

### **Legal Frameworks for Combating Economic and Financial Crimes in Nigeria**

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#### **Abstract**

This study examined the various legal instruments, enactments and frameworks employed by the Nigerian state in the fight against economic and financial crimes. It defined corruption which is the major catch word in this area of study and other allied concepts, such as bribery, fraud, inducement, extortion and other forms of economic and financial crimes guided by statutory provisions and conventional rules of construction of statutes. It took a historical voyage into the various stages of political, economic and social developments in Nigeria with a view to assessing the presence and impact of corruption. It was observed that corruption has a long history in Nigeria as is the case with other countries of the world. Most of the relevant domestic, national, regional, sub-regional and international legal instruments employed by Nigeria at the various stages of political, social and economic developments to fight corruption were appraised. It also examined and considered the establishment of the various anti-graft institutions and certain procedural and enforcement mechanism designed to aid the fight against corruption, such as plea bargaining and forfeiture of assets. The study observed that despite the application and operation of pre-existing legislation on corruption and the enactment of new legislation on corruption in Nigeria, the menace remained on the increase on daily basis and from one regime to another and accordingly recommended some alternative strategies that may assist in the fight against corruption in Nigeria, such as moral and character education. It was concluded that Nigeria needs political leaders with good, moral and ethical compass to make positive changes in the lives of the citizens.

**Key words:** Legal framework, Economic and Financial Crimes, Corruption, Anti-graft agencies, Alternative strategies.

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## **Introduction**

### **The Colonial Era**

Although the fight against corruption has recently assumed a centre stage in our national discourse, it is not a new one. It has a long history in Nigeria, as may be the case with other countries of the world.

It is obvious that the Nigerian colonial experiences was not pure, clean and devoid of corrupt practices and institutional decay. It would seem that corruption was deeply rooted and institutionalised in the colonial administration of Nigeria. Colonization, western education, the development of urbanisation and monetization of the economy, were all attended by the growth of individualism and capitalism, all of which brought dramatic changes in relationship and the way of doing things. The consular court system practised by the colonial administration disrupted the traditional judicial system which the colonialists met on arrival. In its place, was appointed the highly flawed indirect rule under which appointment of personnel was highly arbitrarily made. In several cases, the appointees were unknown people, different from the traditional heads and chiefs, some of whom were persons of questionable characters who became intoxicated with power resulting to abuse and misuse of office, to the extent that criminality was condoned and encouraged. Corrupt practices inherent in the indirect rules system thrived to the amazement and infuraction of the colonialists as most of the warrant chiefs prospered materially beyond measures through the proceeds of bribery and corruption and the local councils established by them were fertile grounds for corruption.<sup>2</sup>

### **Post-Colonial Era**

The post colonial era may not have been devoid of corrupt practices in Nigeria as the nationalists who took over the government of Nigeria from the colonialists prior to full independence was attained, were involved in corrupt practices exemplified inter alia in the mismanagement of the funds of the African Continental Bank owned by the Eastern Region

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<sup>2</sup> Owolabi, E. A, "History of Corruption in Nigeria, <http://www.oecd.org/document/>. (accessed April, 11, 2018). See also, Dike, V. E. *Leadership without a Moral Purpose* (North Charleston; South Carolina; Book Surge Publishing, 2009) pp-187-254, Ade- Ajayi & Akinseye – George, Y. Kayode Eso: *The making of a Judge* (Ibadan, Spectrum Books Ltd, 2002) p. 359-425, Akanbi M.M.A, Keynote address at the opening ceremony of the 48<sup>th</sup> Annual Conference of the Nigeria Association of Law Teachers, held at the University of Ilorin on the 23<sup>rd</sup> day of April, 2013, etc.

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government and the Western Region Government Corporation. This led to the setting up of the Foster – Sultan and Coker Commissions of Inquiry in the mid 1950s and early 1960s to respectively look into the management of the African Continental Bank and the Western Region Government Corporations. The Commissions found the conduct of the key actors in these establishments as falling short of the required high ethical standards expected of public office holders.

Also, at the Federal and Regional levels of governance, corruption featured prominently in the First Republic (1960-1966), as there were electoral malpractices involving the use of money to buy votes, hugger, assassinations, hijacking of electoral boxes and the printing of fake voters“ cards. Those who fraudulently captured power had no other ambition than to actualize and promote selfish interests at the disadvantage of the larger impoverished society. The once cherished culture of hard work and probity in the public service and service to humanity soon yielded place to a culture of graft, financial impunity and the standard of public morality continued to decline.<sup>3</sup>

### **Military Era**

The military era (1966-79, 1983-98) witnessed a massive looting of the national wealth under the cover of sanitizing the polity allegedly messed- up by the political class. Though corruption was widespread among the political class before the advent of military incursion into the Nigerian politics, the military regime tended to be more corrupt than the regimes, the correction of which they claimed was their mission and reason for venturing into the political administration of Nigeria. Despotism, which is an attribute of military regimes, destroyed a culture of accountability and financial decency. Accordingly, military regimes, upon taking over power, and while allegedly fighting against corrupt practices, would remove from office, or dismiss some individuals forcibly, seize the proceeds of corruption, confiscate property through legislation (Decree), directed against particular persons, ban and disqualify such persons from holding public offices in future.

Nonetheless, these efforts or actions were largely perceived to be insincere and dishonest as a result of the extravagant life style and sudden unjustified acquisition of wealth by serving military personnel, their relatives and contractor-friends, their in-laws and accomplices, for there was lack of transparency and accountability in governance. Indeed, military regimes were

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<sup>3</sup> Owolabi, Dike, Akanbi, *ibid*

adjudged to have institutionalized corruption and corrupt practices and entoured a culture of graft in Nigeria.<sup>3</sup>

The military pretended to fight corruption, all to no avail, as they were ill-equipped with no political will, so to do. Nonetheless, the Babangida administration took notable steps to stem the overflowing tide of corruption in public life in Nigeria. It would seem that Babangida's astuteness could be judged from his knowledge of what touched the common man most. Apart from the quest for human rights, the issue of corruption which had become pervasive was equally in the minds of the people. General Babangida knew this and accordingly directed in the Attorney General, prince Bola Ajibola to take urgent legal steps to fight corruption at that time.

On the 3<sup>rd</sup> day of April, 1989, Prince Bola Ajibola assembled a very powerful committee known as the National Committee on Corruption and Other Economic Crimes in Nigeria, consisting of men of proven probity and intellectual attainment. The 15-member Committee was chaired by the late Honourable Justice of the Supreme Court (Hon. Justice Kayode Eso), who for the enormity of work of Committee, co-opted four (4) other members with the consent of the Honourable Attorney- General. Two members of the law Reform Committee also served on the committee, which was upon inauguration by the then Attorney-General,

<sup>3</sup> Eso K, *The Mystery Gunman* (Ibadan, Spectrum Books Ltd, 1996) 275-282, See also, Ribatu, H. "Corruption fights back" *Zero Tolerance* (The magazine of Nigeria's Economic & Financial Crimes Commission) vol. 2. No.

1 October, 2007. P. 54

the Hon. Prince Bola Ajibola, mandated to fashion a new regime for combating corruption and other economic crimes the country. This involves-

- Identification of causes and the possible extent of corruption in the country.
- Examination of deficiencies in the existing legislation on corruption and other economic crimes., and
- Suggestion of remedies, which would lead to the curbing of the incidence of corruption, including suggested improvements to the existing legislation.

The major problem which confronted the Committee was the pervasive cynicism and lack of enthusiasm by the general public about the assignment of the Commission based, ostensibly,

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on the fact that corruption had become so entrenched that people were no longer ready to trust the authorities, notwithstanding their declared intention to eliminate corruption from the polity. The immediate result of this attitude of the public was that the committed was left on its own to look for data, which it needed for its assignment, as the invitation extended to the general public to submit memoranda for use by the Committee, was largely ignored.<sup>4</sup> In an opening speech presented to the committee, its chairman, Hon. Justice Kayode Eso lamented that-

*One problem, which we must not lose sight of indeed, to which we must necessarily address ourselves is the realisation that corruption has been very difficult to fight because it looms large in the very high places. Corruption bestrides the nation like a colossus, and looks undisturbed, even when it is openly and unashamedly exhibited. This is just because, those involved appear to the public as too highly placed and the public could see no reason why they too should not copy that examples, or see why they should be singled out for punishment when the highly placed corrupt was stronger, look indestructible and give an air of that untouchable---- if we have to do battle against corruption, we must think of combating it in the highest places within our Constitution and law<sup>5</sup>*

The Committee functioned through two principal sub-committees. The first dealt with the causes and remedies whilst the second focused on the technical aspect of distilling the ideas of the entire Committee into concrete legal proposals. In the end, the Committee proposed far-reaching legislative and non-legislative remedies which, if implemented, would go a long way in curbing the scourge of corruption in Nigeria. In keeping with this promise in his opening speech, the Committee's chairman, Justice Kayode Eso, ensured that the main theme of the Committee's recommendations was geared towards scheming out corruption in the highest quarters. The formal report pointed out in clear terms that-

*---the entire theme must be leadership by example. It means that a way must be found to lay emphasis on curbing corruption indulged in by the big man, which, indeed, has become a normal past time, as opposed to merely hitting the small man alone, especially*

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<sup>4</sup> Ade-Ajayi, J.F & Akinseye – George, Y, Kayode Eso: The making of a judge (Ibadan, Spectrum Books Ltd, 2002) p. 364. See also, Eso, K, The mystery Gunman (Ibadan, Spectrum Books Ltd, 1996) p. 275, Dike, V. E. Leadership Without A Moral Purpose (North Charleston, Booksurge publishing, 2009) p. 187.

<sup>5</sup> See page 2 of the Committee's Report

*as he is the one who takes its cue from the “big man”. The real problem in the society has not been what question to ask. It is, who would ask that question and above all, the protection he gets when challenged for the “impertinence” in asking the question for otherwise, the whole exercise, is reduced to a thankless risk.<sup>6</sup>*

This gives credence to the consistent claim by Nigerians that the fight against corruption in Nigeria is targeted at the helpless and hopeless, poor and unconnected Nigerians and few big, connected, and powerful politicians on the other side of the divide. The age-long slogan “the law is no respecter of persons” only applies to those at the lower rung of the ladder. In the Nigeria of today, corruption charges against politicians are quickly dropped once they crosscarpet to the ruling party, a fact which questions the sincerity and credibility of the fight against corruption.

In addition to its general recommendations, the committee also presented to the government a draft law, known as “Corrupt Practices and Economic Crimes Decree, 1990”, a legislation which runs into one hundred and fifty-six sections, addressing four main issues, namely-

- Corruption and economic crimes,
- The establishment of an Independent Commission against corruption.,
- Private investigations and
- The Corrupt Practices Court.

This again goes to show that the persistent clamour for the establishment of a Special Court to try corruption cases in Nigeria has a chequered history. The foot dragging attitude of the successive democratic government in Nigeria coupled with the age-long recommendation, needs much to be desired.

The draft legislation introduced new approaches to combating corruption. It avoided the technicalities and loopholes in the hitherto existing laws, which legislated against corruption in narrow compartments, often resulting to the discharge of obviously guilty persons in public and private establishments. It made provisions for punishment according to the gravity of the corrupt act or conduct. This calls to mind, the contemporary laughable decisions of Nigerian

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<sup>6</sup> Report of the Committee, op. cit, p. 140 See also, Eso K, ibid, Ade- Ajayi, J. F & Akinseye – George, Y, Ibid, etc

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courts at the instance of the anti-graft agencies whereby past political office holders who embezzled billions of naira were asked to pay some token or peanuts by way of fine.

Some novel provisions in the draft legislation were designed to punish possession of inexplicable wealth, prominent amongst which is Section II thereof which stated that-

- 1) Any person who-
  - a. Owns or is in possession or is in control of money, property or resources disproportionate to his present or past emolument or earning; or
  - b. Is in possession or is in control of money, property or resources which is reasonably suspected to have been obtained corruptly or in circumstances, which amount to an offence under this Decree, or
  - c. Maintains a standard of living above that, which is commensurate with his present or past emolument or earnings, unless he gives an explanation satisfactory to the court as to how he came by same, commits an offence under this decree.
- 2) Where the court is satisfied in proceedings for an offence under subsection (1) of this section, that having regard to the closeness of his relationship to the accused, and to other relevant circumstances, there is reason to believe that any person was holding money, property or resources in trust for or otherwise on behalf of the accused, or acquired such money, property or resources as gift, or loan without adequate consideration from the accused, such money, property or resources shall, until the contrary is proved, be deemed to have been under the control or in possession of the accused person.

It would seem that the proposed law shifted the onus of proof to the possessor of such wealth who now has to explain to the satisfaction of the court how he came by same. This is in conflict with the age-long doctrine of presumption of innocence whereby the prosecutor bears the burden of proving corrupt or otherwise unlawful acquisition or possession of wealth. Nonetheless, Justice Kayode Eso did not allow this ostensibly legal topsy-turvy to endure by explaining that –

*It means in simple language, If one has properties in excess of his legitimate earnings, and he cannot explain how he has come by them, he forfeits them to the government and where he had transferred the properties to relations, friends or*

*anybody whatsoever, the arm of the law shall extend to these properties wherever they may be lurking*<sup>7</sup>

There is no doubt that the Committee gave to Nigeria and Nigerians, a law that ought to have completely eliminated corruption and corrupt practices in Nigeria. But it is regrettable that the reverse is the case as corruption continues to soar higher and higher at every stage in our political, religious and social history and development. This is so because, rather than belling the cat, our leaders are delighted in impoverishing the society and feeding fat on the national wealth. Tracing the history of corruption in Nigeria, Justice Kayode Eso lamented the adverse effect of corruption on the Nigerian polity. According to His Lordship-

*Corruption helped in a large sense in the destruction of the two (first and second) Republics, that even the grassroots sold their franchise for money. As soon as the first Republic was established, the ugly epithet "ten percenter" was evolved. Highly placed officials in the public sector were reported to have been inflating contract prices by ten percent of their value. They were actively and shamefully aided and encouraged by foreigners at our shores. The notoriety as a result thereof spread beyond the confines of the country and Nigeria public officers wear branded as „ten percenter officials" all over the business world. The shame of it was that the part played by the foreign aides was sublimated. People lived beyond their means and ostentation was exclaimed. The officials wear very rich robes even when they were begging for loans. Houses consequently sprang up in the priced and choicest area. Foreign contractors, who had raked a large sum off public funds, courtesy of the public officers and the foreign contractors who shared the guilt of the odium repeatedly built these houses for public officers. Leadership by example? The example was to show off the money stolen in a pure reckless manner. That was our country of the first Republic. The second republic did not fare better. Indeed, it was from all accounts, worse.*<sup>8</sup>

It is regrettable that nothing has changed, the old order has refused to give way and yield place to a new one. Even former President Obasanjo's bite at the problem, failed to yield positive results as every effort at combating corruption in Nigeria has provided fertile soil for its growth and sustenance. What we see on daily basis is corruption fighting back as a wounded lion,

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<sup>7</sup> In a Speech Captioned – "Nigeria and corruption till death do them part"

<sup>8</sup> Eso K, Reflection on thirty two years of Nigerian nationhood, pp 12-13. See also, Adegbike, F. F & Fakile, A. S, "Economic and Financial Crimes in Nigeria; Forensic Accounting as Antidote (A publication of British Journal Publishing Ind. (2012) [http. www.bjournal.co.uk](http://www.bjournal.co.uk) BJASS. Aspripp.37-38.

hence the renewed efforts by the Buhari administration to „kill corruption before it kills us“. Only time will tell.

