

REVIEWING NIGERIA'S ANTI CORRUPTION LEGAL FRAMEWORK FOR INCREASED DEVELOPMENT.

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Abstract

Corruption, a universal phenomenon, is for Nigeria, a pervasive socio-economic problem. This study examines the deleterious impacts of corruption on sustainable development in Nigeria. The study locates corruption as the major reason for the prevalent poverty and steep socio-economic inequality besetting the country. From the legal perspective, Nigeria has a framework for curbing the menace of corruption. The establishment of the Independent Corrupt Practices Commission, and the Economic and Financial Crimes Commission provided the anti-corruption legal framework with institutional and legislative robustness or solidity. Despite the gains, the anti-corruption legal framework is faced with a number of challenges. These challenges sabotage the country's efforts to extricate itself from the throes of corruption, impeding development. The challenges identified in this study include weak institutional character of anti-corruption agencies, abuse of plea bargain system, abuse of prerogative of mercy, abuse of powers of the Attorney-General, constitutional immunity, insufficient legislation, judicial stalling in form of stay of proceedings, adjournments and injunctions, and inadequate base for civil society engagement. The paper discusses how these challenges impede the fight against corruption and also liberally advance remedial measures for surmounting them. The end is that mitigating these challenges would strengthen the anti-corruption legal framework and weaken the efficacy of corruption as a hindrance to sustainable development in Nigeria. By fighting corruption better, this study posits, Nigeria's efforts at sustainable development can be bettered.

Keywords: Corruption, Development, Legal framework, Nigeria, EFCC, ICPC

1. Introduction

Corruption is a cankerworm in Nigeria.¹ It is hydra-headed and intractable, manifesting itself in diverse kinds such as kickbacks, money laundering, cheating, advanced fee fraud ('419 scam'), internet fraud ('yahoo-yahoo') and inflation of government contracts or budget figures ('padding').² Other kinds of corruption include embezzlement or misappropriation of government funds, bribery, and nepotism. Some writers have broadly categorized corruption into political corruption (or grand corruption, occurring at the highest levels of political

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¹ Iyanda David, 'Corruption: Definition, Theories and Concepts' (2012) 2(4) *AJBMR*36, 37 <[https://www.arabianjbmr.com/pdfs/OM_VOL_2_\(4\)/4.PDF](https://www.arabianjbmr.com/pdfs/OM_VOL_2_(4)/4.PDF)> accessed 12 June 2019

² Ibid 40-41; Mathew Page, 'Nigeria is Home to 500+ Kinds of Graft' *Allafrica.com* (16 August 2018) <<https://allafrica.com/stories/201808160353>> accessed 16 June 2019; Yetunde Aluko, 'Corruption in Nigeria: Concept and Dimensions' (2009) 3 *IFRA* 88

authority), bureaucratic corruption (or petty corruption, a 'low level' or 'street level' corruption occurring in public administration) and electoral corruption.³ Notwithstanding that corruption evades specificity of definition⁴ it necessarily involves impairment of integrity and an unjustified acquisition. One writer defines corruption as the misuse or exploitation of public power, position or patrimony for personal or familial benefits;⁵ another argues that corruption is the acquisition of that which the acquirer is not entitled to.⁶

Whatever perspective is adopted, the fact remains that corruption is at the root of Nigeria's development challenges. Regrettably, many Nigerians see corrupt conducts as normal, excusing it as an insurmountable evil.⁷ Nevertheless, corruption can be surmounted. And there have been legal interventions to tackle corruption in its assorted manifestations. These legal interventions only need strengthening.

In the main, this study examines the impediments to Nigeria's anti-corruption legal framework and proffer remedial solutions in a development-oriented context. The work is segmented into five sections. This first section has clarified the concept of corruption in Nigeria. The impacts of corruption on Nigeria's development would constitute section two of the study. In section three, the study examines Nigeria's anti-corruption legal framework. Section four discusses the challenges and remedies for Nigeria's anti-corruption legal framework. The conclusion is in section five.

³ Victor Dike, 'Corruption in Nigeria: A New Paradigm for Control' (2001) 2 *Africa Economic Analysis* <[https://www.academia.edu/539777/Corruption in Nigeria A new paradigm for effective control](https://www.academia.edu/539777/Corruption_in_Nigeria_A_new_paradigm_for_effective_control)> accessed 10 June 2019

⁴ This is notwithstanding –and perhaps, even more so– because corruption has received extensive attention in the public space and academic literature, with attendant varied definitions: Dike (n3)

⁵ Simeon Igbinedion, 'Workability of the Norms of Accountability and Transparency against Corruption in Nigeria' (2014) 3(1) *Afe Babalola University Journal of Sustainable Development Law and Policy* 149, 151

⁶ Sunday Aborisade, 'Most Nigerian Billionaires are Corrupt' *Sahara Reporters* (23 February 2013) <<http://www.saharareporters.com/2013/02/23/punch-newspaper-most-nigerian-billionaires-are-corrupt-akinyemi>> accessed 17 July 2019

⁷ Adekunle John, 'Corruption' *Vanguard* (9 September 2018) <<https://www.vanguardngr.com/2018/09/corruption-has-become-a-bit-more-culturally-acceptable-in-nigeria/>> accessed 5 July 2019

2. Impact of Corruption on Nigeria's Development

Corruption has been described as the bane of socio-economic development, the cause of governance failure and a danger to the progressive functioning of the Nigerian state.⁸ Corruption has a long history in Nigeria.⁹ It has been traced to the country's formation and colonial rule.¹⁰ It became more evident during decolonization, as private accumulation became a feature of political governance.¹¹ During the First Republic, corruption was palpable as some of the new political elite saw their ascendancy to power as opportunity to exploit state resources for private capital accumulation.¹² This persisted in successive regimes. Although, President Obasanjo (1999-2007) spearheaded the most holistic and enduring anti-corruption reforms in Nigeria by enacting the Corrupt Practices (and other related offences) Act and the Economic and Financial Crimes Commission Act, the menace of corruption has persisted to date.¹³

Corruption in Nigeria is characterized by the ascendancy of irrational and greed-induced embezzlement of public resources over values of accountability, probity and transparency. One resultant impact is the subversion of the country's public institutions, impacting social-economic development. Corruption incapacitates the institutions from efficiently performing designed roles, thereby damaging substantive interests and endangering the lives of citizens.¹⁴ For example, food insecurity continues to bite millions of citizens at a time when 49% of young people

⁸ Seyi Olumide, 'Insecurity, inequality, corruption, bane of Nigeria's growth' *Guardian Nigeria* (4 November 2018) <<https://guardian.ng/news/insecurity-inequality-corruption-bane-of-nigerias-growth-syas-lm-presidential-candidate/amp>> accessed 16 September 2019

⁹ For a fairly detailed discussion on history and impact of corruption, see 'Mohammed Lawan' (PhD Thesis, University of Warwick 2008) 126-164 <http://wrap.warwick.ac.uk/1992/1/WRAP_THESIS_Lawan_2008.pdf> accessed 12 August 2019

¹⁰ Segun Osoba, 'Corruption in Nigeria: Historical Perspectives' (1996) 23(69) *Review of African Political Economy* 371, 372 <<https://www.jstor.org/stable/4006378>> accessed 26 October 2019

