeria-whistleblowing-framework/ on 25th October, 2022.

Since the creation of the policy recoveries have been made in various currencies. A total of N7 Billion (£13 Million); over $ 300 million and £27,000 as at the last update had been recovered.[134] In terms of the tips that have been received, there have been over 1,000 tips with over 900 investigation with 6000 completed and 12 prosecuted and 4 convictions.[135] In terms of the overall effectiveness, it is suggested that because of the absence of legislation, this has impacted the level of protection available to whistle-blowers and the potential to step up and whistleblowing so more needs to be done to provide for this. Since the policy came about there have been incidences of reprisals against whistle-blowers, some recent examples include Aliyu Ibrahim [136] who reported contract fraud within his organisation and was subsequently fired, as at the last update he has been fighting for reinstatement. There has also been Ntia Thompson who was fired for reporting the misappropriation of over $200,000.[137] Thompson was reinstated but he suffered a lot of victimisation that he had to be moved to another department, as at the last update he was still fighting to be paid his salary for the period he was fired (7 months).[138]

Plea bargaining is another way of combating anti-corruption which has been used by the EFCC prior to its provision in the ACJA. There is provision for plea bargaining in the Economic and Financial Crimes Commission Act (EFCC Act),[139] Administration of Criminal Justice Act 2015 (ACJA), and Administration of Criminal Justice Law (ACJL) Lagos state 2007. Section 270(2) of the Administration of Criminal Justice Act, 2015 particularly deals with plea bargaining.

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[134] https://gsdec.network/7750/an-overview-of-the-effectiveness-of-the-nigeria-whistleblowing-framework/#_ftn4

[135] Ibid at page 12.

[136] Ibid at page 20.

[137] Ibid at page 15.

[138] Ibid.

[139] Economic and Financial Crimes Commission (Establishment) Act 2004, CAP E1, Laws of the Federation of Nigeria 2004.

6.0 RECOMMENDATIONS

It is clear that legislations and institutional enforcement is neither enough to curb nor eliminate corruption in our society. Some writers believe that the challenge is not only with the existing anti-corruption legal regime but enforcement of the laws to achieve the desired objectives of combating corruption alongside a strong political will to prosecute the alleged corrupt offenders and implementation of the letter and the spirit of the law against corruption.[140]It is with this in mind that the following recommendations are made:

1. **Establishment of special Court for the anti-graft agencies**. Following the delay always witnessed in the prosecution of anti-corruption cases,[141] it will be ideal to establish a special court charged with the responsibility of handling cases from the ICPC and the EFCC exclusively and appeal from the special court should lie directly to the Supreme Court. It is high time Nigeria made the treatment of corruption cases special as election petition cases. If Nigeria is serious about fighting corruption, the same energy expended during election petition cases should be employed, including the provision of duration for dispensing such anti-graft cases.
2. **Training and retraining of the ICPC and EFCC officials to ensure due diligence in prosecution of cases**. The officials of the ICPC and the EFCC should be trained and retrained on the due procedure towards the prosecution of corruption and other related cases in accordance with the provisions of the enabling laws. Most of the ICPC and EFCC cases are lost on the ground of lack of due diligence in the institution and prosecution of the cases. At this period where financial crimes have gone digital, it will only take a specially

[140] Olujobi, O.J., (2017), "Legal Framework for Combating Corruption in Nigeria-The Upstream Petroleum Sector in Perspective", accessed from https://journals.aserspublishing.eu/jarle/article/view/1475 on 10 September, 2020.

[141] M.O.E Nwoba and Nwokwu Paul Monday (2018), 'Appraisal of Economic and Financial Crimes Commission (EFCC) in the Fight against Corruption in Nigeria (2007-2017)' (Department of Public Administration, Ebonyi State University, Abakaliki) (The Social Sciences, Vol 13, Iss 1, pp.92-104, 2018) p. 102.

trained official to successfully investigate and uncover cybercrimes and other graft practices.

3. **Appointment of the ICPC and EFCC chairmen by an independent body**. A situation where the heads of anti-graft agencies are appointed based on the recommendation of the Attorney-General as recently intended by the proposed amendment to the EFCC Act is in all certainty likely to lead to political interference in the work of the agencies. The appointment of the ICPC and EFCC Chairmen should be by the President on the recommendation of independent bodies like the National Judicial Council and subject to the confirmation of the Senate. The Attorney-General of the Federation who in turn is an appointee of the President is not in the right independent position to recommend the appointment of the anti-graft agencies' Chairmen.
4. **Establishment of a functional and active ICPC and EFCC office in every local government of the federation.** This is to ensure that the fight against corruption is taken to the grassroots. Nowadays, it has become common for Local Government Chairmen and other officials to be corrupt and embezzle public fund, while abusing their office by giving jobs to only their cronies. These local government offices to be reporting to the state commands and in most cases where the money involved is large to the headquarters.
5. **There must be a limitation to the exercise of the power of the Attorney-General of the Federation or even that of the State to enter a *Nolle Prosequi***. *Nolle prosequi* must not be entered on behalf of a person standing trial for corruption and other related cases.
6. **Adequate sensitization and education of the public against corruption and abuse of office**. EFCC is trying in its effort to educate the public against financial crimes by way of making every arrest and prosecution public so that others could be dissuaded. Greater effort should be adopted to ensure that the message gets to all by setting examples with those found culpable.
7. **Removal of the immunity clause in the Constitution as it relates to immunity from criminal prosecutions**. The immunity clause in Section 308 of the Constitution should only shield the President, Vice

President, Governor and the Deputy Governor against civil proceedings arising from the exercise of their public duties. It should not exclude them from criminal prosecution in relation to embezzlement, abuse of office and other corruption related matters even while they are still in office. This will help to curb corruption and keep them on their toes since they would not want to be removed from office.

8. **Limitation on the grant of State Pardon**. For confidence in the fight against corruption to be solidified, the grant of state pardon must be cautiously exercised and must not be available to anyone convicted of corruption or other related offences.
9. **The establishment of an asset recovery law and agency**. The management of recovered assets from proceeds of crimes have always been left many agencies like the EFCC, ICPC, Nigeria Customs and Excise Duties etc. Effort was however made by the 8th National Assembly to pass the Proceeds of Crime (POC) Bill and it was transmitted over to President Mohammadu Buhari who in turn refused to assent to the Bill on the excuse that several agencies have expressed concern that the Bill when passed into law will affect their powers.[142] Till today, that Proceeds of Crime Bill has not been assented to by the President. In consideration of the recent event regarding the allegation of re-looting of recovered assets by Ibrahim Magu, it is high time the President assented to the POC Bill so as to safeguard recovered assets.

7.0 CONCLUSION

It is important that issues relating to corrupt practices should be curbed within the society. In view of this, if the above identified challenges of the ICPC Act and the EFCC Act are tackled and the recommendations above followed and adopted judiciously and tenaciously, the war against corruption, advance fee fraud and other related offences will be a huge success. Thus, the legal and institutional framework for anti-corruption in Nigeria has been critically

[142] BudgIT Nigeria, July 29, 2019, "Nigeria, Anti-Corruption and Asset Recovery Bill: Matters Arising" <https://www.medium.com/@BudgIT/nigeria-anti-corruption-and-asset-recovery-bill-matters-arising-cd9cd4c35a3e/> accessed 17 October 2020.

evaluated, its merits, demerits as well as recommendations for improvement. Corruption in Nigeria has sadly become a way of life and these laws seek to curb this. The flaws in the legal framework as well as the government has been useful in fostering rather than fighting this plague. Thus these recommendations as highlighted above will go a long way in redeeming the image of the country and restoring the lost glory.