### **Conceptual Definitions And Analysis Of Terms**

Though the general approach, inclusive of the legal profession, is to describe conducts or practices offensive to law and morality in the social, economic and religious sense, as „corruption“. Some relevant statutory provisions used other terms, which when properly construed, may mean the same thing as “corruption”. This paper shall focus more on the conceptual meaning of such terms as used by the statutes with passing references to allied words and expressions used, to explain “corruption” as a legal concept. Nonetheless, many studies have been conducted on the nature and characteristics of corruption, some of which have broadly divided the concept into subdivisions such as political corruption, bureaucratic corruption, electoral corruption, etc.

### **Corruption**

Corruption, as a legal concept may be defined as-

*An act done with intent to give some advantage inconsistent with official duty and rights of others. The act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others*<sup>9</sup> It would seem that this very definition of corruption was designed to suit the Nigerian situation where people fight like wounded lions to acquire and occupy public offices with intent to give to themselves, their friends and family members, some advantage over the ordinary and unprivileged members of the society. The Nigerian brand of politics has firmly enthroned the policy and principle of “winner takes all” and nothing is said or done for the masses who are the losers.

Though it seems that the Economic and Financial Crimes (Establishment) Act<sup>10</sup> did not define „corruption“, the Corrupt Practices and Other Related Offences Act,<sup>11</sup> defined “corruption” to include bribery, fraud and other related offences.<sup>12</sup> This definition is not helpful because, it may not make sense or meaning until and unless “bribery, fraud and other related offences” are defined and synthesized to constitute a meaning. Richard Amaechi

Onugbo, of the department of political science, Enugu state University and Eme, Okechukwu

<sup>9</sup> Henry Campbell Black, M. A. Black's law Dictionary, 6<sup>th</sup> Edn (St. Paul, West Group Publishing co. 1990) p. 345

<sup>10</sup> 2004

<sup>11</sup> 2000

<sup>12</sup> Section 2 of the Act.

innocent of the Department of Public administration and local government, University of

Nigeria, Nsukka, summed up various views on the meaning of "corruption". According to them-

*Corruption is a behaviour which deviates from the normal duties of a public role because of private relationship. This includes such behaviour as bribery, nepotism and misappropriation. A pattern of corruption can be said to exist whenever a power-holder who is charged with doing certain things, is by monetary or other rewards not legally provided for, induced to take actions which favour whoever provides the reward and thereby does damage to the public and its interests. Corrupt transactions usually include bribery, fraud such as inflation of contract sums by public officials, unauthorised variation of contracts, payments for jobs not executed, payment of ghost workers, overpayment of salaries and allowances to staff, diversion of government revenue by public officials, deliberate irregularities in the management of accounting procedures. Corruption is defined as "an arrangement that involves an exchange between two parties, which (i) has an influence on the allocation of resources, either immediately or in future; and (ii) involves the use of or abuse of public or collective responsibility for private ends. The international monetary fund, defined corruption as "abuse of authority or trust for private benefit and is a temptation indulged in not only by public officials but also by those in position of trust or authority in private enterprises or non-profit organisations". The transparency International, defines corruption as involving behaviour on the part of officials in the public sector, whether politicians or civil servants in which they improperly and unlawfully enrich themselves or those close to them, by the misuse of the public power entrusted to them.<sup>9</sup>*

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<sup>9</sup> Onuigbo R. A & Eme, O. I "Analysis of Legal framework for fighting corruption in Nigeria; Problems and challenges" Kuwait chapter of Arabian Journal of business and management review: vol. 5, No. 3, November, 2015, p.3 See also, Transparency International (2010), Corruption Perception Index 2010: long methodological brief (Report) transparency international. [http://www.transparency.or/content/download/55903/892623/cp12010\\_long\\_methodology\\_En.pdf](http://www.transparency.or/content/download/55903/892623/cp12010_long_methodology_En.pdf). Retrieved 24 Aug. 2011, World Bank, (1997 b), helping countries combat corruption. The role of the World bank, Washington, DC: World Bank.

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It may therefore suffice to say that corruption is multi-faceted, affecting all spheres of our socio-economic life and politics. The legislature, the executive, the judiciary, the private sector, the civil society are all involved. Thus, there is no all embracing and universally acceptable definition of corruption.

Apart from its general nature and perception, corruption may be classified based on its scope, legal consequences and sanctions, as an abnormal conduct which deviates from approved platform of societal and morally acceptable behaviour. Corruption has various forms and shapes in which it manifests. Apart from bribery and treasury looting, corruption is perceived when there is a deliberate bondage of rules in a given system to extend favours to friends or witch hunt enemies. Nonetheless, there are some forms in which corruption presents itself in positions of trust in Nigeria, some of which are examines hereunder.

### **Bribery**

This means the payment in cash or kind which is given or taken in a corrupt relationship and it manifests in such forms as, kickbacks, pay-offs, greasing of palms, sweeteners, etc.<sup>10</sup> Legally speaking-

*It is the offering, giving, receiving or soliciting for something of value for the purpose of influencing the action of an officer in the discharge of his or her public or legal duties. The corrupt tendering or receiving of a price for official action. The receiving or offering of any undue reward by or to any person concerned in the administration of justice or a public officer to influence his behaviour in office. Any gift, advantage, or emolument, offered, given, or promised to, or asked or accepted by any public officer to influence his behaviour in office.*<sup>11</sup>

The net is so wide and the arm of the law so long, that it will be difficult, if not impossible, for find a Nigerian public office holder that is honest to the extent of not being a role actor in the attractive and lucrative empire of bribery and corruption.

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<sup>10</sup> Nwoba, M.O.E & Nwokwu P.M, "Appraisal of Economic and Financial Crimes Commission (EFCC) in the Fight Against Corruption In Nigeria (2007-2017)" Medwell Journal of Social Sciences 13117, 94 – 104, 2018. See also, Dike, V. E, Leadership without A Moral Purpose (North Charleston, South Carolina, Booksurge Publishing 2009) p. 188, Heidenheimer A, Political Corruption; Concepts and Contexts (Washington Transactions Publications, 2001) p. 101.

<sup>11</sup> Black"s law Dictionary, op.cit. p. 191

## **Extortion**

This implies the extraction of money and other resources through the use of force, violence, coercion or threat of the use of force.<sup>12</sup> It is “the obtaining of property from another, induced by wrongful use of actual or threatened force, violence or fear, or under the colour of official right. A person is guilty of stealing by extortion,

- i. If he purposely obtains the property of another by threatening to inflict bodily injury on any one or commits of any other criminal offence, or
- ii. Accuses any one of a criminal offence or
- iii. Exposes any secret tending to subject any person to hatred, contempt or ridicule, or to impair ones credit or business repute, or
- iv. Takes or withholds action as an officer, or causes an officer to take or withhold action or
- v. Brings about or continues strike, boycott or other collective unofficial actions, if the property is not demanded or received for the benefit of the group in whose interest the sector purports to act, or
- vi. Testifies or provides information or withholds testimony or information with respect to another’s legal claim or defence, or
- vii. Inflicts any other harm which would not benefit the actor. It is the corrupt demanding or receiving by a person in office of a fee for services which should be performed gratuitously, or where compensation is permissible, of larger fee than the law justifies, or a fee not due.<sup>13</sup>

In Nigeria, the law enforcement agencies have been criticised repeatedly for some corrupt practices. It is alleged that some security agents extort money from motorists who ply our roads, in most occasions. It is agonising to observe that even where motorists present evidence of compliance with road traffic regulations and particulars of ownership, the security personnel would still coerce them to part with their hard earned money. Even at the various police stations where the inscription, “Bail is free” is boldly written and pasted in conspicuous places, no suspect regains his freedom from police grip, without extortion, no matter how little. This has remained the norm and no one seems to have any solution to these despicable acts. Nonetheless, these unfortunate conducts of our law enforcement agencies have been severally lamented. One report had bitterly observed that-

*---But the most mind-boggling were cases of hostage taking, hijack of materials and physical attacks on INEC officials perpetrated by security operatives. Of singular note was a certain policeman who ostensibly is a commander of the special antirobbery squad (SARS) in Rivers state. He first tried to lure INEC staff to travel with him from*

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<sup>12</sup> Nwoba & Nwokwu, *ibid.*

<sup>13</sup> Black’s Law Dictionary, *op. cit.* p. 585

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*Port-Harcourt to Emohua LGA under the pretext of enabling them to collate results. But for the intervention of National Commissioners, we suspected that he would have put our staff in harm's way. When he failed in his initial bid, he stalked the INEC officials to the collation centre in Port-Harcourt and physically assaulted them. In fact, one of them ended up with a gash on his head and both spent days at the Air Force Hospital in Port-Harcourt. Surprisingly, the same policeman was promoted to Assistant Commissioner of Police (ACP) and transferred to Yobe state as Area Commander of Nguri on March 29, 2018. On April 4, 2018 he was returned to rivers State as Commander of SARS. What is the purpose of sending him back to rivers state? You can tell why! The same police officer is at it again, allegedly plotting, recruiting, training and arming a special squad to rig the 2019 elections in rivers state through violent means.<sup>14</sup>*

### **Bureaucratic Corruption**

This is the kind of corruption encountered daily by the citizenry at places like the ministers and government departments, hospitals, schools, local licensing offices, police stations, tax offices. Elected and appointed government officials, as well as employee in both public and organised private sector organisations usually indulge in this forum of corruption. It is no longer news, that employees of both public and private establishments manipulate their records with intent to divert what does not belong to them. There are rampant cases of tampering with contract documents and payment vouchers, inflation of contract terms, misuse of Estacode funds and fraudulent acquisition of visas and import license. All these forms of corruption have become the norm in Nigeria to the extent that if a public officer decides to avoid these corrupt acts, he would be branded a non conformist and according looked down upon as a misfit in his work place even amongst his friends and relations. Everybody is persuaded to join or lose out and become poor for life.<sup>15</sup> Justifying this unwholesome attitude to governance in Nigeria, Alamiyeseigh confessed that- *“You can't say that you will be the governor of a wealthy state for six years and your standard of living will not improve. There is nobody you can probe in public office in Nigeria and not find anything. That is not realistic. I didn't kill anyone”*.<sup>16</sup>

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<sup>14</sup> INEC Election Report in Rivers State. The Nation Newspaper (Nigeria) vol. 12 No. 4295, of Thursday, May 3, 2018p. 10. See also, The Nation Newspaper(Nigeria) VOL. 12, No. 4293 Of Tuesday, May 1, 2018 p. 10.

<sup>15</sup> Nwoba & Nwokwu, *ibid.* See also, Dike, *op. cit* at p. 188

<sup>16</sup> Alameseyigh, D. S.P “In defence of corruption” Zero Tolerance, The Magazine of Nigeria’s Economic and Financial Crimes Commission vol. 2 no. 1, October, 2007. P.4.

This is surprising and unbelievable, as available records show that the condition of service of political office holders in Nigeria is satisfactorily adequate. In fact, it has been asserted and proved, time without number, that state Governors in Nigeria, do not give account of their security votes which run into billions of naira to anyone. It is all about greed and endless accumulation and diversion of public funds into private use.

### **Political Corruption**

This takes place at the highest levels of political leadership or authority when policy formulation and legislation is tailored to suit and benefit politicians, at the expense of public interests which the said politicians are elected to protect.<sup>17</sup> It implies the misuse of political power for personal gain. Nigerian political office holders, ostensibly find delight in all forms of corruption, involving weak electoral process, electoral umpires with political bias, highly manipulated law enforcement mechanism and easily influenced judiciary. Election results are inflated, rigged and legitimate winners are deprived of their rights to participate in governance. Public servants connive with political office holders to milk the country dry by national resources being diverted to personal and private use to the neglect of social services. Money laundering and other high profile abuses of office are said to be linked to politicians and political activities and these political malpractices seem to contribute to the sorry state of development in the country. Budgetary allocations are padded and diverted to serve private ends.<sup>18</sup> Political corruption in Nigeria covers and involves more than can be seen with our naked eyes. Suffice it to say that much water passes under the bridges on daily basis when it comes to political corruption in Nigeria.

### **Economic and financial crimes**

This is a compound phrase which cannot be separated into compartments. Nonetheless, a careful construction of its statutory meaning and definition would seem to suggest that this phrase can be segmentalized into different crimes. Its statutory definition runs thus-

*Economic and Financial Crimes means the non-violent criminal and illicit activity committed with the objectives of earning wealth illegally either individually or in a group or organised manner thereby violating existing legislation governing the*

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<sup>17</sup> Dike, op. cit at p. 187

<sup>18</sup> Nwoba & Nwokwu, ibid

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*economic activities of government and its administration and includes any form of fraud, narcotic drug trafficking, money laundering, embezzlement, bribery, looting and any form of corrupt malpractices, illegal arms deal, smuggling, human trafficking and child labour, illegal oil bunkering and illegal mining, tax evasion, foreign exchange malpractices, including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic wastes and prohibited goods.<sup>19</sup>*

It must be observed that apart from the love for repetition as exhibited here by the draftsman, some words are improperly joined thereby making the draft inelegant and devoid of constructive meaning and definition. None of the words „criminal“, „illicit“ or „illegally“ when used separately would mean anything different and joining them together amounts to nothing but repetition. The phrase „corrupt practices“ is an empty noise, signifying nothing as every „corrupt act“ is a „malpractice“ and „every malpractice“ is a corrupt act and joining these two words together means nothing different from their separate existence and usage. It would seem from the definition that economic and financial crimes relate only to the activities of government and its administration and this statutory impression sounds unrealistic as corrupt practices also go on even in the private sector. There is therefore the need for our draftsmen to display mastery in the execution of their duties and functions. Nonetheless, from its statutory definition, each of the following may constitute an „economic and financial crime“, viz- Fraud, Drug trafficking, Money laundering, Embezzlement, Bribery, Looting, Corrupt practices, Illegal arms deal, Smuggling, Human trafficking, Child labour, Illegal oil bunkering, Illegal mining, Tax evasion, Foreign exchange malpractices, Counterfeiting of currency, Theft of intellectual property, Open market abuse, Dumping of toxic wastes and contrabands, etc.