¹¹ Robert Tignor, 'Political Corruption in Nigeria before Independence' (1993) 31(2) *Journal of Modern African Studies* 175, 176 <<https://www.jstor.org/stable/161001>> accessed 24 October 2019

¹² Osoba (n10) 374-375; Michael Ogbeidi, 'Political Leadership and Corruption in Nigeria' (2012) 1(2) *Journal of Nigeria Studies* 7 <https://s3.amazonaws.com/academia.edu.documents/32370272/Political_leadership.pdf> accessed 23 July 2019

¹³ Olu Awofeso and Temitayo Isaac Odeyemi, 'The Impact of Political Leadership and Corruption on Nigeria's Development' (2014) 7(5) *Journal of Sustainable Development* 246 <<http://dx.doi.org/10.5539/jsd.v7n5p240>> accessed 2 October 2019; Dimeji Akinloye 'US says "massive corruption" is evident' *Pulse* (24 April 2018) <<https://www.pulse.ng/news/local/us-says-massive-corruption-is-evident-under-buhari-id8298644.html>> accessed 3 October 2019

¹⁴ Osoba (n10) 384

are either unemployed or underemployed.¹⁵ Also, governments are unable to pay salaries and pensions because funds for such have been diverted through corrupt practices.¹⁶ This invariably leads to another form of corruption -bureaucratic corruption- as the public servants exploit their public offices to make extra-incomes that would augment their meager, irregular or non-existent income as well as plan for their retirement. Consequently, the public service in Nigeria has become characterised by gross inefficiency and lack of a culture of accountability.¹⁷

Corruption is a hindrance to Nigeria's quest to attain sustainable development.¹⁸ The literature¹⁹ has established corruption's deleterious effect on sustainable development in Nigeria. In consequence, today, almost 60 years after independence, the country grapples with underdevelopment. Corruption has negatively affected Nigeria's economic growth to the tune of more than \$1 billion reduction in Gross Domestic Product (GDP) on the average.²⁰ The economic

¹⁵ Oxfam, 'Inequality in Nigeria' (2017) 5

<https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/cr-inequality-in-nigeria-170517-en.pdf> accessed 2 October 2019

¹⁶ BudgIT, '20 states owe salaries, pensions' *Punch* (June 6, 2017) <<https://punchng.com/20-states-owe-pensions-salaries-budgit/>> accessed 10 October 2019; Victor Ahiuma-Young, '35 states can't pay salaries' *Vanguard* (25 February, 2018) <<https://www.vanguardngr.com/2018/02/35-states-cant-pay-salaries-labour-laments/>> accessed 25 October 2019

¹⁷ Hussainatu Abdullahi, Yahaya Abdullahi and Mohammed Yelwa, 'Corruption in Nigeria: Towards a New Paradigm for Effective Democratic Governance' (2012)3(1) *Academic Research International* 243, 248 <[http://www.savap.org.pk/journals/ARInt./Vol.3\(1\)/2012\(3.1-30\).pdf](http://www.savap.org.pk/journals/ARInt./Vol.3(1)/2012(3.1-30).pdf)> accessed 14 October 2019

¹⁸ Transparency International, 'No Sustainable Development without Tackling Corruption' <https://www.transparency.org/news/feature/no_sustainable_development_without_tackling_corruption_SDG_16> accessed 6 October 2019

¹⁹See for example, Mamman Lawan, 'Underdevelopment, Corruption and Legal Disorder in Nigeria' (2012) 75 *NIALS Journal of Law and Public Policy*, 91-95; Oluwaseun Bamidele, 'Corruption, Conflict and Sustainable Development' (2013) 13(1) *The African Symposium* 42, 47-48; Stanslaus Nyemba 'Corruption: A Stumbling Block Towards Development' (LL.M Theses, University of Melbourne 2014) <https://www.academia.edu/27989157/CORRUPTION_A_STUMBLING_BLOCK_TOWARDS_DEVELOPMENT_IN_AFRICA> accessed 12 August 2019

²⁰ Ezeanyi Clement and Rowland Obiakor, 'Corruption and Economic Development in Nigeria' (2015) 8 (1) *Continental Journal of Social Sciences* 34, 39 <https://www.academia.edu/13392270/CORRUPTION_AND_ECONOMIC_DEVELOPMENT_IN_NIGERIA_AN_ECONOMETRIC_ANALYSIS> accessed 15 October 2019

situation particularly appears bleak, and experts have reported that if not tackled, corruption could cost Nigeria up to 37% of GDP by 2030.²¹

The effect of corruption is evident in the social, economic and environmental components of sustainable development.²² On the economic front, by allowing inefficient producers to remain in business, and encouraging governments to pursue perverse economic policies, corruption has distorted the character of government expenditure, impacting the sustainability of economic development.²³ Also, corruption raises the operational cost of doing business and creates uncertainty for investors.²⁴ On the social front, corruption has led to a general state of hopelessness among Nigerians who have resigned to fate, see corrupt conducts as normal, excuse it as insurmountable evil, and accept it as part of an inevitable part of Nigerian culture, colloquially, the Nigerian factor.²⁵ The neglect and dilapidation of public infrastructure and the misallocation of resources meant for environmental protection impacts environmental component of the sustainable development because they undermine attempts by Nigeria to safeguard the environment for the present and future generations.²⁶

Furthermore, corruption has given Nigeria a bad image in the comity of nations. For example, Nigeria has an established notoriety for computer related fraud, colloquially known as ‘yahoo-yahoo’ or internationally, Nigerian scam.²⁷ In *AG Ondo State v AG Federation*²⁸ the Supreme Court lamented that ‘In foreign countries, Nigerians are regarded and treated as corrupt people... Nigerians are subjected to degrading and inhuman treatment, and treated as pariahs on the ground

²¹ PwC, ‘Impact of Corruption on Nigeria’s Economy’ 13 <<https://www.pwc.com.com/ng/en/press-room/impact-of-corruption-on-nigeria-s-economy.html>> accessed 5 October 2019

²² Igbinedion (n5) 154

²³ John Mukum Mbaku, ‘Bureaucratic Corruption in Africa’ (1996) 16(1) *Cato Journal* <<https://dlc.dlib.indiana.edu/dlc/bitstream/handle/10535/3186/Vol.pdf?sequence=1&isAllowed=y>> accessed 12 September 2019

²⁴ Kwabena Gyimah-Brempong,, ‘Corruption, Economic Growth, and Income Inequality’ (2002) 3 *Economics of Governance* 183 <<https://doi.org/10.1007/s1010102000451>> accessed 11 September 2019

²⁵ Adekunle John ‘Corruption’ *Vanguard News* (9 Sept 2018) <<https://www.vanguardngr.com/2018/09/corruption-has-become-a-bit-more-culturally-acceptable-in-nigeria/>> accessed 2 October 2019

²⁶ Igbinedion (n5) 154

²⁷ Monica Whitty, ‘Pathways to Cyber-Fraud Criminality’ (2018) 12 (1) *International Journal of Cyber Criminology* 97 <<https://www.cybercrimejournal.com/WhittyVol12Issue1IJCC2018.pdf>> accessed 14 September 2019

