

HARMONISING THE ROLES OF THE FEDERAL AND STATE GOVERNMENTS IN COMBATING CORRUPTION IN NIGERIA: A CRITIQUE OF THE LAGOS STATE PUBLIC COMPLAINTS AND ANTI-CORRUPTION COMMISSION LAW 2021*

Abstract

Corruption and its many menaces in the society is considered a major challenge to the Nigerian nation. In this regard, the federal government has the legal and institutional frameworks to combat corruption. It is debatable whether these frameworks are adequate and/or effective. Being a federating State, the responsibility of combating corruption is not that of the federal government only. The State governments are expected to also adopt the necessary machinery needed to combat corruption in the State. It is expected that combating corruption at the Federal and State levels should be complementary. This research critically examines the Public Complaints and Anti-Corruption Commission Law 2021 of Lagos State (the Lagos AC Law) in the light of the existing laws enacted by the National Assembly and the institutional framework these federal enactments established. Considering that the Lagos AC Law was enacted after over two decades of implementing the laws at the federal level it is expected that areas of challenge in the federal laws are not repeated in the Lagos AC Law. The methodology adopted for this research is doctrinal and the research finds that the Lagos AC Law is inadequate to combat corruption in Lagos State. In addition, this research finds that the law has not harmonised anti-corruption activities at both the federal and state levels in Nigeria. Finally, this research finds that the provisions for a strong and independent anti-corruption body are missing in the Lagos AC law and recommends that administrative centres be established across the LCDAs in the State for efficient coordination of the implementation of the law. Furthermore, it recommends the introduction of assessment mechanisms for implementation like the provisions UNCAC.

Key-Words – Corruption, Anti-Corruption, Anti-Corruption Agency, Public Complaints Commission

1.0 Introduction

The endemic nature of corruption in Nigeria is not contestable for a few reasons. First, corruption has been an excuse for government overthrow since post-independence days.¹ Unfortunately, each government has proven to be more corrupt than the previous government.² Second, leading international indices have consistently rated Nigeria as a corrupt country. For example, Transparency International's (TI) Corruption Perception Index (CPI) rated the country as the most corrupt nation in the world consecutively in 2011 and 2012.³ While Nigeria is no longer considered as the most corrupt country in the world, the country's ratings have not improved significantly over the years.⁴ Corruption in Nigeria comes with both positive and negative effects, but the negative effects outweigh

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¹ Segun O Osoba, 'Corruption in Nigeria: Historical Perspectives' (1996) 23 *Review of African Political Economy* 371, 375-6; Daniel Agbibo, 'Between Corruption and Development: The Political Economy of State Robbery in Nigeria' (2012) 108 *Journal of Business Ethics* 325, 331.

² Paul D Ocheje, 'Law and Social Change: A Socio -Legal Analysis of Nigeria's Corrupt Practices and Other Related Offences Act, 2000' (2001) 45 *Journal of African Law* 173, 176.

³ Nigeria was perceived as the most corrupt nation in the world in 1996, 1997 and 1999. See for example, Transparency International, 'TI Corruption Perception Index 1996' available https://files.transparencycdn.org/images/1996_CPI_EN.pdf accessed 12 May 2023.

⁴ For Nigeria's five-year CPI rating, see appendix A

the positive ones.⁵ In the light of the adverse effects of corruption on the country, the government of President Obasanjo began in May 1999 with a resolve by the federal government to combat corruption and since then, Nigeria has developed a workable legal and institutional frameworks for combating corruption.⁶ Third, acts of corruption committed among public officers are regular news items in newspapers/social media/internet from time to time.⁷ It can be conjectured that corruption is a challenge for Nigeria. Finally, while this is not considered an effective tool for measuring levels of corruption, the levels of complaints and investigations recorded by the two leading Anti-Corruption Agencies (ACAs) in Nigeria, the Independent and Corrupt Practices Commission (ICPC) and the Economic and Financial Crimes Commission (EFCC) is considered high.⁸ However, prosecution and convictions are not at the same level with the EFCC reporting 3785 convictions secured in 2022.⁹