From the foregoing, it is obvious that every corrupt act qualifies as an economic and financial crime having examined the meaning and legal implications of some forms of corruption, the meaning and legal implications of each class of corruption. Statutorily meaning may be incorporated by reference without further analysis. Having briefly laid some foundation for this discourse, some of the legal frameworks for combating economic and financial crimes in Nigeria may be outlined and examined. Some of these frameworks are domestic while others partake of a regional nature and yet others global.

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<sup>19</sup> Section 26, Economic and Financial Crimes Commission (Establishment) Act, 2004.

## **Domestic Frameworks**

Much as it may not be possible to review all the laws, institutions and structures involved in the fight against corruption in Nigeria, an attempt shall be made to examine some of the major relevant laws and institutions.

### **The Criminal and Penal Codes of Nigeria**

Both the Criminal Code and the Penal Code have anti-corruption provisions which are basically designed to fight corruption in the public sector thereby neglecting the private sector which constitutes the engine of growth in every economy. The Criminal Code provides for official and judicial corruption which can be divided into the offences of bribery and extortion. The offence of bribery is mainly contained in Sections 98 and 116 of the criminal code and elements common to both sections of the code are as follow-

- The public officer corruptly asks, receives, or obtains or agrees or attempts to receive or obtain a bribe;
- The act of asking, receiving, obtaining or attempting to receive or obtain the bribe by the public officer must have been done „corruptly“; and
- There should be offered, demanded, or received „any property or benefit of any kind for the public officer or any other person on account of anything already done or omitted to be done or to be afterwards done or omitted to be done by him.<sup>20</sup>

Also, the offence of extortion by public officers is provided in Section 404(1)(a)-(d) of the Criminal Code and this involves a public servant taking advantage of his employment to extort money from any person. Section 114 of the criminal code, defines the offence of „judicial corruption“ under which any private person who offers a bribe to any judicial officer, on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done by him in his judicial capacity, shall be liable to 14years imprisonment.

It would seem that these Criminal Code provisions on corruption have been unable to effectively deal with both private and official corruption due to the difficulty and complexity encountered in construing and applying these provisions which are ostensibly inelegantly drafted. The provisions also failed to consider restitution and forfeiture of corruptly acquired

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<sup>20</sup> Onuigbo & Eme, Op. cit. p. 14

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property or money with the result that the courts have in some cases been compelled to acquit an obviously corrupt person.<sup>21</sup>

Sections 115-133 of the Penal Code Law,<sup>22</sup> made provisions dealing with corrupt practices in Nigeria. The provisions cover offences by or relating to public servants, which include public servants taking gratification in respect of official acts in order to influence their conducts. The Penal Code provides for punishment such as imprisonment for terms ranging from one to fourteen years or with the option of fine or both.<sup>23</sup>

Though the Criminal and Penal Codes were enacted principally for regulating conventional crimes, the relevant provisions of these Codes did not envisage situations where those offences could assume or attain the present day magnitude and sophistication. Today, the offence of corruption has assumed numerous and large scale dimensions beyond the contemplation of these conventional statutes (the Criminal and Penal Codes) with the result that the courts may not be properly guided when reliance is solely placed on these laws as to the substance and punishment for corrupt practices to the satisfaction and expectations of the average Nigerians. Ultimately, the conventional laws on corruption and abuse of office as therein contained have become moribund and incapable of keeping pace with the ever growing rate, magnitude and manifestation of the offence of corruption in Nigeria.<sup>28</sup> It was in situations as helpless as this that the political will of the Obasanjo's administration to take steps to fight the menace of corruption was appreciated by Nigerians.

### **The Independent Corrupt Practices and Other Related Offences**

(ICPC) ACT<sup>29</sup>

Any person who is familiar with the political history of Nigeria knows that after seven military regimes and three bungled efforts at building a genuine democracy, corruption played a key role in neutralising these efforts which were aimed at governing and developing

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<sup>21</sup> Ikpeze, N. Fusion of Anti-corruption Agencies in Nigeria: A critical Appraisal proceedings of the 46<sup>th</sup> Annual conference of the Nigerian Association of Law Teachers, (2013) p. 37. See also *Biobakuu v. The Police* (1951) 2NLR. 30

<sup>22</sup> (CAP. P3) lfn, 2004

<sup>23</sup> Ikpeza, op cit pp. 37-38. See also. *Sanni & Sanni v. The State* (1981) NCR. 91 where accused persons were convicted by the High Court of Kano State on charges of conspiracy and offering gratification if a public servant continary to sections 97 (i) and 118 of the penal code law <sup>28</sup> Ikpeze, ibid; p. 37-38

Nigeria. It is therefore not surprising that when Obasanjo became the civilian president in 1999, his administration adopted new legal methods of fighting corruption in Nigeria. The first bill which Obasanjo sent to the National Assembly was the proposal to establish the Independent Corrupt Practices and Other Related Offences commission (ICPC), which agency was established in 2000 and inaugurated on September 29, 2000, with honourable justice Mustapha Akanbi as its first chairman.<sup>30</sup> The functions of the ICPC include:

- To receive and investigate reports of corrupt practices, as created by the Act and to in appropriate cases, prosecute the offender(s)
- To examine, review and enforce the correction of corruption-prone systems and procedures of public bodies, with a view to eliminate or minimize corruption in public life; and
- To eradicate and enlighten the public on and against corruption with a view to enlist and foster public support for the fight against it.<sup>31</sup>

The provisions of the ICPC Act, to a large extent, addressed some of the inadequacies of the Criminal Code and Penal Code. The offences prohibited by the Act, include accepting gratification, giving or accepting bribe through an agent, concealing offences relating to corruption, fraudulent acquisition of property, fraudulent receipt of property, deliberate

<sup>29</sup> 2000. Now (Cap. C31) LFN, 2004. This law established the Independent Corrupt Practices and Other Related Offences Commission (ICPC). <sup>30</sup> Dike, op. cit. pp. 234-236 <sup>31</sup> Section 6 of the Act.

frustration of investigation by the commission, making false statement or return, bribery of public officers, bribery for giving assistance in regard to contracts, etc.<sup>24</sup> Unlike the provisions of the Criminal Code and Penal Code, which focused on public and civil servants, private persons are covered by most of the offences under the Act, because the provisions generally begin with the phrase „any person who---“, does or omits to do certain acts. There is also provision for the forfeiture of gratification received by a public officer and payment of fine of not less than five times the sum or value of the gratification received.<sup>25</sup>

### **Institutional Structure of the ICPC**

Before the establishment of the Economic and Financial Crimes Commission (EFCC) the Independent Corrupt Practices and Other Related Offences Commission (ICPC) was the apex

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<sup>24</sup> See sections 9-25 of the Act

<sup>25</sup> Sections 38, 47, 48 of the Act.

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body saddled by law with responsibility to fight corruption and other related offences in Nigeria.<sup>26</sup> The ICPC is operationally structured into a committee system which is put in place to determine and enforce policy directives on investigation and prosecution. From the provisions of the Act, the Commission has enough legal and administrative mandates to effectively combat corruption. The officers of the commission are given similar powers of arrest and prosecution as members of the Nigerian police force.<sup>27</sup> Most prominent amongst the organs of the Commission is the chairman. Some of the powers and functions legally assigned to the chairman include-

- He shall, upon court order, direct in writing for the purposes of investigations into any offence under the act or any other law prohibiting corruption and pursuant to court order, direct any officer of the Commission to investigate alleged fraudulent activities of banks and other financial institutions.<sup>28</sup>
- The chairman of the Commission may, upon reasonable grounds, pursuant to an allegation that an offence has been committed, require any person suspected of having committed such offence, to furnish a statement in writing, on oath or affirmation etc.<sup>29</sup>
- The chairman may, upon information that any moveable property, including any monetary instrument etc. which is the subject matter of investigation is in the possession or custody or control of any bank or financial institution, direct such bank or financial institution, not to part with, deal in, or otherwise dispose of such property or any part thereof, until such order is revoked or varied.<sup>30</sup>
- He may order that any property which is the subject matter of an offence under the Act, or used in the commission of an offence, which is held or deposited outside Nigeria, be not used or dealt with by who, it is held or deposited with.<sup>31</sup>
- In the absence of prosecution or conviction for an offence under the Act, the chairman shall before the expiration of twelve months alter the seizure of a property suspected to be the proceeds of crimes, apply to the High Court for an order of forfeiture of that property if

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<sup>26</sup> Akhileiero P, Legal Dynamics of the Enforcement of Economic Crimes in Nigeria.

[www.nigerianlawguru.com.p.17](http://www.nigerianlawguru.com.p.17) , Last accessed - 31/01/19

<sup>27</sup> See section 5(i) of the ICPC, Act

<sup>28</sup> Section 43 of the Act

<sup>29</sup> Section 44 of the Act

<sup>30</sup> Section 45 of the Act

<sup>31</sup> Section 46 of the Act

satisfied that such property had been obtained as result of or in connection with an offence under sections 18 – 19.<sup>32</sup>

- The chairman may upon a court order, where he has reasonable grounds to believe that any person who is the subject of investigation in respect of any offence under the Act, is likely to leave Nigeria, require such a person, by written notice, to surrender his passport or exit permit or any other travel documents in his possession to the Commission.<sup>33</sup>
- He may at anytime amend or revoke any order or notice which has been made or given by him in the exercise of any power conferred on him under the Act, provided that the revocation of any such notice or order shall not debar from issuing any fresh orders or notices, against any person or thing affected by the earlier order or notice.<sup>34</sup>

The Commission has been quite focused in the prosecution of the anti-corruption war.

According to the then chairman of the Commission (Hon. Justice Emmanuel Ayoola)-

“Apart from the police, the only body that should be dealing with corruption in Nigeria is the ICPC. We believe that we remain faithful and guided by our mandate. That is why we remain fused on what the law enjoins us to do”.<sup>35</sup> The Commission is not administratively equipped to effectively execute its mandate. Technical legal issues are handled by legal experts who may be co-opted at any stage of investigations or prosecution of corruption-related allegations in high places (i.e. high profile corruption cases). Thus-

*When an allegation of corruption or anything purporting to contravene any provisions of this Act is made against the President or Vice-President of Nigeria or against any State Governor or Deputy Governor, the Chief Justice of the Federation shall if satisfied that sufficient cause has been shown upon application on notice supported by an affidavit setting out the facts on which the allegation is based, authorize an independent counsel(who shall be a legal practitioner of not less than fifteen years standing) to investigate the allegation and make report of the his finding to the National Assembly in the case of the President or Vice-President and to the relevant State House of Assembly in the case of Governor or deputy*

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<sup>32</sup> Section 48 of the Act

<sup>33</sup> Section 50 of the Act

<sup>34</sup> Section 51 of the Act

<sup>35</sup> See ICPC Newsletter vol. II No.1 of January, 2007, p.2. note that thus claim might have been true as at the time the EFCC had not been established. Today, the performance of the EFCC has outwritten and overshadowed those of the ICPC.

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*Governor.*<sup>36</sup> It should seem from the provisions of the Act, that the work of the Independent Counsel is concluded upon the submission of the report of his investigation to the National Assembly or the State House of Assembly as the case may be without more. Another snag here is that the report which is now before the legislative houses for consideration, may be lobbied out of existence and legal effect by the Presidential Aides and party men at his instance or in protection of the interests of such Aides. The matter or problems is made worse by the fact that the Act never specified what the Legislative Houses are expected to do with the report.

Nonetheless, the Act enjoins the Commission to fully co-operate with the Independent Counsel by providing all faculties necessary for such Independent Counsel to carry out his functions.<sup>37</sup> The entire scenario may be justified on grounds of the Constitutional immunity from criminal prosecution with which the holders of these offices are clothed.<sup>38</sup> It then follows that such high profile criminal allegations may be prosecuted later, if the reports survive legislative scrutiny. Interestingly, the institutional structure of the ICPC partakes of a pyramidal shape, with the chairman of the Commission at the top and all other staff of the Commission at the supportive base, all working to achieve the mandate for which the Commission is set up.

### **The Economic and Financial Crimes (Establishment) Act, 2004.**

This law established the Economic and Financial Crimes Commission (EFCC) in 2004. The establishment of this anti-corruption agency was a major departure from the past in terms of enabling institutional and legal frameworks for fighting corruption or economic and financial crimes in Nigeria. This Commission is statutorily clothed with supervening powers, functions and responsibilities in combating corruption in Nigeria. Hence, apart from its own specific powers, functions and responsibilities in fighting corruption, it is statutorily empowered to regulate the powers, functions and responsibility of other anti-corruption agencies in Nigeria. The establishment of the Commission was borne out of international pressure as a precondition for the removal of Nigeria from the list of Non-Co-operative Countries and Territories (NCCTs) of the National Financial Intelligence Unit (NFIU) which is expected to receive and

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<sup>36</sup> Section 52 (1) of the Act.

<sup>37</sup> Section 52 (2) of the Act

<sup>38</sup> Section 308 of the constitution of the federal Republic of Nigeria 1999 ( as amended) gives the president, vice president, state governors and their deputies, immunity from civil and criminal litigation during their term in office.

analyse financial information such as Currency Transaction Reports (CTRs) and suspicious transaction Reports (STRs), from Financial Institutions and Designated Non-Financial institutions with a view to disseminate intelligence information arising thereof.<sup>39</sup>

Apart from the immediate needs, problems and circumstances that led to the establishment of the Commission, its functions and powers are statutory and ostensibly comprehensive to cover most of the loopholes found in the hitherto existing anti-corruption statutes.