²⁸ (2002) 27 WRN 1

that they... hail from the most corrupt country of the world.' Additionally, Nigeria consistently appears in the lower rungs of the Transparency International's Corruption Perception Index. In 2018, Nigeria scored 27/100 to rank 148 out of 180 countries, meaning Nigeria is one of the most corrupt countries of the world.²⁹ This tarnished image means that the international business community regards Nigeria as a sinkhole that swallows their money.³⁰ The bad image results in monumental development let downs for Nigeria, investment-wise.³¹

On another level, corruption has endangered effective democratic governance for sustainable development in Nigeria.³² Good governance, - i.e., governance that is participatory, transparent, accountable, effective, equitable, and rule of law oriented- ensures that socio-political and economic priorities are based on broad consensus within the state for the greatest welfare of citizens.³³ Corruption imperils such good governance by creating legitimacy gap (ineffective governance, usually arising from fraudulent electoral process, with no credible mandate), capacity gap (as institutions of government are unable to judiciously utilize state resources towards provision of effective and essential needs and services) and security gap (as corruption in the Nigerian security architecture and attendant ill-equipment of security outfits and poor remuneration and welfare, results in perpetuation of insecurity).³⁴

A significant impact of corruption on Nigeria's development is that it has provided the impetus for the prevalence of poverty in the country.³⁵ Corrupt diversion of resources by the political leadership has made it impossible for the government to translate the availability of resources to improved quality of life for Nigerians.³⁶

²⁹ Transparency International, 'Corruption Information' <<https://www.transparency.org/country/NGA>> accessed 5 October 2019

³⁰ Abdullahi, Abdullahi and Yelwa (n17) 243

³¹ The link between corruption and negative investment is well documented. See for example Fabayo Joesph, Sunday Mauton and Obisanya Adesile, 'Corruption and Investment in Nigeria' (2011) 2 (4) *JESD* <<https://iiste.org/Journals/index.php/JEDS/article/view/347/0>> accessed 15 October 2019

³² Lanre Olu-Adeyemi, 'Governance, Corruption and the Democratic Order in Africa' (2017) 5(4) *GJPSA* 30, 44 <<http://www.eajournals.org/wp-content/uploads/Governance-Corruption-and-the-Democratic-Order-in-Africa-The-Case-of-Nigeria.pdf>> accessed 13 October 2019

³³ Abdullahi, Abdullahi and Yelwa (n17) 244

³⁴ Ibid 246

³⁵ Acho Orabuchi, 'Corruption perpetuates poverty and inequality' *Sunnewsonline* (10 October 2016) <<http://sunnewsonline.com/corruption-perpetuates-poverty-and-inequality/amp>> accessed 5 October 2019

³⁶ Clement and Obiakor (n20) 38

For example, despite the massive petro-dollars from crude oil exports, more than 70 percent of Nigerians are still classified as poor.³⁷ Also, between 2004 and 2010, the number of people living in poverty increased from 69 million to 112 million.³⁸ Corruption-induced poverty in Nigeria has peaked -with an estimated 87 million people as at May, 2018, the country is now reputed to be housing the largest number of the most extreme poor people in the world.³⁹ Indeed, the World Poverty Clock reports that extreme poverty in Nigeria is growing at an alarming rate of six people every minute.⁴⁰

Related to the scourge of poverty, corruption has fueled economic inequality.⁴¹ OXFAM reports that poverty and inequality in Nigeria are not due to lack of resources but the ill-use and misappropriation of such resources.⁴² Corruption-induced inequality has resulted in a situation where Nigeria is left to concurrently straddle two economic worlds: the country becomes too rich to be poor and too poor to be rich. The scourge of inequality bites harder on women, and in the 2016 Global Gender Gap Report, Nigeria ranked behind at 118th out of 144 countries, as Nigerian women navigate massive challenges.⁴³ Nigeria's corruption-induced poverty and inequality is paradoxical as the humongous wealth of the political elite seems to exist to mock the unspeakable mass poverty and misery of majority of the citizens.⁴⁴ This calls for serious concern and policy action. Nigeria must remedy the challenges of corruption, and build a new socio-economic and political order that can facilitate sustainable development.

³⁷ Ogbeidi (n12) See also Awofeso and Odeyemi (n13)

³⁸ Ibid. See also Emmanuel Akinwotu and Sam Olukoye, 'Shameful Nigeria doesn't care about inequality' *The Guardian* (July 18 2017) <<https://amp.theguardian.com/inequality/2017/jul/18/shameful-nigeria-doesnt-care-about-inequality-corruption>> accessed 2 October 2019

³⁹ Rejoice Ewodage, 'Nigeria Overtakes India in World's Extreme Poverty Ranking' *Channels TV* (25 June 2018) <<https://www.channelstv.com/2018/06/25/nigeria-overtakes-india-in-worlds-extreme-poverty-ranking/>> accessed 30 October 2019

⁴⁰ *ibid*

⁴¹ Japhet Omojuwa, 'Legitimised corruption fuels inequality' *The Cable* (20 Oct 2017) <<https://www.thecable.ng/legitimized-corruption-fuels-inequality>> accessed 1 November, 2019

⁴² Oxfam (n15): Between 1960 and 2005, about \$20 trillion was stolen from the treasury by public office holders.

⁴³ *Ibid*

⁴⁴ Osoba (n10) 383

3. Nigeria's Anti-Corruption Legal Framework: A Snapshot

Prior to 1999, successive governments in Nigeria constituted commissions or panels of enquiries as anti-corruption strategy.⁴⁵The governments also enacted anti-corruption legislation. While some of these laws have been repealed or reviewed, others are extant. The legislation include the following:

- i) Advance Fee Fraud and Other Related Offences Decree⁴⁶ which deals with corrupt practices involving cheating by deception or obtaining by false pretence.
- ii). Code of Conduct Bureau and Tribunal Decree⁴⁷ which established the Code of Conduct Bureau and Code of Conduct Tribunal.
- iii). Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree⁴⁸ which deals with financial malpractices and corrupt practices relating to failed banks.
- iv). Foreign Exchange (Miscellaneous Provisions) Decree⁴⁹ which proscribes various forms of corrupt practices relating to foreign exchange.
- v). Money Laundering Decree⁵⁰ which criminalizes various conducts amounting to money laundering.
- vi). Miscellaneous Offences Decree⁵¹ which proscribes a miscellany of corrupt practices.

Quite apart from these subject-specific laws, the Penal Code⁵² applicable in Northern Nigeria and the Criminal Code⁵³ applicable in Southern Nigeria, as general laws proscribing miscellany of criminal conducts, contain ample provisions adopted for fighting corruption. Some of the relevant anti-corruption provisions in these codes are theft/stealing and criminal breach of trust/criminal misappropriation. The provisions on stealing in section 390 Criminal Code and theft in section 287 Penal Code are utilized to prosecute the corrupt practices of embezzling or looting state funds. The offences essentially proscribe the conduct

⁴⁵ Nnamdi Nwaodu, David Adam and Okechukwu Okereke, 'A Review of Anti-Corruption Wars In Nigeria'(2014) 2(3) *APSDPR*152, 156<<https://doi.org/10.4102/aspdr.v2i3.63>> accessed 10 November 2019

⁴⁶ Decree No. 13 of 1995

⁴⁷ Cap C15 LFN 2004

⁴⁸ Cap F2 LFN 2004

⁴⁹ Cap F34 LFN 2004

⁵⁰ No 3 of 1995; The Decree was superseded by Money Laundering (Prohibition) Act Cap M18 LFN 2004 which was also superseded by Money Laundering (Prohibition) (Amendment) Act 2012

⁵¹ Cap M17 LFN 2004

⁵² Cap P3 LFN 2004

⁵³ Cap C38 LFN 2004

of dishonestly moving or taking property (resources) belonging to another (the state) without consent. Adapted for anti-corruption purposes, it would amount to criminal breach of trust under section 311 Penal Code, for a public officer entrusted with state property or funds to dishonestly misappropriate or convert to their own use or to use or dispose of such property, contrary to the trust. However, where the state property was not held under trust, the charge is for criminal misappropriation under section 308 Penal Code. Either way, the provisions ensure that persons entrusted with state resources or who come into custody of state resources do not corruptly enrich themselves with same.