Although there is need for improvement, the legal and institutional frameworks for combating corruption in Nigeria is considered adequate and accords with the country's constitutional provision that '[t]he State shall abolish all corrupt practices and abuse of power.'¹⁰ The Supreme Court of Nigeria interpreted the word State to mean either the Federal or State governments, depending on the circumstances.¹¹ That is, both the Federal and State governments in Nigeria are empowered to combat corruption.¹² Consequently, the federal government has taken steps since 2000 to combat corruption, through enacting laws and establishing institutions. However, very few states in Nigeria, have taken steps towards achieving this aim.¹³ Considering the time it took these States and in particular, Lagos State to enact a law to combat corruption, it is expected that this step would have been taken upon a consideration of the challenges, if any, encountered by the Federal Government in combating corruption. It is also expected that the States would have critically examined the existing legal and institutional frameworks enacted by the federal government.

⁵ See Osita Agbu, 'Corruption and human trafficking: The Nigerian case. (2003) 4 (1) West African Review 1, 5-8.

⁶ For example, the Corrupt Practices and other Related Offences Act 2000 and the Economic and Financial Crimes Commission (establishment) Act 2004.

⁷ A search on the internet on 'corruption among public officials in Nigeria' yielded 1,750 results in 0.51 seconds. Information available at https://www.google.com/search?q=corruption+among+public+officials+in+nigeria&client=safari&rls=en&sxsrf=APwXEdcEUwVSw2xXKhJlIQZ2uSUrB59r3w:1683898170654&source=lnms&tbm=nws&sa=X&ved=2ahUKewj4u7LC8e-AhVWgPOHHdL_AFMQ_AUoAXoECAEQAw&biw=1439&bih=904&dpr=2 accessed 12 May, 2023.

⁸ OT Odusote, 'Investigating and prosecuting corruption in Nigeria: An empirical analysis of institutional and legal frameworks' (PhD University of Surrey, 2021)

⁹ Economic and Financial Crimes Commission, 'EFCC secures 3785 convictions in 2022' available [https://www.efcc.gov.ng/efcc/index.php/news-and-information/news-release/8781-efcc-secures-3785-convictions-in-2022#:~:text=The%20Economic%20and%20Financial%20Crimes,record%20for%202021\(2220\)](https://www.efcc.gov.ng/efcc/index.php/news-and-information/news-release/8781-efcc-secures-3785-convictions-in-2022#:~:text=The%20Economic%20and%20Financial%20Crimes,record%20for%202021(2220)). Accessed 5 May 2023.

¹⁰ See Constitution of the Federal Republic of Nigeria 1999 (CFRN 1999) as amended s 15 (5).

¹¹ *AG Ondo State v AG Federation* (2002) FWLR (Pt 111) 1972.

¹² *ibid.*

¹³ Public Complaints and Anti-Corruption Commission Law, 2021. Others are Kano State with Public Complaints and Anti-Corruption Commission Law (No 2) 2009; Oyo State with Anti-Corruption Agency Law, 2019.

This research is conducted in the light of these assumptions and seeks to critically examine States' approach to combating corruption using Lagos State's law as a case study although the discussion will be juxtaposed with the Oyo State Anti-Corruption Agency Law 2019.¹⁴

The methodology adopted in this paper is purely doctrinal as it critically examines aspects of the Lagos State Public Complaints and Anti-Corruption Commission Law 2021 (Lagos ACC Law 2021) in the light of literature. This paper is divided into five sections. Section one introduces the discourse while section two discusses matters related to the definition of corruption in Nigeria. The Lagos ACC Law 2021 and matters related to powers and independence are discussed in section 3. The existing legal framework is also discussed with the aim of determining areas of harmony or conflict. Section 4 of the paper presents recommendations for better improvement that will aid the effective enforcement of anti-corruption measures in Lagos State while section 5 concludes the discourse.