### **Functions of The Commission**

The Commission shall be responsible for-

- The enforcement and the due administration of the provisions of the Act.<sup>40</sup>
- The investigation of all financial crimes including advance fee fraud, money laundry, counterfeiting, illegal charges, transfers, future market fraud, fraudulent encashment of negotiable instruments, computer credit card fraud, contract scam, etc.<sup>41</sup>
- The co-ordination and enforcement of all economic and financial crimes laws and enforcement functions conferred on any other person or authority;<sup>42</sup>
- The adoption of measures to identify, trace, freeze, confiscate or seize proceeds derived from terrorist activities, economic and Financial crimes related offences or the properties the value of which corresponds to such proceeds;<sup>43</sup>
- The adoption of measures to eradicate the commission of economic and financial crimes;<sup>44</sup>

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<sup>39</sup> Onuigbo and Eme, op. cit. p. 8

<sup>40</sup> Section 6 (a) of the Act

<sup>41</sup> Section 6 (b) of the Act

<sup>42</sup> Section 6 (c) of the Act

<sup>43</sup> Section 6 (d) of the Act

<sup>44</sup> Section 6 (e) of the Act

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The adoption of measures which include co-ordinated, preventive and regulatory actions, introduction and maintenance of investigative and control techniques on the prevention of economic and financial related crimes;<sup>45</sup>

- The facilitation of rapid exchange of scientific and technical information and the conduct of joint operations geared towards the eradication of economic and financial crimes;<sup>46</sup>
- The examination and investigation of all reported cases of economic and financial crimes with a view to identify individual, corporate bodies or groups involved;<sup>47</sup>
- The determination of the extent of financial loss and such other losses by government, private individuals or organisations;<sup>48</sup>
- Collaborating with government bodies both within and outside Nigeria, carrying on functions wholly and outside Nigeria, carrying on functions wholly or in part analogous with those of the Commission, concerning-
  - The identification, determination of the whereabouts and activities of persons suspected of being involved in economic and financial crimes;<sup>49</sup>
  - The movement of proceeds or properties derived from the commission of economic and financial and other related crimes,<sup>50</sup>
  - The exchange of personnel or other experts<sup>51</sup>
  - The establishment and maintenance of a system for monitoring international economic and financial crimes in order to identify suspicious transactions and persons involved,<sup>52</sup>
  - Maintaining data, statistics, records and reports on persons, organisations, proceeds, properties, documents or other items or assets involved in economic and financial crimes,<sup>53</sup>

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<sup>45</sup> Section 6 (f) of the Act

<sup>46</sup> Section 6 (g) of the Act

<sup>47</sup> Section 6 (h) of the Act

<sup>48</sup> Section 6 (i) of the Act

<sup>49</sup> Section 6 (j) (i) of the Act

<sup>50</sup> Section 6 (j) (ii) of the Act

<sup>51</sup> Section 6 (j) (iii) of the Act

<sup>52</sup> Section 6 (j) (iv) of the Act

<sup>53</sup> Section 6 (j) (v) of the Act

- Undertaking research and similar works with a view to determine the manifestation, extent, magnitude and effects of economic and financial crimes and advising government on appropriate information measures for combating same.<sup>54</sup>
- Dealing with matters connected with extradition, deportation and mutual legal or other assistance between Nigeria and any other country involving economic and financial crimes;<sup>55</sup>
- The collection of all reports relating to suspicious financial transactions, analyse and disseminate to all relevant government agencies;<sup>56</sup>
- Taking charge or supervising, controlling, co-ordinating all the responsibilities, functions and activities relating to the current investigation and prosecution of all offences connected with or relating to economic and financial crimes,<sup>57</sup>
- The co-ordination of all existing, economic and financial crimes investigations units in Nigeria;<sup>58</sup>
- Maintaining a liaison with the office of the Attorney-General of the federation, the Nigerian customs service, the Immigration and Prison Service Board, the Central Bank of Nigeria, the Nigeria Deposit Insurance Corporation, the National Drug Law Enforcement Agency, all government security and law enforcement agencies and such other financial supervisory institutions involved in the eradication of economic and financial crimes;<sup>59</sup> Carrying out and sustaining rigorous public enlightenment campaign against economic and financial crimes within and outside Nigeria;<sup>60</sup> and
- Carrying out such other activities as are necessary or expedient for the full discharge of all or any of the functions conferred on it under the Act.<sup>61</sup>

### **Powers Of The Commission**

The Commission shall have powers to-

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<sup>54</sup> Section 6 (j) (vi) of the Act

<sup>55</sup> Section 6 (k) of the Act

<sup>56</sup> Section 6 (l) of the Act

<sup>57</sup> Section 6 (m) of the Act

<sup>58</sup> Section 6 (n) of the Act

<sup>59</sup> Section 6 (o) of the Act

<sup>60</sup> Section 6 (p) of the Act

<sup>61</sup> Section 6 (q) of the Act

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- Cause investigations to be conducted as to whether any person, corporate body or organisation has committed an offence under the Act or other laws relating to economic and financial crimes;<sup>62</sup>
- Cause 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.<sup>63</sup>

The Commission shall in addition to the powers conferred on it by the Act, be the coordinating agency for the enforcement, execution and implementation of the provisions of other relevant enactments, such as-

- The Money Laundering Act, 2004, 2003 No.7, 1995, No.13,<sup>64</sup>
- The Advance Fee Fraud and Other Related Offences Act, 1995;<sup>65</sup>
- The Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act (as amended);<sup>66</sup>
- The Banks and other Financial Institutions Act, 1991 (as amended);<sup>67</sup>

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<sup>62</sup> Section 7 (1) (a) of the Act

<sup>63</sup> Section 7 (1) (b) of the Act

<sup>64</sup> Section 7 (2) (a) of the Act

<sup>65</sup> Section 7 (2) (a) of the Act

<sup>66</sup> Section 7 (2) (c) of the Act

<sup>67</sup> Section 7 (2) (d) of the Act

Miscellaneous Offences Act;<sup>68</sup> and

- Any other laws or regulations relating to economic and financial crimes, including the criminal Code and Penal Code.<sup>69</sup>

The Act clothed the EFCC with extensive powers and functions and it would seem from these statutory provisions that the Commission can do anything lawful to ensure that the fight against corruption in Nigeria succeeds to a large extent. Nonetheless, the success or failure of the Commission so far remains a topic for public debate.

### **Institutional Framework of The Commission**

The institutional and membership composition of the Commission is broad based and representative of almost all key government establishments and ostensibly designed to accommodate all stakeholders in the economic and financial sectors of the country.

### **Appointment And Tenure of Members Of The Commission**

The commission shall be headed by a chairman who shall be the chief executive and accounting officer of the Commission. He shall also be a serving or retired member of any government security or law enforcement agency, not below the rank of Assistant Commissioner of Police or equivalent with not less than 15years cognate experience in or out of service.

The Governor of the Central Bank of Nigeria shall serve personally or be represented at the Commission. The Federal Ministries of Foreign Affairs, Finance and Justice shall be represented.<sup>70</sup> Others include-

- The chairman, National Drug Law Enforcement Agency or his representative;

The Director-General of the National Intelligence Agency or his representative, the

Department of State Services or his representative, the Registrar-General of the Corporate

Affairs Commission or his representative and the Director-General, Securities and

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<sup>68</sup> Section 7 (2) (e) of the Act

<sup>69</sup> Section 7 (2) (f) of the Act

<sup>70</sup> Section 7 (2) (a) (i) (ii) & (iii), (b), (c) (i) (ii) & (iii) (d) (iv) & (ii), (f) & (g) of the Act

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Exchange Commission or his representative.<sup>71</sup>

- The Managing Director Nigerian Deposit Insurance Corporation or his representative;
- The Commissioner for Insurance or his representative;<sup>72</sup>
- The Postmaster-General of the Nigerian Postal Services or his representative;<sup>73</sup>
- The chairman, Nigerian Communication Commission or his representative;<sup>74</sup>
- The Comptroller-General, Nigerian Customs Service or his representative;<sup>75</sup>
- The Comptroller-General, Nigerian Immigration service or his representative;<sup>76</sup>
- The Inspector-General of Police or his representative;<sup>77</sup>
- Four eminent Nigerians with cognate experience in any of the following, that is , finance, banking, law or accounting;<sup>78</sup> and
- The Secretary of the Commission who shall be the head of administration.<sup>79</sup>

The members of the Commission, other than the Chairman and Secretary, shall be part time members.<sup>80</sup> The chairman and members of the Commission other than ex-officio members shall be appointed by the President, subject to confirmation by the Senate.<sup>81</sup> The chairman and members of the Commission, other than ex-officio members shall hold office for a period of four years and may be re-appointed for a further term of four years and no more.<sup>82</sup>

A member of the Commission may at any time be removed by the president for inability to discharge the functions of the office or for misconduct or if the President is satisfied that it is

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<sup>71</sup> Section 2 (h)

<sup>72</sup> Section 2 (i)

<sup>73</sup> Section 2 (j)

<sup>74</sup> Section 2 (k)

<sup>75</sup> Section 2 (l)

<sup>76</sup> Section 2 (m)

<sup>77</sup> Section 2 (n)

<sup>78</sup> Section 2 (o)

<sup>79</sup> Section 2 (p)

<sup>80</sup> Section 2 (2)

<sup>81</sup> Section 2 (3)

<sup>82</sup> Section 3 (1)

not in the interest of the Commission or the interest of the public that the member should continue in office.<sup>83</sup> A member of the Commission may resign his membership of the Commission by notice in writing addressed to the President and that member shall, on the date of the receipt of the notice by the President cease to be a member.<sup>84</sup> Where a vacancy occurs in the membership of the Commission, it shall be filled by the appointment of a successor to hold office for the remainder of the term of office of his predecessor, and shall represent the same interest as his predecessor.<sup>85</sup>

Apart from being clothed with the powers to regulate its internal officers, proceedings and those of its various committees, the Commission acts as a watchdog over the activities of other anti-corruption agencies and ultimately charged with the responsibility of enforcing the provisions of-

- The relevant sections of the Criminal Code and Penal Code.
- The Miscellaneous offences Act, 1985
- The National Drug Law Enforcement Agency Act (NDLEA) of 1988 □ The Code of Conduct Bureau and Tribunal Act, 1990
- The Banks and other Financial Institutions Act of 1991 (as amended)
- The Money Laundering Act of 1995 (as amended)
- The Foreign Exchange Act of 1995
- The Failed Banks (recovery of Debts) and Financial Malpractices Act of 1994 (as amended)
- The Advance Fee Fraud and Related offences Act of 1995

It would seem from the foregoing that the EFCC is saddled with much responsibilities and the enormity of its responsibilities makes it difficult to assess its performance to a tangible degree. Nonetheless, some Nigerians have adjudged the Commission as making some appreciable progress in its mandated fight against corruption in Nigeria, while others feel that much still needs to be done. To a former Military Head of State-

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<sup>83</sup> Section 3 (2)

<sup>84</sup> Section 3 (3)

<sup>85</sup> Section 4

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*I think EFCC has done remarkably well because it came at a time when this country needed an organisation that should check the scourge of corruption and the rest of it. I think it came at the right time. I took quite an interest to know how the Commission operates, especially under the present (Jonathan"s) leadership. I believe they are achieving good results.<sup>86</sup>*

But, to a former Minister of External Affairs-

*None believes anymore in the concept of society. Nigerians have created their own god in their own image. In my youth, to be accused of theft or any other criminal offence was tantamount to being banished from the society while to be convicted was tantamount to suicide. However today, no one asks for the source of wealth. People in jail, accused of murder run for, and win elections.<sup>87</sup>*

And yet, a Nigerian cleric lamented thus-

*They say they can do this, they can do that and God is watching all of us. If it were to be in the Old Testament, they would all have been struck down by God. But God is a patient God. We have to be praying for this kind of people for them to have a change of heart, what are they looking for with jet? Another one said, „Jesus said, go into the whole world and evangelize“. So how can I go into the whole world, with what? I need a plane to be able to go to the world. Even the devil can quote scriptures. But did Jesus Christ say you should go and steal to go and buy plane?<sup>88</sup>*

In the same vein, a Swiss Ambassador, sympathized with Nigeria when he pointed out that- *Switzerland is the famed safe haven where stolen wealth is stashed in coded accounts by the world"s kleptomaniacs. But the small nation has equally distinguished itself as the bastion of accountability in public affairs. As an ambassador, I fly economy. That is why I hardly meet Nigerian officials in aircrafts, because they fly business or first class with stolen money.<sup>89</sup>*

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<sup>86</sup> Babangida, IB, Corruption: I was a saint“ Zero Tolerance, The Magazine of Nigeria"s Economic & Financial crimes Commission, Vol. 7 No.3, October – December, 2014. P. 16

<sup>87</sup> Akinyemi, B „Quote me „, Zero Tolerance op. cit. p. 12

<sup>88</sup> Okojie, A „Quote me „, Zero Tolerance, ibid

<sup>89</sup> Hana – Rudolf Hodel, „ Our officials don“t use private jets or fly first class „,Zero Tolerance, op. cit. p. 13

<sup>98</sup> Section 3 (1) (o) of the Act

The lamentations continue to pour in and no assessment of the performance of the EFCC can be conducive until corruption and corrupt practices are completely eradicated from Nigeria, which is a task impossible. Having examined the salient provisions of the Nigerian Criminal and Penal Code Acts, the provisions and legal application of other anti-corruption statutes may now be considered.

### **The National Drug Law Enforcement Agency Act.**

The Act was enacted in response to and in line with the Vienna Convention of 1988. The Convention has been given local adaptation and is designed to balance the approach hitherto adopted in drug control legislation. The Act specifically charged the agency with the responsibility for:

*Reinforcing and supplementing the measures provided in the Convention on Narcotic Drugs of 1961 (as amended) by the 1970 protocol, the 1971 Convention on Psychotropic substances and the UN Convention against Illicit traffic in Narcotic drugs and Psychotropic substance of 1988 as adopted by the magnitude and extent of illicit trafficking in narcotic drugs and psychotropic substances and its grave consequences and strengthening and enhancing effective legal means for international co-operation in criminal matters to suppress the international activities of illicit trafficking in narcotic drugs and psychotropic substances.*<sup>98</sup>

The Act confers on the Agency, powers to enforce laws against the cultivation, processing, sale, trafficking and use of hard drugs. The agency shall also adopt measures aimed at identifying, tracing, freezing, confiscating or seizing proceeds derived from drug related offences or property whose value corresponds with such proceeds. The agency shall collaborate with other government bodies (both within and outside Nigeria) on-

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- a. The identities, whereabouts and activities of persons suspected to be involved in offences created under the Act.
- b. The movement of proceeds or property derived from the commission of such offences;
- c. The movement of narcotic drugs and psychotropic substances and instruments used or intended to be used in the commission of such offences.
- d. Exchange of personnel and other experts and the establishment and maintenance of systems for monitoring international dealings in narcotic drugs and psychotropic substances in order to identify suspicious transactions and persons engaged in them;
- e. Monitoring international dealings in narcotic drugs and psychotropic substances in order to identify suspicious transactions and persons engaged in them.<sup>90</sup>

It must be pointed out that illicit drug consumption and counterfeiting is the highest form of corruption because it affects life directly and EFCC and ICPC are working very hard against economic crimes and both should also work in collaboration with NAFDAC and NDLEA since all are working against one form of corruption or the other, the only difference being that the vices confronting NAFDAC affect health directly. It is on record that drug counterfeiting is evil not just on health grounds, it also affects the economy largely and since EFCC is working on those crimes that are destroying the Nigerian economy, all the agencies concerned should work together since there are meeting points at the economic level.<sup>91</sup>

### **The Money Laundering (Prohibition) Act**

Money laundering has been defined as “the conversion of illicit money, illicitly obtained, or the proceeds of illicit transactions into clean money through a combination of supposedly legitimate transactions.”<sup>92,93</sup> The Money Laundering Act was promulgated to detect and prevent money laundering transactions conducted through the Nigerian financial system. The Act makes provision for the prevention of money laundering, by inter alia, limiting the cash payments that can be made or accepted, regulating Over The Counter Exchange

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<sup>90</sup> Section 3 of the Act. See also, Abubakar, I. A. “An appraisal of Legal and Administrative framework for Combating Terrorist financing and Money Laundering in Nigeria” *Journal of Law, Policy and Globalization* (2013) vol. 19 p. 26.