The offence of gratification under sections 115, 116 and 118 of the Penal Code, which is similar to the offence of bribery of public official under the Criminal Code, is also a relevant corruption offence. Other sections of the Penal Code creating corruption offences include section 320 on cheating and section 291 on extortion. For the Criminal Code, we have sections 98, 98A and 98B relating the offence of bribery, section 419 on obtaining by false pretence, section 421 on cheating, and sections 99 and 408 on extortion.

From 1999, the government introduced more potency into the anti-corruption fight.

This was by enacting ICPC Act and EFCC Act.⁵⁴ Consequently, robust anti-corruption institutions, namely ICPC and EFCC were established. This marked a watershed in the anti-corruption legal framework in Nigeria as it was the first time, from legislation and institutional perspective, that serious specific attention was placed on the anti-corruption issue. The ICPC and EFCC are established as enduring and structurally solid anti-corruption institutions.

Under section 10 of ICPC Act, the ICPC has the general duty to investigate and prosecute persons accused of engaging in corrupt practices proscribed under the Act or any other law prohibiting corruption. The corrupt practices proscribed under ICPC Act include gratification; corrupt offers; fraudulent acquisition of property; bribery; and using office or position for gratification among others.⁵⁵

Section 42 of ICPC Act provides for investigation of allegations of corruption made against the President or Vice President of Nigeria or any State Governor or Deputy

⁵⁴ Cap C31 and CE1 LFN 2004 respectively. See Daniel Agbibo, 'Between Corruption and Development: The Political Economy of State Robbery Nigeria' (2012) 108(30) *JBE* 325, 338 <<https://www.jstor.org/stable/414762988>> accessed 22 October 2019

⁵⁵ ss12-22

Governor.⁵⁶ Where such an allegation is made, the Chief Justice of Nigeria shall, if satisfied that sufficient cause has been shown, authorize an independent counsel to investigate and make a report to the National Assembly (in relation to the President or the Vice President) or the state House of Assembly (in relation to Governor or Deputy Governor).⁵⁷ No doubt, the ICPC regime represents a massive advancement in the anti-corruption legal framework. Nevertheless, the ICPC has failed to curb the menace of corruption in Nigeria. In this regard, it is reported that the regime has not substantially addressed the scourge of corruption in Nigeria.⁵⁸

The EFCC Act is a legislative and institutional mechanism for combating the scourge of corruption in Nigeria. Section 1 thereof empowers the agency to enforce all laws dealing with economic and financial crimes in Nigeria. Section 6 provides the detailed ambit of EFCC's functions. To effectively undertake these functions, section 7 imbues EFCC with special investigative powers. The EFCC is also empowered to act as coordinating agency in enforcement of special and general laws relating to economic and financial crimes. These laws include the Criminal Code, the Penal Code, the Money Laundering Act, the Advance Fee Fraud Act, the Failed Banks Act, the Banks and Other Financial Institutions Act, and the Miscellaneous Offences Act. The EFCC also has powers in relation to forfeiture of property, seizure of property, and freezing order on banks, among others.⁵⁹

The EFCC Act itself contains criminal law provisions. Section 14 creates offences relating to financial malpractices; Section 17 proscribes retention of proceeds of criminal conduct; Section 18 deals with offences relating to economic and financial

⁵⁶ s308 of 1999 Constitution provides that these persons are immune from criminal prosecutions during the term of their office. But immunity from prosecution is not immunity from investigation. The Supreme Court in *Gani Fawehinmi v Inspector General of Police* (2002) 23 WRN 1 held that they can be investigated for alleged crimes. Indeed, these investigations may lead to their impeachment or removal from office and consequent prosecution. See Femi Falana, 'Fayose's immunity has limits' *Thecable.ng* (20 August 2018) <<https://www.thecable.ng/fayoses-immunity-limits>> accessed 14 November 2019

⁵⁷ This is apt for the corruption scandal involving Governor Abdullahi Ganduje of Kano State. See Egunoluwa Olafusi, 'Kano Assembly bows to pressure, suspends probe of Ganduje' *Thecable.ng* (13 November 2018) <<https://www.thecable.ng/kano-assembly-bows-to-pressure-suspends-probe-of-ganduje>> accessed 15 November 2019; Recourse could be had to section 42 ICPC Act to investigate the allegation

⁵⁸ Osaretin Aigbovo and Lawrence Atsegbua, 'Nigerian Anti-corruption Statutes: An Impact Assessment' (2012) 16(1) *JMLC* 62,67 <<https://doi.org/10.1108/13685201311286869>> accessed 15 October 2019

⁵⁹ ss20-23, 26 and 34.

crimes. Hearteningly, it is reported that the EFCC has been very active in the investigation and prosecution of public officers who embezzle public funds, chief executives and other officials of banks who engage in money laundering and other frauds, as well as fraudsters who engage in advance fee fraud ('yahoo-yahoo' or '419').⁶⁰ Notwithstanding, there are criticisms that EFCC flouts due process in its operations, is selective and that it often exceeds its powers.⁶¹

4. Nigeria's Anti-Corruption Legal Framework: Problems and Solutions

Despite the relative robustness and institutional solidity introduced to Nigeria's anti-corruption legal framework by the enactment of ICPC and EFCC Acts, a number of issues still persist. These issues constitute challenges besetting the effectual working of the framework and account for Nigeria's failure in curbing corruption. In this section, these issues are discussed as challenges, and remedial solutions to ameliorate them, suggested.