2. Theoretical framework

2.1 Definition and Scope of Corruption

Corruption is an age-long complex phenomenon that has defied a single definition. The numerous definitions of the phenomenon across disciplines which are contextual, are considered unsatisfactory although each may have suited the purpose of each research. First, is the public-office definition with Nye's being the foremost and with its varied versions. Nye's definition and variations of it are considered the most acceptable. For example, corruption is defined as 'the abuse of entrusted power for personal gain,'¹⁵ or 'the abuse of public power for private gain.'¹⁶ Although it is the mostly acceptable definition, one major limitation of this definition is that it applies to only the public sector. This definition ignores the fact that corruption also occurs in the private sector. The examples of Enron and Haliburton are reminders that corruption exists in the private sector.¹⁷ Furthermore, the Nigerian Corruption Index (NCI) finds that corruption is rife in both the public and private sectors in Nigeria since activities in both sectors are interrelated.¹⁸ The second is the market centred definition which defines corruption from the perspective of the principal-agent model or the principal-agent-client (PAC) model. Here, the electorate or government institutions represent the principal, the agent is the official and the public is the client, who is also the recipient of the service/s rendered.¹⁹ Furthermore, Klitgaard argues that corruption thrives in the public sector because an agent

¹⁴ Assented to by the Governor of Oyo State on 10 December 2019.

¹⁵ Transparency International, 'How do we define corruption?' <https://www.transparency.org/what-is-corruption#define> accessed 20 May 2018

¹⁶ The World Bank Group, 'Helping Countries Combat Corruption' available <http://www1.worldbank.org/publicsector/anticorrupt/corruptn/cor02.htm> accessed 20 May 2018

¹⁷ C William Thomas, 'The rise and fall of Enron' *Journal of Accountancy* available <https://www.journalofaccountancy.com/issues/2002/apr/theriseandfallofenron.html> accessed 16 May 2023; Sahara Reporters, 'Haliburton Scandal: EFCC traces 13.5 billion to private account (1 September 2016) available <https://saharareporters.com/2016/09/01/haliburton-scandal-efcc-traces-n135b-private-account> accessed 16 May 2023.

¹⁸ Anti-Corruption Academy of Nigeria (2020) A report of a Pilot Study conducted by the Independent Corrupt Practices Commission 3.

¹⁹ Robert E Klitgaard, 'Strategies for Reform' (1991) 2 (4) *Journal of Democracy* 86; AW Goudie and David Stasavage, 'A framework for the analysis of Corruption' (1998) 29 *Crime, Law & Social Change* 113, 117.

who occupies a monopolistic position is conferred with a lot of discretionary power and s/he is not accountable to anyone.²⁰ Due to the critical position the agent occupies, the public is left without any choice and finds it difficult to avoid the rent created by the agents. The rent is the extra amount paid by the public for what is needed desperately.²¹ This is possible because the agent is familiar with the system and understands where the lapses are and seeks to take advantage of the lapses in the system particularly because the agent seeks his/her interest and is not committed to the institution.²² Often, the solution adopted to curb the abuse of discretionary power is to stipulate the circumstances in which the discretion is to be exercised. Unfortunately, it is impossible to foresee all the circumstances under which the agent is required to exercise discretionary power and this inadvertently creates opportunities for corrupt behaviour.²³ While the PAC model sees corruption from an individualistic perspective however, Toerell suggests that corruption should be seen from an institutional perspective.²⁴ In addressing corruption, both approaches are necessary for effective control.²⁵ The Principal-Agent approach has also been criticised as being narrow where grand corruption has occurred and inadequate because it does not consider the interest of the public.²⁶

The third definition proffered by social scientists is the public-interest who describes the circumstances under which corruption occurs. The public-interest definition explains that corruption occurs where a public officer places his/her personal interest above that of institutional considerations because of inducement received from third parties.²⁷ Unfortunately, while the proponents of this definition seek a balance between the public-office and market-centred definition,²⁸ it is difficult to determine what constitutes public-interest in a multi-ethnic society like Nigeria.²⁹

The definitions among the social scientists are limiting for a few reasons. The first as mentioned earlier is that the definitions assume that corruption occurs only in the public sector. It is logical that AC measures introduced cover combating corruption in both the public and private sectors for greater efficiency. Likewise, these definitions are not relevant to combating corruption from the legal perspective. This is because corruption is

²⁰ Robert E Klitgaard, *Controlling Corruption* (University of California Press 1988) 75.