<sup>91</sup> Akunyili, D “Drug Taking is The Worst Form of Corruption” *Zero Tolerance, the Magazine of Nigeria’s Economic & Financial Crimes Commission* vol. 2 No. 1, October, 2007, pp.38-41.

<sup>92</sup> Akanhe, O. “The Legal Regulation of Money Laundering in Nigeria”. *Business law & practice journal*, vol. 93, June, 1996, p.1

Transactions”,<sup>94</sup> providing for the proper identification of customers and empowering the National Drug Law Enforcement Agency (NDLEA) to place surveillance on certain bank accounts and create offences for contravention of its provisions.<sup>95</sup> This law makes comprehensive provisions prohibiting the laundering of proceeds of crime or illegal act. It provides appropriate penalties and expounds the interpretation of financial institutions and scope of supervision of the authorities on money laundering activities among other things.

The Act makes it mandatory for financial and designated non-financial institutions to verify the identity and update all relevant information on the customer before opening an account or issuing a passbook to, entering into financial transaction with renting a safe deposit box to establishing any other business relation with the customer.<sup>96</sup>

The act also made provisions for the reporting of suspicious transactions at unjustifiable frequency and complexity to the Nigerian Financial Intelligence Unit (NFIU). The Act mandated financial and designated non-financial institutions to report to NFIU within seven (7) days on any single transaction, lodgement or transfer of funds in excess of ₦5,000,000 or its equivalent in the case of individual and ₦10,000,000 in the case of a corporate body. The administrative and enforcement regime is as accomplished by the EFCC, the NDLEA, the CBN and Security and Exchange Commission (SEC).

### **The Advance Fee Fraud Act, 1995**

The enforcement of this Act represents a pragmatic attempt to tackle the notorious 419 crime which has perverted the length and breadth of the nation for quite some time now. The Act, inter alia, seeks to cover the loopholes inherent in the provisions of the Criminal and Penal Codes in respect of offences of fraud and obtaining by false pretences. It introduced some elaborate provisions on money laundering of the proceeds of crimes and fraudulent scams.<sup>97</sup>

Under this Act, it is an offence for any person with intent to defraud under false pretence to-

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<sup>94</sup> “Over The Counter-Exchange Transaction” includes a financial investments and securities transaction processed through a bank without reference to a bank account or one that is normally carried out, otherwise than in organised exchange market and without any prescribed form” See section 25 of the Act.

<sup>95</sup> Sections 3, 4, 5 & 6 of the Act See also, Legal Dynamics of the Enforcement of Economic Crimes in Nigeria available, [www.nigerianlawguru.com](http://www.nigerianlawguru.com), Last accessed 18/12/18

<sup>96</sup> Sections 3(1) (a) (i) & (ii) of the Act. See also, Abubakar, I, A, OP. cit. p 30

<sup>97</sup> Akhiero, P.A. “Legal dynamics of the enforcement of Economic crimes in Nigeria” available. [www.nigerianlawguru.com](http://www.nigerianlawguru.com), Last accessed – 20/01/19

<sup>106</sup> Section 1(1) (a)–(c) of the Act.

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- a. Obtain from any other person in Nigeria or in any other country, for himself or any other person;
- b. Induce any other person in Nigeria or in any other country to deliver to any person; or
- c. Obtain any property whether or not that property is obtained or its delivery is induced through the medium of a contract induced by false pretence.<sup>106</sup>

It would seem that the indulgence by some Nigerians in advance fee fraud (419) has destroyed the reputation and credibility of the country all over the world and has accordingly made it unnecessarily difficult for majority of innocent Nigerians to transact business both locally and internationally. For instance, in the U.S. there is a special law enacted by the Congress against the Nigerian fraud and there are several cases where reputable Nigerians have been treated with humiliation just because of our records in the global comity of nations.

This shameful conduct by some Nigerians has resulted to discriminatory treatments on Nigerians by some agencies abroad, which also have special desks for Nigerian fraudsters namely-

- a. The Interpol has a special desk for Nigerians.
- b. The Interpol organises annual conferences on Nigerian fraudsters.
- c. The Metropolitan Police London Special Fraud Office keeps watchful eyes on Nigerians.
- d. US-FBI, Scotland Yard Police, UK, European Union, South Africa, Ghana and Cote d'Ivoire are all watch dogs on Nigerian travellers.<sup>98</sup>

Here in Nigeria, it was reported that a governorship aspirant, who metamorphosed into a Presidential aspirant was swindled by spirits. According to the report-

*As it is now, only the Almighty God can convince Hon. Ade Ajayi that it is not possible for calabash to talk, let alone foretell the future. It has been a herculean task convincing the Ekiti born politician that speech making attributes are exclusive to homosapiens. But contrary to conventional wisdom backed by the empiricism of science, Ajayi believes that calabash also has the power of speech making. This outstanding folly has*

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<sup>98</sup> Ribadu, N "Implications of Economic and Financial crimes on the nation's Economy" available: [www.nigerianlawguru.com](http://www.nigerianlawguru.com), Last accessed – 15/12/18 <sup>108</sup> Team, ZT, "Swindled by spirits" Zero Tolerance, The Magazine of Nigeria's Economic & Financial Crimes Commission (EFCC) Vol. 2. No. 1 October, 2007 p.43

*cost the politician ₦7.5million. He lost the sum to a deadly syndicate of fraudsters who specialize in what is called „local“ in 419 parlance.<sup>108</sup>*

### **The Code of Conduct Bureau And Tribunal Act**

The Nigeria Constitution has created special agencies to enforce the provisions of the code of Conduct for Public Officers as enshrined in the 5<sup>th</sup> Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The Code of Conduct Bureau is established as the administrative organ, while the Code of Conduct Tribunal is the adjudicatory organ for the enforcement of the Code.<sup>99</sup> It is more of a moral Code, though enforceable by law. Thus-

*The aims and objectives of the Bureau shall be to establish and maintain a high standard of morality in the conduct of government business and to ensure that the actions and behaviour of public officers conform to the highest standards of public morality and accountability.<sup>110</sup>*

Unfortunately, the dividing line between law and morality seems wide as the two streams may never meet. Though what is legally wrong is morally wrong, not all moral wrongs constitute legal wrongs. Except now that specific enactments have made corrupt acts legally punishable, most Nigerians had seen corruption as a moral wrong which may not be enforced by earthly laws. This includes to-

- a. Receive assets declarations by public officers in accordance with the provisions of the act;
- b. Examine the assets declarations and ensure that they conform with the requirements of the Act and any other law(s) for the time being in force in Nigeria;
- c. Take and retain custody of such assets declarations; and
- d. Receive complaints about non-compliance with or breach of the Act and where the Bureau considers it necessary to do so, refer such complaints to the Code of Conduct

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<sup>99</sup> See The Code Of Conduct and Tribunal Act (cap. C.15) LFN, 2004 <sup>110</sup> Section 2 of the act

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Tribunal established by section 20 of the Act in accordance with provisions of Sections 20 to 25 of the Act.<sup>100</sup>

Essentially, the provisions of the Code of Conduct are designed to prevent corruption among public servants. The functions of the code of conduct Bureau are mainly concerned with the actual operation of the provisions of the Code. It would seem that with the establishment of the Bureau, no other body has the right to receive complaints about non-compliance or breach of the Code.<sup>101</sup>

The mandatory provisions of the Code should be a strategic weapon by the Bureau in the campaign against corruption. But unfortunately, the declarations are hardly verified. No wonder there has not been any reported conviction for the more substantial violations of the code such as bribery and abuse of office. The Bureau has not been proactive in its approach towards the actualization of its mandate. It has been suggested that one of the proactive measures which the bureau can adopt in order to achieve its objectives is to publish the assets declaration forms of prominent public office holders in some national newspapers or in the Bureau's website on the internet. This will attract public response and inspire their verification by the Bureau.<sup>102</sup>

Timely compliance with the provisions of the act in completing the declaration forms upon the assumption of office and soon thereafter seems to be ignored by the key-players in governance as there are no records to show that it is part of their hand-over requirements. The Act demands that every public officer shall within fifteen months after the coming into force of Act or immediately after office and thereafter- a. at the end of every four years; b. at the end of his term of office; and c. in the case of serving officer, within thirty days of the receipt of the form from the Bureau or at such other intervals as the Bureau may specify, submit to the Bureau, a written declaration in the form prescribed in the First Schedule to the Act, or in such form as the Bureau, may from time to time specify, of all his properties, assets and liabilities and those of his spouse or unmarried children under the age of twenty-one years.<sup>103</sup> The act also makes any statement in any declaration which is found to be false by any authority or person

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<sup>100</sup> Section 3 of the Act

<sup>101</sup> *Ogbuagu v. Ogbu* (1981) 2NCLR. 680

<sup>102</sup> Ekpu O. O, "Curbing Corruption in Nigeria; The Role of the code of Conduct Bureau" *benin Journal of public Law*, 2004 p. 73

<sup>103</sup> Section 15 (1) (a) – (c) of the Act

authorized in that behalf to verify same, to constitute a breach of the Act.<sup>104</sup> Any property or assets acquired by a public officer after any declaration as required by the Act which is not fairly attributable to income, gifts or loan approved by the Act, shall be deemed to have been acquired in breach of the Act, unless the contrary is provided.<sup>105</sup>

### **The Whistleblower Policy**

On December 21, 2016, the Federal Government of Nigeria announced a policy designed to strengthen the fight against corruption. The policy offers financial reward to anyone who provides information that leads to the recovery of stolen funds. The whistleblower policy was nonetheless, greeted with mixed feelings. While some were optimistic that it would mark a turning point in the efforts of the government to recover funds stolen from the treasury, by light fingered officials, sceptics were convinced that it would end up as another lofty policy that failed to live up to expectations. Most of those who hold the later view were doubtful whether the promised reward of between 25% and 5% of the recovered funds would be enough motivation for those with such sensitive information to come forward. But six months down the road, it is becoming clear that the initial scepticism were misplaced. The nation was jolted to the reality of the policy when on February 3, 2017 the EFCC announced that it had recovered a staggering sum of \$9,772,800 (Nine million, seven hundred and seventy-two thousand U.S. Dollars) and another sum of £74,000 (Seventy-four thousand pound sterling) cash. The monies were found hidden in fireproof safe in a decrepit building in the Sabon Tasha slum of Kaduna, North Central Nigeria. The outrage which trailed the unusual find had barely cleared when the anti-graft agency in what remains its biggest single cash recovery till date, shocked the world with the \$43million haul at a flat in Osborne Towers in Upscale Ikoyi, Lagos.

A common strand to these massive cash recoveries is the fact that they were made possible by information provided by whistleblowers, an indication that the policy has began to yield fruits. The truth is that, as welcome as this development may be, it is a policy and not a law, and until the Legislature endorses the move, its foundation remains shaky. These are concerns which cannot be ignored. Nonetheless; the good news is that there is already a Bill before the National Assembly, awaiting consideration by the lawmakers in the midst of anxieties in some quarters

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<sup>104</sup> Section 15 (2) of the Act

<sup>105</sup> Section 15 (3) of the Act

that the sponsors of the Bill may not have accommodated all the ramifications of the policy, particularly when it comes to protecting the whistleblowers.

Meanwhile, the anti-corruption agencies should be enrolled to implement the policy under the supervision of the Ministry of Justice.<sup>106</sup>

### **The Nigerian Financial Intelligence Unit (NFIU)**

As part of its efforts to combat money laundering and the financing of terrorist activities in Nigeria, the Federal Government has set up the Nigerian Financial Intelligence Unit (NFIU), domiciled in the Economic and Financial Crimes Commission (EFCC).<sup>107</sup> Accordingly-

*The Commission is the designated Financial Intelligence Unit (FIU) in Nigeria, which is charged with the responsibility of co-ordinating the various institutions involved in the fight against money laundering and enforcement of all laws dealing with economic and financial crimes in Nigeria.*<sup>119</sup>

This was a presentation for the removal of Nigeria from the Financial Action Task Force (FATF) list of Non-Cooperative Countries and Territories (NCCTs). The NFIU operates as an autonomous central national agency. It recovers and analyses financial information (Currency Transaction Reports (CTRs) and Suspicious Transaction Reports (STRs) from financial institutions and designated non-financial institutions with a view to disseminating intelligence information arising thereof to law enforcement agencies (LEAS) and other stakeholder.<sup>120</sup> It was in realization of this policy that a 10-man Technical Committee made up of representatives from the CBN, NDIC, the private sector, a police officer, together with an employee of the EFCC, was constituted in October 2003 to develop a comprehensive plan for the establishment of the Nigerian Financial Unit (NFIU). The Committee has since submitted its report, the implementation of which fulfilled the statutory provisions of the EFCC Act in this regard.

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<sup>106</sup> Adamson, K. "The whistle Revolution" Zero Tolerance, the magazine of Nigeria's Economic & Financial Crimes Commission, June 2017, Vol. 9, No. 1. P. 13.