4.1 Weak Institutional Character of Anti-Corruption Agencies

The enforcement process in Nigeria's anti-corruption matrix is entrapped by the prevalent corrupt socio-political climate⁶² as the anti-corruption agencies are institutionally weakened. The agencies are often embodied as agents of the ruling political elite⁶³ whereby they routinely protect the elites' ad-hoc interests.⁶⁴ Consequently, political opponents complain that fight against corruption is a witch-hunt and selective.⁶⁵ Also, section 43 of the EFCC Act empowers the Attorney-General of the Federation to make rules or regulations with respect to the functions

⁶⁰ Richard Onuigbo, 'Analyses of Legal Frameworks for Fighting Corruption in Nigeria(2015) 5(3)*AJBMR* 16 <https://www.arabianjbm.com/pdfs/KD_VOL_5.3.pdf> accessed 11 November, 2019

⁶¹Ibid 17; Nwaodu, Adam and Okereke (n45); Olujobi O, 'Legal Framework for Combating Corruption in Nigeria – the Upstream Petroleum Sector' (2017) 8(3) *JARLE* 956, 974 <[https://doi.org/10.14505/jarle.v8.3\(25\).33](https://doi.org/10.14505/jarle.v8.3(25).33)> accessed 10 November 2019

⁶² Olayinka Akanle and J. Adesina, 'Corruption and Nigerian Development Quagmire' (2015) 31(4) *Journal of Developing Societies* 421, 435 <<https://doi.org/10.1177/0169796X15590323>> accessed 20 November 2019

⁶³ Ibid

⁶⁴ During President Obasanjo's tenure (1999-2007), EFCC spearheaded impeachments of governors not aligned with his political interests: Charles Kumolu, 'Impeachment as a Crude Weapon' *Vanguard* (22 July 2014) <<https://www.vanguardngr.com/2014/07/impeachment-crude-weapon-nigerian-experience/amp/>> accessed 23 November 2019

⁶⁵Olu-Adeyemi (n32) 40; Henry Umoru 'Witch-hunt: Jafaru Isa's Vindicates Us' *Vanguard* (20 January 2016) <<https://www.vanguardngr.com/2016/01/witch-hunt-jafaru-isas-release-vindicates-us-pdp/amp/>> accessed 23 November 2019

of the EFCC, giving him, sufficient latitude to interfere in the functioning of the EFCC.⁶⁶

Resulting from gaps in procedure for their appointment and removal, there is lack of security of tenure for heads of anti-corruption agencies.⁶⁷ Section 3 ICPC Act provides for five year tenure for ICPC Chairman. By section 3 EFCC Act, the tenure of EFCC Chairman is four years. But the President may remove them before the expiration of their tenures for inability to discharge the functions of their office or for misconduct. Removing ICPC Chairman requires approval of two-thirds majority of members of Senate, but no such requirement exists for EFCC Chairman. In practice, the power of removal has been abused as whenever EFCC Chairman fails to advance political interests of the President or President's associates, he is unceremoniously removed.⁶⁸ The result is that high-profile political cases are never successfully prosecuted once political heavyweights interfere as the EFCC often operates as a political appendage with its role lopsided.⁶⁹ Worryingly, the Presidency is advancing an argument that even the appointment of EFCC Chairman is not subject to Senate approval.⁷⁰ This would further weaken the EFCC's institutional character.

We recommend the boosting of the institutional character of anti-corruption agencies by providing better security of tenure of office of their heads. Legislative intervention is also required to introduce provisions that imbue the agencies with independence and insulate them from political interference. One recommendation is that the powers of appointment of heads of anti-corruption agencies should be vested in the National Judicial Council who will make recommendations to the

⁶⁶ Chijioko Kelechi Iwuamadi (2016) 'Nigeria' in *Effectiveness of Anti-corruption Agencies in West Africa* (2016) A Review by OSIWA 157, 162 <<http://www.osiwa.org/wp-content/uploads/2016/12/ACC-West-Africa-ENG.pdf>> accessed 14 November 2019

⁶⁷ Igbinedion (n5) 160

⁶⁸ Abubakar Sale, 'EFCC Bosses: The Face of Anti-graft Campaign' *DailyTrust* (12 March 2015) <<https://www.dailytrust.com.ng/news/general/efcc-bosses-the-faces-of-anti-graft-campaign/118735>> accessed 23 November, 2019; Oscar Onwuemanyi 'EFCC Chairmanship and the Dust' *Vanguard* (27 November 2011) <<https://www.vanguardngr.com/2011/11/efcc-chairmanship-and-the-dust/>> accessed 24 November, 2019; Igbinedion (n5) 160: Nuhu Ribadu, was removed as EFCC Chairman just two weeks after EFCC arrested Governor James Ibori, a member of the political elite

⁶⁹ Akanle and Adesina (n62) 435

⁷⁰ Taiwo George, 'Magu Doesn't Need Senate Confirmation' *TheCable* (12 April 2017) <<https://www.thecable.ng/im-fully-support-magu-says-osinbajo/amp>> accessed 25 November 2019

Council of States for approval.⁷¹ Another method is to provide stringent procedure for removal of the heads, such as that it must be supported by resolution of two-thirds, or even four-fifths of the majority of the members of the Senate. Also, through activism and advocacy, the habitual interference with the mandate of the agencies by political heavyweights can be checked or curtailed.

4.2 Constitutional Immunity

Under section 308 of the 1999 Constitution, persons occupying office as President, Vice President, Governor or Deputy Governor are conferred with immunity from criminal proceedings during their term of office. This immunity suspends right of action against them until after their tenure.⁷² The rationale for immunity is to afford them stability to effectively perform their functions.⁷³

Generally, it is expected that persons occupying these exalted offices have high integrity. However, experience has shown that state governors routinely abuse their offices and engage in varied corrupt schemes.⁷⁴ This is evident in the huge number of criminal proceedings that have been instituted against former governors.⁷⁵ With such statistics, it is arguable that immunity is undeserved, and an impediment to anti-corruption efforts. Immunity affords these corrupt governors ample time and opportunity to cover up their criminalities and at the expiration of their tenure, relevant evidence or witnesses to prosecute them becomes tampered with or unavailable.⁷⁶

We submit that the immunity clause should be amended to provide clear instances where immunity may be suspended in deserving corruption cases. This is not anything new. In Guatemala, the President can be stripped of immunity whenever there is compelling allegations of corruption.⁷⁷ This should condition office-holders

⁷¹ OSIWA Nigeria Report (n66) 158

⁷² *Hassan vs Aliyu* (2010) All FWLR (Pt. 539) 1007

⁷³ *Alamieyeseigha vs Yeiwa* (2001) FWLR (Pt. 50) 1676

⁷⁴ Abdullahi, Abdullahi and Yelwa (n17) 250

⁷⁵ Fatai Sowunmi, Muniru Adesola and Mudashiru Salako, 'An Appraisal of Performance of Economic and Financial Crimes Commission' (2010) 54(6) *IJOTCC* 1047 <<https://doi.org/10.1177/0306624X09341043>> accessed 20 November 2019

⁷⁶ Anna Markovska and Nya Adams 'Political Corruption and Money Laundering Nigeria' (2015) 18(2) *JMLC* 169, 178 <<https://doi.org/10.1108/JMLC-10-2014-0040>> accessed 1 November 2018

⁷⁷ Sofia Menchu 'Prosecutors attempt to strip Guatemala's president of immunity' *Reuters* (10 August 2018) <<https://www.reuters.com/article/us-guatemala-corruption/prosecutors-again-attempt-to-strip-guatemalas-president-of-immunity-idUSKBN1KW01X>> accessed 12 November 2019

to desist from abusing their offices. As we await legal reform, we can utilize extant provisions to work around the challenge. Under section 42 ICPC Act, an independent counsel can be appointed to investigate allegations of corruption against persons otherwise enjoying immunity. This provision is apt for the allegation of corruption against Governor Abdullahi Ganduje of Kano State.⁷⁸ Moreover, the Supreme Court in *Fawehinmi v IGP*⁷⁹ held that the immunity clause does not preclude anti-graft agencies from investigating persons enjoying constitutional immunity. Based on this decision, ICPC and EFCC were able to investigate serving governors between 1999 and 2007.⁸⁰

4.3 Powers of The Attorney-General

The offices of Attorney-General of the Federation ('AGF') and Attorneys-General for state ('AGS') are created by sections 150 and 195 of the 1999 Constitution respectively. Sections 174 and 211 of the Constitution grants the AGF and AGS, enormous powers in respect of the criminal justice system, anti-corruption legal framework included. These powers are to:

- a. institute criminal proceedings before any court of law in Nigeria except court martial;
- b. take over and continue any criminal proceedings instituted by any other authority or person; and
- c. discontinue, at any stage before judgment is delivered, any criminal proceedings.