²¹ P Mauro, 'Why Worry About Corruption?' (1997) Economic Issues Series, No. 6 Washington: International Monetary Fund, 13 cited in Morris Szeftel, 'Misunderstanding African Politics: Corruption & the Governance Agenda' (1998) 25 (76) *Review of African Political Economy* 221, 224.

²² Toke S Aidt, 'Economic Analysis of Corruption: A Survey' (2003) 113 *The Economic Journal* F632, F636.

²³ Donatella Della Porta and Alberto Vannucci, 'The 'Perverse Effects' of Political Corruption' (1997) 45 *Political Studies* 516, 528.

²⁴ Jan Teorell, 'Corruption as an Institution: Rethinking the Nature and Origins of the Grabbing Hand' (2007) 5 *QoG Working Paper Series* 8-12.

²⁵ *ibid* 11.

²⁶ Johann Graf Lambsdorff, 'Corruption and rent seeking' (2002) 113 *Public Choice* 97, 98.

²⁷ C Friedrich, *Corruption Concepts in Historical Perspective* in Arnold Heidenheimer, Michael Johnston, and Victor Le Vine (eds), *Political Corruption: A Handbook* (New Brunswick 1990) 15–24 N J Transaction Publishers cited in Daniel Egiegba Agbibo 'Serving the few, starving the many: How Corruption under develops Nigeria and how there is an alternative perspective to Corruption Clean-ups' (2012) 58 (4) *Africa Today* 111, 115.

²⁸ Lambsdorff, 'Corruption and Rent Seeking' (n 26).

²⁹ Mark J Farrales, 'What is Corruption? A History of Corruption Studies and the Great Definitions Debate' [2005] 20 available at < <http://ssrn.com/abstract=1739962>> accessed 20 May 2018.

both a legal and moral wrong.³⁰ To be convicted under the law, an act must be named as being a form of corruption. Where this is not clearly stated, an accused cannot be arraigned or convicted for corruption.³¹

In defining corruption from the legal perspective, the law is unable to define the phenomenon as several acts constitute corruption. While the law has named some acts as constituting corruption, it has not been able to provide a comprehensive list because of the dynamic and evolving nature of corruption.³² This explains the adoption of a descriptive approach by the United Nations Convention against Corruption (UNCAC). In doing that, the UNCAC stipulates some acts constituting corruption. This approach affords the inclusion of new acts of corruption that may emerge.³³ The need to define the phenomenon is critical as the difficulty of defining corruption manifests when ACs measures are designed. That is, an apt definition/description of the phenomenon makes a wholesome approach to anti-corruption strategies easier.

In Nigeria, the Corrupt Practices and Other Related Offences Act 2000 (CPORO Act) defines corruption to include 'bribery, fraud and other related offences.'³⁴ This is considered a narrow definition because it does not include offences like nepotism and favouritism although it applies to bribery and extortion.³⁵ Under the Economic and Financial Crimes Commission (establishment) Act 2004 (EFCC Act), acts constituting economic and financial crimes include bribery and other corrupt malpractices.³⁶ Similarly, the Lagos ACC Law 2021 defines corruption to include 'bribery, fraud, undue influence and other related offences.'³⁷ This definition is wider than the definition provided by CPORO Act 2000 and the EFCC Act, 2004, but does not relate to nepotism. The absence of a comprehensive definition is not considered as a limitation that will hinder the attainment of the objectives of the Law. Irrespective of the definition of corruption, bribery, extortion, abuse of office and nepotism are examples of acts of corruption that are rife in Nigeria.³⁸

2.2 Anti-Corruption measures

It is ideal to adopt a comprehensive AC strategy in combating corruption and these should

³⁰ Osoba's definition.

³¹ *Aoko v Fagbemi* (1961) 1 All NLR 400.