<sup>107</sup> EFCC Information Handbook 1 (Abuja, Mednat Ltd production, 2004) p.8 <sup>119</sup> Section 2 (c) of the EFCC (Establishment) Act, 2004. <sup>120</sup> EFCC Information Handbook 1, ibid

## **Advantages Of Establishing The NFIU**

The following are the major advantages derivable from establishing the Nigerian Financial Intelligence Unit:-

- It is a veritable mechanism for fighting economic and financial crimes in Nigeria
- It is actively combating money laundering and financial terrorism in Nigeria
- It is adding value to criminal investigation by providing financial intelligence information relating to money laundry trials
- It is facilitating the sharing of relevant information with other international financial intelligence units
- It is enhancing the effectiveness and ability of the EFCC in the detection and prevention of financial crimes
- It is facilitating the development of enabling environment necessary for the inflow of foreign investment in Nigeria
- It is helping Nigeria to be delisted from the Financial Action Task Force (FAFT) list of Non-Cooperative Countries and Territories (NCCTs)
- It is protecting and sanitizing Nigeria's financial system.
- It is monitoring the principle of Customer Due Diligence (CDD) culture in Nigerian financial institutions.
- It is facilitating compliance with some of the requirements of Financial Sector Assessment Programme (FSAP) of the International Monetary Fund (IMF) and the World Bank.
- It is improving the rating of Nigeria in the assessment of the transparency international
- Its reports now serve as credible resource input to Nigeria's national policies.<sup>108</sup>

It is on record that through the sustained efforts of the EFCC, Nigeria has been taken off the negative advisory of the United States Department of Treasury Financial Crimes

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<sup>108</sup> EFCC Information handbook 1, op. cit pp. 9-10

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Enforcement network (FINCEN) and admitted to full membership of the EGMONT Group. A follow up to this development is that Nigeria became the first country in the West African sub-region to be admitted to full membership of the Egmont Group of financial intelligence units on the 30<sup>th</sup> day of May, 2007 in far away Hamilton Bermuda.<sup>109</sup>

### **The Role of The Courts**

The Federal High Court or High Court of a state or High Court of the Federal Capital

Territory, has jurisdiction to try offenders under the Act. The Court shall have power to-

- Impose the penalties provided for under the Act;
- Ensure that all matters brought before it by the EFCC against any person, body or authority shall be conducted with dispatch and given accelerated hearing;
- Adopt all legal measures necessary to avoid unnecessary delays and abuse in the conduct of matters brought by the EFCC before it or against any person, body or authority; and
- In any trial for an offence under the Act, the fact that an accused person is in possession of pecuniary resources or property for which he cannot satisfactorily account and which is disproportionate to the known sources of income or that he had at or about the time of the alleged offence obtained an accretion to his pecuniary resources or account, may be proved and taken into consideration by the court as corroborating the testimony of any witness in the trial.<sup>110</sup>

### **The Constitution of The Federal Republic of Nigeria, 1999 (As Amended)**

The Constitutional basis and foundation for the fight against corruption in Nigeria cannot be ignored as you cannot put something on nothing and expect it to stand, it will definitely collapse. Consideration would have to be given to the Constitution of Nigeria and particular Sections 15(5) which states that “the state shall abolish corruption and abuse of power”; Section 43 which provides that every citizen shall have the right to acquire and own immovable property; and Section 44(1) which provides that such property or moveable property shall not be taken possession of compulsorily or any right or interest acquired, except in the manner and

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<sup>109</sup> October 2007, Edition of Zero Tolerance Magazine, p. 32.

<sup>110</sup> Section 19 (10) (2) (a) – (c) (3) (5) of the EFCC Act. See also, EFCC information handbook 1, p. 15.

for the purpose prescribed by law including S.44(2)(b) for the imposition of penalties or forfeiture for breach of any law, whether under civil process or after conviction for an offence.<sup>111</sup>

But it would seem that the same Constitution which decreed the abolition of corruption in Nigeria also turned round to put stumbling blocks on the road to its actualization in the form of immunity clauses. Accordingly-

- a. No civil or criminal proceedings shall be instituted or continued against a person to whom this Section applies during his period of office;
- b. A person to whom this Section applies shall not be arrested or imprisoned during that period either in pursuance of the process of any court or otherwise;
- c. No process of any court requiring or compelling the appearance of a person to whom this Section applies shall be applied for or issued;
- d. This section applies to a person holding the office of President or Vice-President, the Governor or Deputy Governor and the reference in this Section to period of office is a reference to the period during which the person holding such office is required to perform the functions of the of the office.<sup>112</sup>

There is no doubt that the provisions of Section 308 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) on immunity works against the prosecution of corrupt Presidents, Vice Presidents, Governors and Deputy Governors while in office. A case in point is that of the former Governor of Plateau State, Joshua Dariye. He was arrested in Marriot hotel, Central London by the Metropolitan Police over money laundering charges, having been found with the sum of £80,000 in his possession. During the pendency of the case, Dariye jumped bail and fled back to Nigeria on September 15, 2004. As a serving Governor, he enjoyed some form of immunity from criminal prosecution. Not even a petition written by the then Attorney-General Of The Federation (AGF) to the Plateau State House of Assembly for possible impeachment of the Governor brought him anywhere near justice; even though the petition

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<sup>111</sup> See the "Guidance Notes on Non-Conviction and Conviction Forfeiture and Management of the Res in Conviction based Forfeiture in Nigeria" A publication of the Presidential Advisory Committee Against Corruption (PACAC) 2017 P. 12

<sup>112</sup> Section 308 (1) (a)-(c) and (3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

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gave comprehensive details of his offences bothering on money laundering and economic crimes against British and Nigerian laws.

Rather than nail him, a Federal High Court sitting in Abuja gave him a reprieve by declaring that the Code of Conduct Tribunal had no power to summon, arrest or try him over alleged breach of assets declaration law. Apart from the support he enjoyed from the state legislature, the former Governor also got a shield from the Court.<sup>113</sup>

### **Office of The Attorney General And Minister of Justice**

The focal point here is to critically appraise the constitutional functions and powers of the Federal Attorney General and Minister of Justice vis-à-vis the statutory functions and powers of the anti-graft agencies with a view to resolving practical and operational conflicts between them (if any) in deserving circumstances. It would seem that these legal provisions are either being misconstrued or construed with a particular policy direction in mind. Again the areas of conflict were perceived and anticipated with pre-emptive measures being taken to avoid a head-on collusion between the relevant bodies and authorities charged with the fight against corruption in Nigeria.

It all began when the then president of the Nigerian Bar Association, Mr Olisa Agbakoba

(SAN) led a delegation of bar leaders to the office of the then newly appointed Minister of Justice and Attorney General of the Federation, Chief Michael Aandokaa (SAN). On that occasion, Mr. Agbakoba advised the Justice Minister to divest the Economic and Financial Crimes Commission (EFCC) of all prosecutorial powers. A friendly advice when wrongly given ignites a conflagration, the flames of which both the giver and the receiver of such cannot control.

Ostensibly prompted by such „professional piece of advice“ coupled with pressure from vested interests, the Attorney General requested the then President (Umaru Musa Yar“Adua) to direct the Economic and Financial Crimes Commission (EFCC), the Independent Corrupt Practices and other Related Offences Commission (ICPC) and the Code of Conduct Tribunal to henceforth, obtain the written approval of the Minister of Justice before the institution of any criminal cases in Court. The Minister then issued a statement to the effect that there would be

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<sup>113</sup> “Corruption and National Development” Being proceedings of the 46<sup>th</sup> Annual conference of the Nigeria Association of law teachers, 2013 p. 284.

the need for his Ministry to oversee, supervise and monitor the prosecuting activities of some bodies, Commissions and institutions established by law, particularly, Acts of the National Assembly in order to ensure that sanity is brought to the criminal justice system of the country, in relation to the prosecuting powers and duties of these bodies, Commissions and institutions.<sup>114</sup> Now the office of the Attorney General of the Federation is created by the Constitution. Section 150(1) provides that- “There shall be an Attorney General of the Federation who shall be the chief law officer of the Federation and a Minister of the Government of the Federation.”

Of all the Ministers of Government at the Federal level, and the commissioners at the state levels, it is only the office of the Attorney General that was created by the Constitution and the same Constitution goes further to make him the chief law officer of the Federation or State as the case may be. The section provides that the Attorney General of the Federation shall have power:-

- a) *To institute and undertake criminal proceedings against any person before any of the court of law in Nigeria other than a court Marshall, in respect of any offence created by or under any Act of the National Assembly;*
- b) *To take over and continue any such criminal proceedings instituted by any other authority or person; and*
- c) *To discontinue at any stage before judgement is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person.*

The attorney general can exercise these powers and functions as they relate to criminal prosecution by proxy and must be prompted in so doing by the dictates of public interest, fairness and equity.<sup>115</sup>

From the foregoing, the Attorney General’s powers of prosecution may be broken into three parts, viz:

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<sup>114</sup> Olanikpekun, W “Nigeria: Before the Attorney General is taken to the Golgotha” Zero Tolerance, The Magazine of Nigeria’s Economic and Financial crimes Commission, Vol. 2 No. 2. December 2007 p. 45. See also, Falana F, “Nigeria: Anti-graft Agencies and the Attorney General” Zero Tolerance, op.cit. p. 47.

<sup>115</sup> Section 174 (2) & (3) of the Constitution

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1. He can on his own take up the institution of criminal proceedings against any person in respect of offences created by an act of the National Assembly and this extends to criminal proceeding relating to or connected with the Economic and Financial Crimes (establishment) act, 2004, the ICPC Act, Immigration, Customs and Excise, NDLEA, NAFDAC, Police, DSS etc.
2. The Constitution recognises that the other aforementioned agencies or authorities, outside the office of the Attorney General can initiate criminal proceedings and this engaged the consideration of the supreme court of Nigeria in *Osahon v. FRN*<sup>116</sup> where it was held that other law enforcement agencies can on their own, initiate criminal proceeding in respect of offences created by an Act of the National Assembly subject to the powers of the Attorney General to take over and continue with such proceedings.
3. The Attorney General is vested with the power to discontinue any criminal proceedings instituted by him or by any law enforcement institution.<sup>117</sup> This he does through the instrumentality of the *nolle prosequi*. In *Shittu Layiwola v. The Queen*,<sup>118</sup> the supreme court of Nigeria held that- “It is the province of the law officers of the Crown to decide in the light of what the public interest requires in any particular case who shall be charged and with what offence”<sup>119</sup>

Accordingly, the Constitution had this judicial input in mind when it directed the Attorney General to be motivated by public interest, the interest of justice and the need to guard against the abuse of legal process in the exercise of his prosecution powers in criminal cases.<sup>120</sup>

Arising from this discourse so far, is as to whether the Attorney General is a superior authority in the prosecution of criminal cases in Nigeria, from who all other law enforcement agencies should take instructions. The answer is in the negative as they all seem to be equal partners. This is so because-

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<sup>116</sup> (2006) 5NWLR (pt.973) 631

<sup>117</sup> Section 174 (i)(c) of the Constitution

<sup>118</sup> (1959) 4 FSC 119

<sup>119</sup> See section 2 of the Law officers Act (cap 180) LFN 2004, where “law officers” are defined to include the Attorney-general, the solicitor-general and state counsel.

<sup>120</sup> See, *FRN V. Aderem* (2007) 10NWLR (Pt 1042) 399, *state v. Obasi* (1998) 9NWLR (pt. 5670 686 state V. Ilori (1983) ISCN CR. 94, *Julius V Lord Bishop of Oxford* (1880) 5AC. 214 (HL0) etc

*All agencies of the government are organs of initiative whose powers are derived either directly from the Constitution or from laws enacted there under. Therefore they stand in the relationship to the Constitution as it permits of their existence and functions.*<sup>121</sup>

Neither the law establishing the Economic and Financial Crimes Commission, nor the law setting up the Independent Corrupt Practices and Other Related Offences Commission made any reference to the powers of the Attorney General vis-à-vis the prosecution of criminal cases. What the law did was to protect their independence and non-subjection to the powers of the Attorney General. Thus- “The Commission shall in the discharge of its functions under the Act, not be subject to the direction or control of any other person or authority”<sup>122</sup>

The only caveat, which is of global application is that the laws setting up these bodies and their operational scope cannot run counter to the provisions of the Constitution as they relate to criminal prosecution and proceedings. Thus, it is not in dispute that “If any other law is inconsistent with the provisions of the Constitution, the Constitution shall prevail and that other law shall to the extent of its inconsistency be void”<sup>123</sup>

There are presently no cases of conflict of authority, functions or powers between the office of the Attorney General and other law enforcement agencies, what we may find is that the Attorney General is empowered to strengthen and assist other law enforcement agencies in the performance of their functions by making rules to guide them in cases of lacunae as the case may arise. Thus, “The Attorney General of the Federation may make rules or regulations with respect to the exercise of any of its duties, functions or powers of the Commission under the Act”<sup>124</sup>

This rule and regulation making functions of the Attorney General does not create a masterservant relationship between the office of the Attorney General and that of any other law enforcement agencies in Nigeria. Thus, in *A.G. Abia state v. A.G. Federation*,<sup>125</sup> the supreme court of Nigeria held that the Attorney General of the Federation cannot be held vicariously liable for the actions of the Economic and Financial Crimes Commission (EFCC). While the anti-graft agencies and the office of the Attorney General should work together in the

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<sup>121</sup> AG, Ondo State V. AG federation (2002) Fulb (pt.III) 2167 (SC)

<sup>122</sup> Section 3 (14) of the ICPC act

<sup>123</sup> Section 1 (3) of the Constitution

<sup>124</sup> Section 43 of the EFCC Act, 2004

<sup>125</sup> Obalonye, J. T “Buhari signs Executive order on Suspicious Assets” The Sun Newspaper (Nigeria) Vol. 15 no. 66 Friday July 6, 2018 p.6. <sup>139</sup> (2002) 6NWLR (pt. 764) P. 542

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prosecution of all indictable offences so as to end the culture of impunity in Nigeria; it is abundantly clear that the Attorney General has no supervisory control over the EFCC, ICPC and the Code of Conduct Tribunal.

### **Executive Order No.6 Of 5<sup>th</sup> July, 2018.**

On the 5<sup>th</sup> day of July, 2018, President Muhammadu Buhari declared a state of emergency on corruption by signing Executive Order No.6 of 2018 on the preservation of assets connected with serious corruption and other related offences. Called into question by this bold step taken by the President is as to whether an Executive Order of this nature could be used to create a criminal offence without any form of delegation by the National Assembly which has the constitutional mandate to make laws, particularly Penal Laws.<sup>139</sup>

Nonetheless, Executive Order No.6 of 2018 is designed to restrict dealings in suspicious assets subject to investigation or enquiry bordering on corruption in order to preserve such assets from dissipation, and to deprive alleged criminals of the proceeds of their illicit activities which can otherwise be employed to allure, pervert and/or intimidate the investigative and judicial process or for acts of terrorism, financing of terrorism, kidnapping, sponsorship of ethnic or religious violence, economic sabotage and cases of economic and financial crimes, including acts contributing to the economic adversity of the Federal Republic of Nigeria and against the overall interest of justice and the welfare of the Nigerian nation. The President described the signing of the bill as another milestone in the fight against a corruption, project which was crucial to the viability and continuous well-being of Nigerian. While noting that his administration has kept its promises to fight corruption, tackle insecurity and revamp the economy; he assured that he will remain committed until Nigeria triumph over the evil of corruption, attain a prosperous economic status, and surmount all her security challenges. The President pointed out that it had become necessary to re-kit and retool the administration's arsenal to be able to effectively tackle corruption's perilous counterattack against the Nigerian state. He maintained that the federal government, in line with its anti-corruption strategy would seek to ensure that the ends of justice is not defeated or compromised by persons involved in cases or complaints of corruption. He noted that while there were many reasons why Nigeria has been struggling, the most unfortunate cause of great disparity between Nigeria's wealth and its poverty is endemic corruption.