These powers are absolute and not subject to judicial interference, as in exercising the powers, the Attorney-General is not bound to give any reason or justification to the court.⁸¹ Expounding further, the Supreme Court in *State v Ilori*⁸² stated that "The Attorney-General is a master unto himself, law unto himself and under no control whatsoever, judicial or otherwise, in relation to his powers." Regrettably, Attorneys General are susceptible to abuse their enormous powers especially because they also double as political minister or commissioner.

⁷⁸ Samuel Ogundipe 'Kano governor Ganduje caught receiving dollars from contractors' *Premium Times* (14 October 2018) <<https://www.premiumtimesng.com/news/headlines/290358-kano-governor-ganduje-caught-on-video-receiving-dollars-from-suspected-contractors.html>> accessed 2 November, 2019

⁷⁹ (2002) NWLR (Pt. 767) 606

⁸⁰ Richard Eme and Okechukwu Innocent 'Analyses of Legal Frameworks for Fighting Corruption in Nigeria' (2015) 5(3) *AJBR* 21

⁸¹ *Abubakar Audu v AG Federation* (2013) 8 NWLR (Pt 1355) 175, 189

⁸² (1984) 5 NCLR 40

The most notoriously abused power is the power to discontinue proceedings, commonly known as *nolle prosequi* or simply *nolle*. One of the early signs of abuse of *nolle* power in the current dispensation was in 2002 when Kanu Agabi as AGF, filed a *nolle* and terminated the corruption case against a former Permanent Secretary, for which he was queried by President Obasanjo, his appointor.⁸³ Succeeding AGF's have also abused the power. For example, within the last eight months of his tenure as AGF, Mohammed Adoke discontinued about 25 high profile cases, including Halliburton, National Electricity Regulatory Commission, Police Equipment Fund and Siemens scandals.⁸⁴

The power of taking over criminal proceedings has also been abused whereby the AGF takes over cases as smokescreen to frustrate prosecution of privileged persons and political elites.⁸⁵ Former AGF, Michael Aondoakaa, on assuming office issued an order directing EFCC to hand over its files after investigation to his office, going on to frustrate prosecution.⁸⁶ Aondoakaa's successors, Adoke and Malami, have also shown the same penchant to take-over corruption cases from anti-corruption agencies especially where it involved privileged or politically exposed persons.⁸⁷ To worsen an already bad situation, section 34 of EFCC Act empowers the AGF to make rules and regulations for the exercise of duties and functions of the EFCC, effectively granting the AGF extended latitude to interfere in the functions of the EFCC.

We recommend activism and advocacy as measures to keep erring AGF's in check. We also suggest that the Nigerian Bar Association (through its Legal Practitioners Disciplinary Committee), the Body of Senior Advocates of Nigeria, and the Legal Practitioners Privileges Committee (as in Aondoakaa's case)⁸⁸ should liberally exercise their disciplinary powers on AGs that abuse their powers. Fundamentally

⁸³John Tanko 'Makanjuola Fraud Affair' *Nigerian Muse* (28 December 2006) <https://www.nigerianmuse.com/nigeriawatch/officialfraud/?u=Makanjuola_fraud_affair.htm> accessed 2 October 2019

⁸⁴Yekeen Nurudeen 'How Nigeria's Attorney-General Works Against Anti-Corruption' *Sahara Reporters* (22 April 2017) <<http://www.saharareporters.com/2017/04/22/how-nigeria%E2%80%99s-attorney-general-works-against-anti-corruption-war-icirigeria>> accessed 2 October 2019

⁸⁵OSIWA Nigeria Report (n66) 157

⁸⁶Eme and Innocent (n80) 22

⁸⁷Ibid

⁸⁸Innocent Anaba, "Aondoakaa: Burden on Legal Practitioners' Privileges Committee" *Vanguard* (10 October 2010) <<https://www.vanguardngr.com/2010/10/aondoakaa-burden-on-legal-practitioners%E2%80%99-privileges-committee/>> accessed 2 October 2019

though, we recommend that the office of the Attorney-General as Chief Law Officer should be separated from the office of the Minister of Justice as a politician and cabinet member.

4.4 Prerogative of Mercy

Prerogative of mercy refers to the constitutional powers of the President or Governor to grant pardon or any such remission to a convicted person.⁸⁹ Corruption offences involve dishonesty. Under Nigeria's electoral laws, persons convicted of such offences are prohibited from running for office for 10 years.⁹⁰ However, the legal effect of pardon is to free such persons from all liabilities and disabilities flowing from the conviction as they are thereby completely cleansed of that ignominy.⁹¹

As a special kind of power held in public trust, it ought to be exercised with the highest sense of responsibility.⁹² Regrettably, the penchant is for President or Governor to use it for political purposes, contrary to anti-corruption interest. For example, there was no plausible reason why President Jonathan granted pardon to D.S.P Alamiyeseigha, rather than because he was his kinsman and ex-boss.⁹³ Abuse of this prerogative can dampen morale of anti-corruption agencies, and the judiciary. It also sends a message that with the right political connections, one can loot all he can and would get pardon if and when convicted.

We recommend that notwithstanding that the word "prerogative" connotes wide discretion, that the prerogative of mercy provision should nevertheless be reviewed to forbid its exercise in relation to persons convicted of corruption. Alternatively, the review should streamline and make rigid, the conditions for grant of pardon in such cases. Similarly, concerted activism and advocacy can also help stem abuse of prerogative of mercy.

⁸⁹ ss175 and 212 of the Constitution

⁹⁰ s182(1)(e) of the Constitution

⁹¹ Frank Agbedo 'Presidential Pardon under the Constitution' *The Nation* (19 March 2013) <<https://thenationonlineng.net/presidential-pardon-under-the-constitution/>> accessed 4 November 2019

⁹² Ibid

⁹³ Mark Olaide, 'PardonGate: New Document Confirms Shehu Yar'adua was pardoned in 1988' *Sahara Reporters* (15 March 2013) <<http://saharareporters.com/2013/03/15/pardongatenew-document-confirms-shehu%20yar%E2%80%99adua%C2%A0was-pardoned-1998>> accessed 5 November 2019

4.5 Insufficient Legislation

To effectively curb corruption, there must be adequate legislative provisions to criminalize and appropriately punish its varied manifestations. Unfortunately, while corrupt practices become more sophisticated as its practitioners invent new strategies to meet the dynamic nature of society, criminal legislation lags.⁹⁴ For example, until the 2011 Evidence Act, there were challenges with admissibility of electronic evidence in court, impeding effective prosecution.