³² For example, see the Corrupt Practices and other Related Offences Act 2000, s 2; Economic and Financial Crimes Commission (Establishment) Act, 2004, s 46.

³³ R Rajesh Babu, 'The United Nations convention against corruption: A Critical Overview' (2006) Asian African Legal Consultative Organization, New Delhi, 6 available at < <http://ssrn.com/abstract=891898> > accessed on 12 September 2013; Antonio Argandoña, 'The United Nations Convention against Corruption and its impact on International Companies' (2007) 74 Journal of Business Ethics 481, 488.

³⁴ CPORO Act 2000 s 2

³⁵ Ocheje (n 2) 179

³⁶ EFCC Act 2004 s 46.

³⁷ Lagos State Public Complaints and Anti-Corruption Law 2021 (LSPCAC Law), s 1. See also the Oyo State Anti-Corruption Law 2019, s 2

³⁸ ST Akindele, 'A Critical Analysis of Corruption and its Problems in Nigeria' (2005) Anthropologist, 7 (1) 7, 12 who gave examples of corruption common in Nigeria; Daniel Egiegba Agbiboa, 'Corruption and Economic Crime in Nigeria' (2013) 22 African Security Review 47, 52.

include preventive measures, criminalisation, international cooperation, asset recovery and enlightenment approaches.³⁹ This is because while these approaches are not mutually exclusive, a combination of all the approaches will yield greater efforts in combating corruption. Out of all the approaches, criminalisation is widely adopted by nations across the globe.⁴⁰ One reason for this may be the desire to ensure that the perpetrators of corruption are punished for the wrong done to the society.⁴¹ Criminalisation comprises investigation, prosecution and upon establishment of guilt, conviction, and sentencing. Undeniably, the first two processes are critical to a successful criminalisation of corruption.

At the national level, several institutions are involved in investigating and prosecuting corruption related offences. They include the Attorney-General of the Federation (AGF)/Attorneys General of the States (AGS),⁴² the Nigeria Police,⁴³ the ICPC,⁴⁴ the EFCC,⁴⁵ the Code of Conduct Bureau (CCB), the Code of Conduct Tribunal (CCT),⁴⁶ and the Nigerian Financial Intelligence Unit (NFIU).⁴⁷ It is arguable that the foremost of these institutions are the AGs of the Federation and States, the ICPC and the EFCC. Notwithstanding the existence of these agencies and their roles in the criminalisation of acts constituting corruption, combating corruption through criminalisation in Nigeria is still challenged.⁴⁸ Two broad reasons explain this. First, is the absence of political will on the part of the government. This is responsible for non-enforcement of the laws, inadequate funding of the ACCs and absence of independence of the ACCs. In effect, government is found to pay lip service to the ACC agenda.⁴⁹ Secondly, the citizens of the country are not averse to the prevalence of corruption in the country even though the effects of the phenomenon are overwhelming and distorts the quality of life.⁵⁰ Considering

³⁹ OECD, 'Specialised Anti-Corruption Initiatives: A Review of Models' (OECD 2008) available <https://www.oecd.org/corruption/acn/39971975.pdf> accessed 14 May 2023.

⁴⁰ Emile van der Does de Willebois and Jean-Pierre Brun, 'Using civil remedies in corruption and asset recovery cases' (2013) 45 Case W Res. J. Int'l L 615, 617; Indira Carr, 'Fighting Corruption Through Regional and International Conventions: A satisfactory solution?' (2007) European Journal of Crime, Criminal Law and Criminal Justice 121, 128.

⁴¹ Emile van der Does de Willebois and Jean-Pierre Brun, *ibid*.

⁴² CFRN 1999 as amended s 174 (1) (a)- (b), (3), s 211 (1) (a)-(b); Administration of Criminal Justice Act (ACJA) 2015 S 106-8. A private prosecutor to initiate criminal proceedings subject to the AGF's consent.

⁴³ Police Act 2020 (n 44) ss 4, 23; *FRN v Osahan* (2006) LPELR-3174 (SC) p 74 para-C-D 74.