As earlier raised in the opening remarks to this segment, it would seem that the power to issue Executive Orders is incidental to the powers vested in the President in a Presidential Democracy like ours. In the United States of America, the power is said to have been impliedly provided for in Article 2 of the U.S. Constitution. Similarly in Nigeria, the power can be said to have been derived from Section 5 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). Much as it would seem from this section that the power of the President are wide, it must be pointed out that they operate subject to the Constitutional provisions on Fundamental Rights. Accordingly, where the exercise of such executive powers conflict with fundamental rights, it shall be null and void and of no effect.<sup>126</sup>

President Buhari had maintained that the essence of the Executive Order No.6 of 2018 is “to restrict dealings in suspicious assets subject to investigation or inquiry bordering on corruption in order to prevent such assets from dissipation.” The practical implication of this Order is that the moment a person is accused of corruption, rightly or wrongly, with or without cogent evidence, his or her assets can be seized without any court order. Similarly, the accused may not have the opportunity to approach the court to vacate or reverse the seizure until the investigation or trial is concluded even if it takes decades, neither would he be able to sell, lease, mortgage or otherwise raise funds from the assets. Such a factual situation runs counter to the provisions of Sections 36(2)(a) and 43 of the Constitution of the Federal Republic of Nigeria, 1999(as amended) which guarantee the rights to fair hearing and property ownership respectively.

Though the EFCC Act,<sup>127</sup> empowers the Commission to seize assets suspected to be the proceeds of corruption, persons suspected to be the owners of such properties must have been arrested, prosecuted and convicted in the process of which they must have been given fair hearing pursuant to section 44(1)(b) of the Constitution, a situation where the assets of persons suspected to have engaged in corrupt practices are confiscated (as contemplated in Executive Order No.6 of 2018) without giving them fair hearing as to how the assets were acquired by them may constitute a breach of the Fundamental Rights provisions of the Constitution and therefore unconstitutional, null and void and of no effect whatsoever.

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<sup>126</sup> See, *Ojukwu v. Governor of Lagos State* (1986) INWLR P. 102

<sup>127</sup> Sections 20-34 of the EFCC Act

### **Regional Legal Instruments**

From the 1990s when the subject of corruption became openly recognised and accepted as a global problem, legal initiatives to counter it have been overwhelming. Several legal instruments have been adopted at regional and sub-regional levels to complement international efforts in this regard.

Prominent among them is the African Union Convention on Preventing and Combating Corruption (AUCPCC). This instrument was adopted by the African Union in July, 2013 after five years of negotiations and deliberations.<sup>128</sup> Its main goals are to promote and develop mechanisms of prevention, detection, punishment and eradication of corruption both in public and private sectors.<sup>129</sup> The adoption of the AUCPCC was an expression of African Leaders' concern over the negative impact of corruption and impunity on various aspects of Africa's development in the areas of politics, economy, culture, social stability and recognition of the devastating effect of corruption on the general well-being of the African people. It was also recognised and accepted that corruption undermines transparency and accountability in the management of public life and societal existence and this created the need for the determination to fight it through partnership and cooperation between government at regional global and sub-regional levels with women groups as stakeholders in the fight. It was agreed that there should be genuine penal pursuit geared towards citizen's protection against the menace of corruption and the adoption of appropriate legislative and preventive measures in the fight against corruption. It must be noted that the convention has been instrumental to efforts being made by state parties to tackle the menace of corruption in Africa.<sup>144</sup>

### **Sub-Regional Legal Instruments**

Sub-regional framework for combating corruption often serves as a linkage between international, regional and national legal efforts. At this level, focus will be centred on the Economic Community of West African States (ECOWAS) legal initiatives in fighting corruption within the sub-region in collaboration with international agencies.

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<sup>128</sup> See, Kolawole, O. "The Africa Union Convention on Preventing and Combating Corruption: A critical Appraisal" 4AFR. HUNG.RTS. L.J.74, 78 (2004)

<sup>129</sup> See, the preamble to the all convention on preventing and combating corruption. <sup>144</sup> See Art 4, AU Convention.

At the twenty-fifth summit of Heads of State and Government of ECOWAS, state parties, expressed their determination to intensify and revitalize the cooperation between them with a view to enhancing the effectiveness of anti-corruption measures.<sup>130</sup> The Protocol obliges state parties to adopt the necessary legislative measures to criminalize active and passive bribery in the public and private sectors, illicit enrichment, false accounting as well as acts of aiding and abetting corrupt practices and laundering of the proceeds of corruption to ensure the protection of victims and to provide each other with judicial and law enforcement cooperation. The Protocol also calls state parties to harmonize their national anti-corruption laws to adopt effective preventive measures against corruption and to introduce proportionate and dissuasive sanctions. As regards the efficacy of this very Protocol, it is difficult to categorically appertain specific feat since the situation with corruption in the sub-region remains the same if not on the increase with little or no convictions and no evidence of collaborations among the Saharan African states.

There are nonetheless, some other efforts worth mentioning such as African Development Community Protocol (ADCP) against corruption.<sup>131</sup> It came into existence for the purposes of promoting and strengthening the development by each of the state parties, of mechanisms needed to prevent, detect, punish and eradicate corruption in the public and private sector ; to promote, facilitate and regulate co-operation among the state parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption in public and private sectors; and inter alia foster the development and harmonisation of policies and domestic legislation of their state parties relating to the prevention, detection, punishment and eradication of corruption in the public and private sectors.<sup>132</sup> Suffice it to say that the ADCP Protocol is a notable expression of regional political will to prevent and combat corruption.

### **Global Legal Framework**

Long before now, corruption was perceived as a domestic/national problem which needed to be tackled only at such levels. But today and in the recent past, the international community has witnessed a positive change in the global recognition and fight against corruption and has accordingly devised some legal instruments to accomplish the demands of this new awakening.

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<sup>130</sup> Full text of protocol available at [http://www.afrimap.org/english/images/treaty/ECOWAS\\_protocol\\_or\\_corruption.pdf](http://www.afrimap.org/english/images/treaty/ECOWAS_protocol_or_corruption.pdf): accessed July, 2018.

<sup>131</sup> The ADCP was adopted at the summit of the ADCP Heads of State and Government held in Polantyre, Malawi, in August, 2001.

<sup>132</sup> Article 2 ADCP Protocol Against corruption

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Thus, there are presently in existence, some multilateral mechanisms specifically created to address the problem of corruption and nations are working together to prosecute this menace.

Accordingly, for some decades now, international anti-corruption agreements have served to boost political commitments to fight corruption and have identified fundamental international norms and practices for addressing the issue of corruption in the various strata of society and governance. By agreeing on mechanisms to fight corruption, the international community is opening the doors for increased multilateral and bilateral co-operations in the fight against corruption. A brief look at some of these instruments may reveal the magnitude of the efforts so far made.

### **The United Nations Convention Against Corruption (UNCAC)**

This is the most comprehensive and globally applicable agreement in recent times, developed under the auspices of the United Nations. It is also on record to be the first true globally applicable international anti-corruption agreement; with about one hundred and forty signatures and one hundred and sixty five states parties as at the 24<sup>th</sup> day of December, 2012.<sup>133</sup>

More than one hundred and thirty countries participated in the two-year negotiation for the UNCAC, which entered into force in December, 2005. For the first time, this Convention establishes a frame work for co-operation in asset recovery cases. A fundamental principle of the convention and one of its main innovations is the right to recovery of stolen public assets.

### **United Nations Convention Against Transnational Organised Crime (UNCATOC)**

This was the United Nations' first attempt to create a binding international agreement in the fight against corruption. It was adopted in November, 2000 and has one hundred and fifty-nine parties.<sup>134</sup> It came into force three years later with the submission of the fortieth instrument of ratification and contains about twenty Articles. Its focus is on organised crime recognising the

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<sup>133</sup> Brandolino J. and Lana D, "Addressing Corruption Through International Treaties and Commitments" available at <http://iipdigital.usenbassey.gov./st/English/publication/20008060/200806012/2227s.endo.646084.htmlaxzz3mr.5u8riv>, accessed march 10, 2018.

<sup>134</sup> Andrew, T. G. "The design of international Agreements" 16 EUR. J. INT'L. 579, 580 (2005)

obvious fact that corruption can be a product of organised criminal offences, such as money laundering, corruption and obstruction of justice.<sup>135</sup>

On bribery related offences, both the supply and demand sides are criminalized, and the criminalization of other forms of corruption is left to the discretion of the member states.<sup>151</sup> Because of its main concern with organised crime, its cooperation provisions can only apply to corruption cases if they contain a transnational component or if they involve an organised criminal group. Its main setback was the lack of provisions for penalties or sanctions. It nonetheless does call on member states to adopt measures aimed at confiscating proceeds of crime, as well as their identification, tracing, freezing and seizure of assets suspected to be the proceeds of corruption.<sup>136</sup>

### **United Nations Declaration Against Corruption and Bribery in International Commercial Transactions**

The frame work was created by the General Assembly of the United Nations“ Resolution, No.5/191 of the 16<sup>th</sup> day of December, 1996 in which the Assembly declared war against corruption and bribery in International Commercial transactions. The Assembly in the same resolution requested the Economic and Social Council (ECOSOC) and its subsidiary bodies, particularly the Commission on Crime Prevention and Criminal Justice to examine ways to further the implementation of the declaration so as to promote the criminalization of corruption and bribery in international commercial transactions; to keep the issue of corruption and bribery in international commercial transactions under regular review; and to promote the effective implementation of the resolution.<sup>137</sup> Member states agreed by virtue of the resolution that actions taken by them to establish jurisdiction over acts of bribery of foreign public officials in international commercial transactions shall be consistent with the principles of international law regarding the extraterritorial application of states“ laws. Of importance was the recognition of legal provisions relating to extradition of fugitive corrupt offenders as part of cooperation in corruption cases. This buttressed the need not to overlook such relevant provisions in

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<sup>135</sup> Kemp, G “The United Nations Convention Against Transnational Organised Crime: A milestone in International Criminal Law, S. AFR. J. (RIM. JUST. 152, 152 (2001) <sup>151</sup> Act 8, UNCATOC.

<sup>136</sup> Art. 12, UNCATOC/

<sup>137</sup> Marie, C and Gillian D, “U4 Expert Answer; Comparative Assessment of anti-corruption conventions “Review mechanism 6 (2008).

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international legal agreements on corruption and related crimes, though states are encouraged to engage in diplomatic relations that allow for extradition of indicted corrupt persons.<sup>138</sup>

### **Some Procedural Mechanisms**

There are some procedural mechanisms for fighting corruption outside regular court rules and proceedings. Some are designed to save time and cost while others are there to block escape routes for persons accused of committing offences relating to corruption. Plea bargaining and forfeiture of assets shall be briefly considered here.

#### **Plea Bargaining**

The United States of America, Britain and Canada led other common law countries to institutionalize the law and practice of plea bargaining, though the system or practice was largely prohibited in Europe, until recently when Italy, France and other countries passed the legislation, allowing its operation and practice. In other countries in Western Europe, a variant of this concept, known as “Penal Order”, which allows for settlement outside the courtroom between the prosecutors, was practiced. These involved minor offences, known as „Vergehen“ but all felonies, known as „Verbrechem“ were compulsorily prosecuted. Here, the prosecutor writes to the accused informing him of the offence and his proposal to convict if he is not heard from within a week.<sup>139</sup>

The seed of plea bargaining was sown in the Criminal Courts of Middlesex County, Massachusetts, between 1890-1900 and the first plea bargain occurred in the prosecution of victimless crimes. It was stated that judges were barely involved and that by 1800, in Middlesex county, plea bargaining had „triumphed as a systematic regime“ which the legislature reinforced in 1848. The state of New York, USA became the first in 1995 to formally allow plea bargaining as applied in the case of *Bardly v. US*, and *Santeobello v. New York*,<sup>156</sup> where the court straddled between the validity and invalidity of the practice.

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<sup>138</sup> See generally, Wairi-Azi, F, Efeakandu, I and Arewa A, An Overview of International Legal Framework for Combating Corruption” Proceeding of the 46<sup>th</sup> Annual Conference of the Nigerian Association of law Teachers pp. 346-366.

<sup>139</sup> Langbein, J.H “Land without plea bargaining: how the Germans do it”, Mich L. Rev. Vol. 78, 1979-1980, 204, 210-212. See also, Xavier, AK, “Plea bargaining: Unexpected Development in the Criminal Justice system” [www.andamanchronicle.com](http://www.andamanchronicle.com) assessed 10<sup>th</sup> July, 2017, etc.

Plea bargaining has been loosely defined „a deal between the prosecutor and the defendant wherein the defendant pleads guilty to a charge less than the original or receives sentencing consideration for pleading guilty to the original charge“.<sup>157</sup> It is an agreement arrived at through negotiation between the prosecutor and the defendant“s attorney during which a proposed resolution of the criminal charges against the defendant is considered. It is a practice whereby the accused foregoes his right to plead not guilty and demand a full trial and instead, uses a right to bargain for benefit. It means that the accused plea of guilty has been bargained for and some consideration has been received for it.<sup>158</sup> Generally, it is-

*The process whereby the accused and the prosecutor in a criminal case workout a mutual satisfactory disposition of the case subject to court approval. It usually involves the defendant pleading guilty to a lesser offence or to only one or some of the Courts of the multi-count indictment in return for a lighter sentence than that possible for the graver charge.*<sup>159</sup>

There seem to be urgent and compelling reasons for the adoption of the practice of plea bargaining in Nigeria as part and parcel of its legal system. It has been pungently pointed out that-

*One of these is the problem of prison congestion. Most police cells across the country are inconceivably over congested. Suspects are on the flimsiest charges, sometimes without justification, held for several months without formal charges. This high degree of congestion undoubtedly stretches prisoners and the few remaining obsolete prison facilities to a breaking point. Some cases are never investigated or prosecuted for upward of up to 45 years. One measure that would greatly assist in the decongestion of prisons in Nigeria is the use of plea bargaining to liquidate human*

<sup>156</sup> 404 US 259, 260 ( 1971)

<sup>157</sup> Mohr, A “The necessity of plea bargaining <http://artsci.diathe.edu/dussj/mohaaron.pdf> accessed 10th July, 2018. <sup>158</sup> Ferguson F and Roberts D, “Plea bargaining: Directions for Canadian Reform” (Canadian bar review, vol 52 (1974) p. 501. See also, Santos. M.G. “Plea and plea bargains” Tropical Report 1.2, Maynard, B. W “ Aspects of sequential organisation in plea bargaining Discourse “Haman Studies Journal Vol 5 (1982) pp. 319-344 <sup>159</sup> Henry Campbell black, Black“s Law Dictionary, 6<sup>th</sup> Edn (St. Paul, West group, 1991) p. 1152.