Additionally, the Penal Code and Criminal Code, which forms bulk of the provisions to prosecute corrupt practices, are near obsolete.⁹⁵ These laws yearn for revision as they are inadequate for the dynamism of corruption.⁹⁶ One area of this inadequacy is the insufficient sentencing provisions of the Penal Code.⁹⁷ For example, the punishment for criminal misappropriation under section 309 Penal Code is imprisonment for a term which may extend to two years or fine, meaning that imprisonment for one day or fine of one naira is legally permissible. This kind of sentencing provisions permeates the whole law and generally, the judge is allowed wide discretion in sentencing. Because of such lax provisions, the pension thief, John Yusuf, who was convicted for embezzling about N33 billion was “legally” able to get away with two years imprisonment or payment of fine.⁹⁸

We recommend the review of the Criminal Code and Penal Code to keep pace with the dynamism and sophistication of corrupt practices in the country. Additionally, there is need for sentencing guidelines so as to sufficiently provide dynamic sentences for varied manifestations of corrupt practices. All necessary legislative reviews for giving teeth to the criminal justice administration should be intensified.

⁹⁴ Akume Albert, ‘Combating Corruption in Nigeria and Constitutional Issues’ (2016) 23(4) *Journal of Financial Crime* 708 <<https://doi.org/10.1108/JFC-07-2015-0034>> accessed 6 November 2019

⁹⁵ Ikechukwu Nnochiri, ‘Laws regulating criminal trials in Nigeria are archaic- CJN’ *Vanguard* (18 March 2015) <<https://www.vanguardngr.com/2015/03/laws-regulating-criminal-trials-in-nigeria-archaic-cjn/amp/>> accessed 10 November 2019

⁹⁶ Ikechukwu Nnochiri ‘Criminal Justice System in Nigeria Obsolete, says NBA’ *Vanguard* (13 April 2012) <<https://www.vanguardngr.com/2011/07/criminal-justice-system-in-nigeria-obsolete-says-nba-/amp/>> accessed 18 November 2019. The Criminal Code and Penal Code do not contain provisions on forensics, no provisions accommodating crimes committed with aid of computers or technology, no provisions to improve speed of criminal proceedings, and certainly no dynamic sentencing provisions to meet the varied circumstances of different cases.

⁹⁷ OSIWA Nigeria Report (n66) 159

⁹⁸ John Emeka, ‘Director jailed 2yrs for stealing N33bn pension fund freed’ *PremiumTimes* (28 January 2013) <<https://www.premiumtimesng.com/news/117599-drector-jailed-2yrs-for-stealing-n33bn-pension-fund-freed-on-n250000-fine.html>> accessed 4 November 2019

4.6 Abuse of the Plea Bargain System

Plea bargain is an arrangement between the prosecutor and defendant whereby the defendant pleads guilty to a particular charge in return for some concessions from the prosecutor.⁹⁹ Section 14(2) of the EFCC Act and Paragraph 22 of the EFCC (Enforcement) Regulations, 2010, permits the EFCC to make plea arrangements. Regrettably, the provisions have been subjected to abuse allowing corrupt persons to make away with lenient sentences. In Cecilia Ibru's case, the former Managing Director of the defunct Oceanic Bank got six months imprisonment when she agreed to forfeit N190 billion (USD 1.2 billion).¹⁰⁰ Tafa Balogun, retired Inspector General of Police, had earlier made away with same six months imprisonment for forfeiting USD 150 million in respect of his embezzlement of N18 billion.¹⁰¹ In *FRN v Igbinedion*,¹⁰² the former Governor forfeited N500 million and three properties in respect of his case worth N2.9 billion, and was sentenced to six months imprisonment or option of fine of N3.5million which he immediately paid in the court room.¹⁰³ Compared to sentences routinely passed in our courts for arguably lesser offences, it stands to be argued that these sentences are lenient. However, we observe that plea bargaining is usually resorted to where it is difficult for the prosecution to gather enough evidence or conviction is unlikely using normal trial procedure.

Plea bargain can fester corruption by giving assurance that corrupt persons can keep a chunk of their loot while escaping custodial sentence or getting only lenient sentence. Applying the principle of deterrence, lenient sentences resulting from plea bargain may incentivize rather than deter would-be corrupt persons.¹⁰⁴ The light sentence granted to pension thief, John Yusuf, is illustrative of the low risk–high benefit theory of corruption in Nigeria.¹⁰⁵ In contrast, hefty sentences like the 150-years imprisonment handed to Bernard Madoff in the United States for defrauding investors fund¹⁰⁶ would deter others.

⁹⁹Ogbewere Ijewereme, 'Anatomy of Corruption in Nigerian Public Sector' (2015) 5(2) *SAGE Open* 10<<https://doi.org/10.1177/2158244015581188>> accessed 1 November 2019

¹⁰⁰ Ibid

¹⁰¹ *FRN v Tafa Balogun* Case No. FHC/ABJ/CR/14/2005

¹⁰² Case no. FHC/EN/CR/17/2008

¹⁰³ Ijewereme (n99)

¹⁰⁴ Ibid

¹⁰⁵ Ibid

¹⁰⁶ Ibid

As panacea, section 270 Administration of Criminal Justice Act (ACJA) 2015 restricts plea bargain to specific instances. But the provision still allows great latitude of discretion on the prosecutor and is therefore, insufficient a remedy to the challenge. We recommend that the conditions for plea deals should be further streamlined and made more stringent.

4.7 Stalling of Judicial Process: Stay of Proceedings, Injunctions and Adjournments

Undue delay in the judicial process is a challenge to Nigeria's anti-corruption legal framework as corruption trials are preceded by endless objections and applications to quash proceedings.¹⁰⁷ Where such applications are made, parties often move on to appeal the ruling and concomitantly apply for stay of proceedings, to stall the trial. Stay of proceedings is a procedure whereby the substantive matter is suspended pending the determination of interlocutory appeal. As the Nigerian judicial system is otherwise inefficient with cases staying on the docket for years, the appeal takes time to be heard and the substantive trial stalls. Such situation made Dariye's case and Nyame's case to elongate.¹⁰⁸

Thankfully, section 306 of the ACJA 2015 now prohibits stay of proceedings in the following words 'An application for stay of proceedings in respect of a criminal matter before the Court shall not be entertained'. In *Metuh v. FRN*¹⁰⁹ the Supreme Court unanimously upheld the constitutional validity of section 306 ACJA, 2015, effectively bringing to close an ignominious chapter in Nigeria's criminal jurisprudence and practice where corruption trials got stuck in the courts on account of stay of proceedings applications. In the lead judgment, Ogunbiyi JSC, held that the '... motion for stay of proceedings is violently in conflict with the provisions of section 36(4) CFRN 1999 (as amended), section 306 ACJA, 2015 and section 40 of the EFCC (Establishment) Act, 2004 as well as the plethora of cases cited.' In concurring, Eko JSC stated that section 306 is 'geared towards eliminating delay and ensuring expeditious determination of criminal matters pending before the trial courts.' The Administration of Criminal Justice Law (ACJL), of states also contains similar provision as section 306 ACJA, 2015. In *Azi v FRN*¹¹⁰ the Court of Appeal held that by section 304 ACJL Delta State, courts cannot grant stay of proceedings

¹⁰⁷ OSIWA Nigeria Report (n66) 159

¹⁰⁸ Wale Odunsi, 'How ex-Gov Dariye begged mercy' *Daily Post* (13 June 2018) <<https://www.dailypost.ng/2018/06/13/ex-gov-dariye-begged-mercy-14-year-prison-sentence/amp/>> accessed 1 October 2019

¹⁰⁹ (2017) 11 NWLR (pt. 1575) 157

¹¹⁰ (2019) LPELR-46430(CA)

in criminal matters in Delta State: 'The decision of the Supreme Court in *Metuh v. FRN* (supra) was in consideration of the provisions of Section 306 of the Administration of Criminal Justice Act 2015 and Section 40 of the EFCC Act which are all in the same spirit with Section 304 of the ACJL 2017 of Delta State under contention herein.' This new posture of the Nigerian judiciary against stay of proceedings is commended for its potency to promote efficient administration of criminal justice in Nigeria.