⁴⁴ CPORO Act 2000, s 6.

⁴⁵ EFCC Act 2004, s 6.

⁴⁶ CFRN 1999 as amended s 153 (1) (a), Third Schedule Pt 1 and Fifth Schedule. The Police, AGF/AGS and the ACCs mentioned above are the primary institutions responsible for prosecuting corruption cases. There are other institutions that handle corruption cases but were not established primarily as ACC. E.g., the Central Bank of Nigeria and the Securities and Exchange Commission. See P Matsheza, 'Measuring and Fighting Corruption in the region: Anti-Corruption Mechanisms and Strategies in Southern Africa' (2001) 10 (4) African Security Review 149. Following the definition of 'economic and financial crimes' by the EFCC Act 2004, it is arguable that the National Drug Law and Enforcement Agency and Customs are anti-corruption agencies. See EFCC Act 2000 s 46.

⁴⁷ This body was established under the National Financial Intelligence Unit Act 2018. Before then, the NFIU used to be domiciled under the EFCC and was considered a source of undue advantage to the EFCC over other ACCs and the cause of international sanctions by the Egmont Group against Nigeria. See J Amehza, 'Buhari appoints new NFIU boss, ends merger with EFCC', Punch (Lagos, 8 January 2019) available <https://punchng.com/buhari-appoints-new-nfiu-boss-ends-merger-with-efcc/> accessed 7 May 2019.

⁴⁸ Odusote (n 8) 268-9.

⁴⁹ *ibid* 269

⁵⁰ *ibid*

that the Federal government's AC efforts have not been able to get Nigeria's rating on international indices to the above-average mark, the decision of State governments to enact State AC legislation is a welcome development. The next section examines Lagos State's AC legislation to determine if the enactment is merely a rouse or a step in the right direction.

3.0 Overview of the Public Complaints and Anti-Corruption Commission Law 2021

3.1 Scope of the Law

The Lagos ACC Law 2021 establishes the Lagos State Public Complaints and Anti-Corruption Commission whose power applies only to corruption within the public sector.⁵¹ Being a public complaint agency, the agency's jurisdiction extends to receipt of complaints from private individuals/organisations against acts of corruption committed by an officer of any of the state's agencies. The law does not apply to acts of corruption committed within private organisations or among private citizens. In effect, the Commission's jurisdiction is limited to the public sector and does not extend to the private sector, although the Commission can receive complaints from private individuals against public officers working in Lagos State.⁵² While it is settled that corruption in Nigeria is high, based on indices that have measured corruption in the public sector,⁵³ the prevalence of corruption in the private sector is yet to be determined empirically. It can however be conjectured that corruption in Lagos State will be high since the State is the commercial nerve center of Nigeria.⁵⁴ Therefore, acts of corruption committed outside of the State agencies would be investigated by other enforcement agencies like the police.⁵⁵

The offences for which the Commission may prosecute include active and passive bribery, undue influence, fraud, and gratification. In a society where there is a thin line between bribery and gratification on one hand and gift giving/receiving on the other hand, the Law punishes the giving and receipt of gifts to public officers.⁵⁶ In addition, the Commission shall coordinate all AC and financial crime laws/functions conferred on any other person/authority relating to the finances of the Lagos State government.⁵⁷

The Commission has power to investigate stated acts of corruption and may forward its findings to the State Attorney General (SAG). Similarly, the Commission has prosecutory powers where such is delegated to it by the State AG and the Commission would be deemed to prosecute in the name of the State AG. Furthermore, the Commission is empowered to investigate properties of any public servant if it appears to the Commission that there is no justification for the lifestyle and properties when compared to the income

⁵¹ LSPCAC Law s 13 (1).

⁵² *ibid*

⁵³ TI Corruption Perception Index and NACA Nigeria's Corruption Index.

⁵⁴ The state's economy is rated as 5th in Africa. See Innocent Benjamin, 'Richest states in Nigeria 2023' available <https://www.clacified.com/business/16/richest-state-nigeria#:~:text=Lagos%20State%2C%20the%20economic%20and,fifth%20largest%20economy%20in%20Africa>.