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*suffering, avoid trial and secure guilty plea. This certainly will be reciprocated with charges as well as sentence bargain.*<sup>140</sup>

Corollary to this is that time is saved. A lot of time wasted between the time of arrest and the time of trial to the disposal of cases. Even when the matter is taken to the court, it suffers unnecessary and sometimes, avoidable adjournments. This inevitably will be cured by the plea bargaining process which saves time and avoids undue publicity.<sup>141</sup>

It would seem also that the judiciary greatly benefits from the practice of plea bargaining, even in other jurisdictions. According to Chief Justice Burger-

*The consequences of what may seem on its face; a small percentage change in the rate of guilty pleas can be tremendous. A reduction from 90 percent to 80 in guilty pleas requires the assignment of twice the judicial man power and facilities---a reduction to 70 percent triples this demand*<sup>162</sup>

This is more so now with the dwindling resources to the third arm of government (the judiciary) in recent times. It is common place to find the registry of courts located across the various states in Nigeria, without typing sheets or even typing machines. Computers are a luxury though highly desirable bargaining will reduce costs and ease the financial burden on the judiciary and on the government.<sup>163</sup>

It was not until the enactment of EFCC (Establishment) Act, 2004 which established the Economic and Financial Crimes Commission that the law and practice of plea bargaining reared its head in the Nigerian criminal justice administration. Section 14(2) of the Act, provides-

*Subject to the provision of section 174 of the constitution (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,*

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<sup>140</sup> Odinkalu, A and Ehonwa O “behind the Wall: a report on Prison Congestion in Nigeria and the Nigerian prison system (Lagos, CLO, 1991) P. 113

<sup>141</sup> Alubo, A. O, Barde J, lar, O. H and Zechariah M “plea – bargaining mechanism in the judicial determination of corruption cases: a critical interjurisdictional Assessment” 46<sup>th</sup> Nalt Annual conference proceedings, 2013 p. 248. <sup>162</sup> Burger, W “The state of the Judiciary, “AB. A. J, Vol. 170, 929, 931. See also, Osinbajo, O and Kalu, A.

u(eds) law, Development and Administration in Nigeria (Lagos, Fed. Min. of Justice pub. 1990) p. 40 <sup>163</sup> Alubo, et al, *ibid*.

*not exceeding the amount of the maximum fine to which that person would have been liable if he had been convicted of that offence*

This provision has been used by the EFCC in a number of cases to secure conviction by persuading the accused persons to make restitution.

### **Forfeiture Of Assets**

„Forfeiture“ is defined as loss of property or goods, as a result of the misbehaviour of the holder.<sup>142</sup> Forfeiture has been judicially defined as-

*A comprehensive term which means a divestiture of specific property with compensation. A loss of some right or property as a penalty for some illegal act, which imposes a loss by the taking away of some pre-existing valid right without compensation----such forfeiture provisions apply to property used in the commission of a crime as well as property acquired from the proceeds of crime.*<sup>143</sup>

Nigeria is a signatory and member state of the United Nations Conventions Against Corruption (UNCAC), which came into force in 2005 and the Convention, with one hundred and eighty one parties, is the first legally binding international anti-corruption instrument aimed at providing a legal frame work for fighting corruption and recovering its proceeds.<sup>166</sup> Chapter V of the Convention provides a comprehensive assets recovery regime as an effective sanction against corruption and a fundamental principle of international public law. It underscores three basic principles: first, the regime sends a strong signal that corruption does not pay and that consequences will follow those who steal from the poor; second, it helps to disrupt the cycle that sustains these organisations and fraudsters; and third, it allows the stolen funds to be recovered and used to the benefits of the victim.<sup>144</sup> Article 54 of UNCAC, provides that-

*Each state party shall. In accordance with its domestic law, consider taking such measures as may be necessary to allow a confiscation of such property without a*

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<sup>142</sup> Alubo, O, Criminal Procedure Law in Nigeria (Jos, innovative Communications, 2012)388. See also, Tarhule W, Corrections Under Nigeria Law (Lagos innovative communications, 2014) p. 366.

<sup>143</sup> Mohammed Abacha V. Federal Republic of Nigeria (2004) 4NWLR (pt. 970) 239 at 252 (Per Augi JCA) <sup>166</sup> See guidance notes on non-conviction and conviction based forfeiture and management of the Res in conviction based forfeiture in Nigeria (A production of the presidential Advisory committee Against corruption (PACAC) 2017 p. 9.

<sup>144</sup> PACAC, Ibid.

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*criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.*

It was also agreed that common wealth countries that have yet to do so should promptly put in place, strong and comprehensive legislation and procedures for criminal conviction based asset confiscation. This should include a power to confiscate in circumstances where the accused has absconded or died.<sup>145</sup>

Here in Nigeria, there is no single and all embracing legal frame work on assets forfeiture. This corrective measure is nonetheless provided for in a number of legislation, some of which are the Penal Code,<sup>146</sup> the Administration of Criminal Justice Law of Lagos State,<sup>147</sup> the Economic and Financial Crimes (Establishment) Act,<sup>148</sup> the Customs and Excise

Management Act,<sup>149</sup> and the trafficking in Person"s Prohibition Law Enforcement and Administration Act,<sup>173</sup> etc.

There are broadly, two main approaches by which assets of criminal suspects can be forfeited to the state. The most common form is the conviction based Penal forfeiture. Here, the assets of the offender are lost to the state upon his conviction after criminal trial. The second approach which is uncommon is the non-conviction based forfeiture process, which is popular in the United States of America. Here, the offender or suspect needs not to be convicted before his assets are forfeited to the state. The distinctive feature of this approach is that forfeiture does not depend on a finding or proof of guilt in respect of any offence, the proceedings being essentially against property and not the person of the accused or suspect.<sup>150</sup>

Some issues have been raised across many jurisdictions on the practice of non-conviction based forfeiture. The approach adopted to these issues in most jurisdictions is designed to assist the courts and parties. It is self evident that any binding determinations as to procedure or substantive law in cases within Nigeria are a matter for determination by the courts.

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<sup>145</sup> Report of Common Wealth Expert Group on Asset Recovery and Repatriation (2005)

<sup>146</sup> Section 68

<sup>147</sup> Sections 290-298

<sup>148</sup> Sections 20-25

<sup>149</sup> (Cap. C 45) LFN 2004, Section 169

<sup>150</sup> Adedeji, A. "proceeds of crime in Nigeria: getting our Act together" (Abuja, Nigerian Institute of Advanced legal studies press, 2011) pp. 7-10

Nonetheless, even under Universal legal practice, case law has usefully articulated the common underlying rationales and principles of non-conviction based forfeiture.

Accordingly, the European Court of Human Rights (ECHR) has in some of its judgements held that some universal legal mechanisms,<sup>151</sup> have set the standards applicable in circumstances where-

- The confiscation of property linked to serious criminal offences, such as, corruption, money laundering, drug offences and other offences that generate proceeds of crime without the prior existence of a criminal conviction, is encouraged.
- Confiscation measures may be applied to the direct proceeds of crime and also to property, including any measures and other indirect benefits, obtained by converting or transforming the direct proceeds of crime or intermingling them with other possibly lawful assets
- Confiscation measures may be applied to persons directly suspected of criminal offences and also to any third parties which hold ownership rights without the requisite bona fide with a view to disguising their wrongful role in amassing the wealth in question.<sup>176</sup>

The court observed that the non-conviction based forfeiture provisions in question, formed an essential part of a larger legislative package aimed at intensifying the fight against corruption in the public service by both compensating the state and serving as a preventive warning to others. According to the court-

*The aim of the civil proceedings in rem is to prevent unjust enrichment through corruption as such, by sending a clear signal to public officials already involved in corruption or considering so doing that their wrongful acts, even if they passed unscaled by the criminal justice system, would nevertheless not procure pecuniary advantage either for them or for their families.*<sup>152</sup>

In another case,<sup>153</sup> the European Court of Human Rights (ECHR) commented on the nature and purpose of the non-conviction based forfeiture legislation thus-

- The proceeds of crime legislation only seek to ensure that benefits from that activity and other criminal conducts cannot be enjoyed by a person in Seychelles. Is the provision a bold

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<sup>151</sup> Such as the UNCAC and the forty financial Action task force recommendations. <sup>176</sup> *Gogitidse & others V. Georgia* ECCHR 158 (2015) para. 105

<sup>152</sup> (supra) at p. 102

<sup>153</sup> *Hackl. V. the financial intelligence unit & the Attorney general Seychelles* (2005) ECLA, CW. App. At 335 see also, *cullingham v. C. A. Bureau* ( 2001), FSC 112.

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departure from previously enacted laws? Undoubtedly it is, but desperate times require desperate measures.

- Jurisdictions around the world have had to create laws to fight money laundering and organised criminal and terrorist financing. Seychelles has to meet commitments under UN Conventions and satisfy other international standards concerning such activities. Our laws contain provisions that are no more and no less of these requisite standards.

Here in Nigeria, constitutional provisions, empowering the state to abolish corruption and abuse of power have to be resorted to in the fight against corruption.<sup>154</sup> Recently, the Federal Government enacted (by Proclamation), Executive No.6 of 2018, designed to-

*Restrict dealings in suspicious assets subject to investigation or inquiry bordering on corruption, in order to preserve such assets from dissipation and to deprive alleged criminals of the proceeds of their illicit activities which can otherwise be employed to allure, pervert and/or intimidate the investigative and judicial processes or for acts of terrorism, kidnapping, sponsorship of ethnic or religious violence, economic and financial crimes, including acts contributing to the economic adversity of the Federal Republic of Nigeria and against the overall interest of justice and the welfare of the Nigerian state.*<sup>155</sup>

Some days later, the Federal Government described the Order as the administration's most potent weapon against corruption till date.<sup>181</sup> The implication of this Order is that the moment a person is accused of corruption, rightly or wrongly, with cogent evidence or none, the assets of such a person, tangible or intangible can be seized without any court order. Similarly, the accused may not have the opportunity to approach the court to vacate the seizure until the investigation or trial is conducted even if it takes ages, neither would he be able to sell, lease, mortgage or otherwise raise earning from these assets, even if the purpose is to raise money to hire lawyers to defend him at the trial.<sup>156</sup>

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<sup>154</sup> Section 15 of the constitution of the Federal republic of Nigeria, 1999 (as amended) states that the state shall abolish corruption and abuse of powers.

<sup>155</sup> Taiwo – Obalonye, J “ Buhari signs Executive order on suspicious Assets” Daily sun newspaper (Nigeria) vol.15, No. 3966 of Friday, July 6, 2018 p. 6. <sup>181</sup> Adesina, F „Executive Order Most Potent weapon Against Corruption“ The Nation Newspaper (Nigeria) vol. 12, No: 4370 of Tuesday, July 17, 2018 P.6.

<sup>156</sup> Ibikunle I. M “legality of Executive order on seizure of Assets” the nation newspaper (Nigerian) vol. 12, No. 4363 of July 10, 2018 p. 14.

### **Alternative Strategies for Tackling Corruption: Character and Moral Education.**

Corruption has defied all conventional efforts to tackle the menace in Nigeria because those pretending to wage „war“ are also corrupt. Nonetheless, any society faced with the challenge of corruption will continue to search for new strategies to tackle the problem. In theory, Nigeria has all the laws in the statute books to tackle corruption, but legal options and other conventional methods are not effective because corruption has spread or gone deeper into the fabric of the society. The political leaders are always devising new methods to circumvent the system and steal public funds with the result that the nation’s fight against graft is likened to a bucket with hole, which keeps water leaking off as one pours water in it.

Nigeria has instituted many Panels and tried many methods to tackle corruption, yet the problem remains unsolved and it would seem that a change of strategy may be necessary at this stage. Though the family is the basic institution for moral and character education, it may be noted that schools have good settings for moral education. The main goal of schools is student learning and the purpose of learning is to promote students’ cognitive development and thus cognitive academic development and character formation. Character formation helps to shape their attitudes and behaviours as may be reflected in such values as honesty, integrity, respect, responsibility, self-discipline and reliability. Nonetheless, „cognitiveacademic“ and „character development“ prepare the students for work, further education, lifelong learning and citizenship.

Nigeria should focus on changing the character of the political and business leaders by removing the social, political and economic conditions that encourage corruption in the society. Reform efforts shall focus on mentality change, tougher with the enforcement of the laws, good quality education, improving economic wellbeing of the people by creating employment and providing constant energy supply, good roads and security of lives and property. Character education which has been the practice in advanced democracies for decades, involves teaching the children and youths, basic human values, including honesty, kindness, generosity, courage, freedom, equality and respect. This also aims at creating societies that foster ethical, responsible and caring people. Good moral and character training could prevent individuals from engaging in anti-development behaviours such as bribery and corruption. But for character and moral education to be successful, societies must engage families and community members as partners in the character building efforts. For effective character education, schools should reinforce „good character traits“ through systematic approaches such as adult

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modelling, curriculum integration, positive school climate and access to comprehensive guidance and counselling services.

Character education is a holistic instructive system which teaches principles and values of democracy, from which the people examine their civil rights and responsibilities and also participate in the governance of their local communities and society at large. Ultimately, if the leaders of Nigeria, including parents, politicians, policymakers and educators are truly concerned about the rampant corruption and fraud in the polity, low quality education and academic achievements of the students, coupled with the unethical behaviour and poor work ethics of adults, and if they are concerned about its negative impact on national development, they should take character and moral education very seriously.

### **Conclusion**

Corruption has destroyed the common attributes of democracy in Nigeria giving the society a different form of democracy and system that render the conventional methods of tackling corruption ineffective. The Nigerian brand of democracy seems to be nothing but a mandate to steal the common wealth and use the proceeds to fight back by intimidation, oppression, harassment and manipulations that have the effect of recycling corrupt leaders in office. The adoption of alternative strategies to effectively tackle the root cause of corruption in Nigeria may be suggested. The alternative methods include, a combination of good enforceable laws and well implemented character and moral education. Nigeria needs political leaders with good moral compass to make positive changes in the lives of the citizen.