Similarly, because prosecution of corruption cases does not end in a day, proceedings are necessarily adjourned from time to time. This is sanctioned by section 36(5) (b) of the Constitution. Unfortunately, frequent, long interval adjournments on flimsy grounds stall corruption trials.¹¹¹ It is submitted that grant of application for adjournment is not a matter of course, but at the discretion of court. The discretion must be exercised judicially, judiciously, in the interest of justice, and with the need to avoid abuse of the legal process or frustration of the cause of justice.¹¹²

An order of injunction is made by the court to prohibit performance of a conduct. This judicial remedy is often abused in corruption cases in Nigeria. The Kano State government in 2014 filed a suit¹¹³ with an application for injunction to restrain EFCC from investigating its budget. Earlier, Dr. Peter Odili, former governor of Rivers State, secured perpetual injunction restraining EFCC from investigating or prosecuting him on allegations of corruption.¹¹⁴ Injunctions, like adjournments and stay of proceedings, frustrate expeditious disposal of corruption prosecutions.

We suggest that the Chief Justice of Nigeria and other heads of courts should formulate case management rules and practices for speedy prosecution of corruption cases. Injunctions and stay of proceedings should not be granted for corruption cases while adjournments should be granted only rarely, for compelling reasons and for short intervals. And since special courts have been established for election disputes (Election Tribunal) and for labour matters (National Industrial Court), it is time a special court is established for something as crucial as corruption. We suggest that the Code of Conduct Tribunal could be re-established

¹¹¹Ade Adesomoju, 'CJN blames prosecutors for corruption trial delays' *Punch* (21 May 2018) <<https://www.punchng.com/cjn-panel-blames-prosecutors-others-for-corruption-trial-delays/amp>> accessed 3 November 2019

¹¹² *Pam v Mohammed* (2008) All FWLR (Pt. 436) 1866

¹¹³ Suit No. FHC/K/CS/06/2014

¹¹⁴ Suit No. FHC/PHC/CS/I78/2007

and restyled as National Anti-Corruption Court with jurisdiction over corruption related matters (such as arising from the mandate of EFCC, ICPC and the numerous anti-graft laws) and code of conduct matters. In the meantime, special divisions of High Courts should be created to handle corruption cases. This is already the case in the Federal Capital Territory and Lagos State. Other states should follow suit.

4.8 Inadequate Base for Civil Society Engagement

The absence of effective collaboration between anti-corruption agencies and civil society is a challenge to the war against corruption in Nigeria.¹¹⁵ Whereas, sections 6(a) and 23(2) of the ICPC Act allows civil society involvement in the process leading to corruption control, where the ICPC fails to follow through, there is no remedial measure the civil society could fall back on. This is compounded by the common law doctrine of *locus standi* which provides that one must demonstrate special and superseding interests in the subject matter of the case to have title to sue in court.¹¹⁶ In criminal cases, it is the AGF (for federal crimes) and the AGS (for state crimes) that have the constitutional powers to prosecute. Private persons can only undertake criminal prosecution under the instruction or fiat of the AGF or AGS. This study agrees that the law should allow private persons be able to cause a writ of mandamus to issue against a reticent AGF or AGS or anti-corruption agency to act.¹¹⁷ This would enhance the base for civil society engagement.

Additionally, the enactment of the Freedom of Information Act, 2011¹¹⁸ presents civil society –and the media- with added base for engagement in corruption control. This would build up towards formation of a coalition against corruption, and a garnering of ideological and practical support for corruption control efforts. To achieve this, the government must encourage freedom of press and information.¹¹⁹ This study commends the efforts of Socioeconomic Rights Advancement

¹¹⁵ OSIWA Nigeria Report (n66)

¹¹⁶ Igbinedion (n5) 173-176

¹¹⁷ *ibid*

¹¹⁸ Madubuike-Ekwe Mbadugha ‘Obstacles to Implementation of Freedom of Information Act Nigeria’ (2018) 9(2) *NAUJIL* 96

¹¹⁹ Oluwaseun Bamidele, Azee Olaniyan and Bonnie Ayodele, ‘The Challenges of National Development and Dilemma of Anti-graft Agencies in Nigeria’ 86 (2015) 7(1) *African Social Science Review* <<https://pdfs.semanticscholar.org/6561/6bbbc882bd72cece3cbc25f606f02d4da118.pdf>> accessed 15 October 2019

Project,¹²⁰ BudgIT,¹²¹ Sahara Reporters,¹²² Premium Times,¹²³ Chief Femi Falana (SAN)¹²⁴ and Jafar Jafar,¹²⁵ among others, in corruption control engagement.

5. Conclusion

Corruption, a global social problem, was described in this study as a pervasive, prevalent and militating cankerworm that negatively impacts Nigeria's development fortunes. Corruption within Nigeria's political leadership is characterized by the fleecing of the country's treasury by its custodians. As a result, resources for development are diverted. This study clarified the concept and context of corruption in Nigeria, disclosing its deleterious impact on sustainable development. The study broadened appreciation of the legal framework to curb corruption in Nigeria, especially the roles of ICPC and EFCC. The crux of the research was the exposition of the challenges impeding Nigeria's legal framework for corruption control and proffering of remedial solutions. It is hoped that this intervention would contribute towards strengthening Nigeria's anti-corruption legal framework, and thereby mitigating the negative impact of corruption on Nigeria's quest for sustainable developmental.

¹²⁰ SERAP 'What we do' <https://serap-nigeria.org/what-we-do/>

¹²¹ BudgIT 'About Us' <http://yourbudgit.com/about-us/>

¹²² Sahara Reporters 'About' <http://saharareporters.com/about>

¹²³ Premium Times "About" <https://www.premiumtimesng.com/about>

¹²⁴ Bayo Waha 'Falana writes Kachikwu to explain how Nigeria lost \$60 in oil revenue' Pulse (14 April 2019) <<https://www.pulse.ng/news/local/falana-writes-kachikwu-asking-him-to-explain-how-nigeria-lost-dollar60b-oil-revenue/mf59x1q>> accessed 20 October 2019

¹²⁵ Tobi Aworinde, 'Contractor complained about Ganduje collecting 15 to 30%' *Punch Newspapers* (4 November 2018) <<https://punchng.com/contractor-complained-about-ganduje-collecting-15-to-30-video-publisher-jafar/>> accessed 6 November 2019