Accessed 14 May 2023.

⁵⁵ See Police 2020, s 4.

⁵⁶ LSPCAC Law 2021, ss 28, 29

⁵⁷ *ibid* s 14 (2) (c).

of such person.⁵⁸ It is unclear if this provision criminalises illicit enrichment in Lagos State. But this paper submits that where incriminating evidence is found implicating an official of illicit enrichment the evidence should be taken as constituting ingredient for the offence of illicit enrichment.⁵⁹

A limitation on the jurisdiction of the Commission is that it is not empowered to handle matters pending before any court of law.⁶⁰ A literal interpretation of this law may mean that the Commission's functions are limited once the matter is pending before the court irrespective of when the matter was instituted in court. A better approach would have been to limit the Commission's power to matters pending before the courts before the commencement of the law. This would prevent actions being instituted to challenge the Commission's jurisdiction, a common feature among legal practitioners and their clients with respect to the CPORO Act 2001 and the EFCC Act 2004.⁶¹

3.2 Nature of Public Complaints Commission

ACCs exist in different forms depending on the needs of each country. The implication is that each nation is to first determine its peculiar needs for combating corruption and then how corruption is to be addressed.⁶² Kuris categorises ACCs into either watchdogs or guard-dogs.⁶³ While the guard dog agencies have strong investigative powers, are bigger and more intimidating, the watchdog agency does not have such extensive powers.⁶⁴ The decision on the choice of ACC to be established, whether a guard dog or a watch dog, is taken by each country. The decision may conclude that the ACC need not be newly established.⁶⁵ Interestingly, quite a few developing nations in formulating ACs policies established new agencies, suggesting that countries were compelled to establish new ACCs. Hatchard notes that this is not the case.⁶⁶ Specifically, while the UNCAC expects that nations would have ACCs, it does not make the establishment of brand-new agencies a must.⁶⁷

The Lagos State has established the Public Complaints and Anti-Corruption Commission to oversee its AC activities. The Public Complaints Commission (Ombudsman), is 'an office provided for by the constitution or by an action of the legislature or parliament and headed by an independent high-level public official who is responsible to the legislature or parliament, who receives complaints from aggrieved persons against government

⁵⁸ *ibid* s 13 (4).

⁵⁹ See Odusote (n 8) 80-2.

⁶⁰ LSPCAC Law 2021 s 17 (1).

⁶¹ *Hassan v EFCC* [2014] 1 NWLR (Pt 1389) 607.

⁶² See the point on political will; UNCAC art 36; AUCPCC art 5 (3)

⁶³ Petter Langseth, 'Prevention: An Effective Tool to Reduce Corruption', (1999) Global Programme against Corruption Conference (CICP 2; Vienna: United Nations Office for Drugs Control and Crime Prevention, Centre for International Crime Prevention) 29 available at <<http://www.unodc.org/pdf/crime/gpacpublications/cicp2.pdf>> accessed on 14 May 2023.

⁶⁴ Gariel Kuris, 'Watchdogs or guard dogs: Do anti-corruption agencies need strong teeth?' (2015) 34 *Policy and Society* 125, 126.

⁶⁵ John Hatchard, *Combating corruption: Legal approaches to supporting good governance and integrity in Africa* (Edward Elgar Publishing 2014) 117-180.

⁶⁶ *ibid*.

⁶⁷ *ibid*.

agencies, officials, an employer nor who acts on his motion, and who has the power to investigate, recommend corrective action and issue reports.⁶⁸

Historically, the Ombudsman was first established in the Scandinavian country of Sweden in 1809 and it has been adopted by nations across the globe since then.⁶⁹ The Ombudsman's role was conceived as an administrative machinery and in Nigeria, it was established 'to address complaints by members of the public concerning the administrative action of any public authority or companies or their officials.'⁷⁰ In essence, the Ombudsman was established to provide an avenue for redress to the ordinary citizens against wrong doings.⁷¹ In some climes, the Ombudsman has since evolved into an ACC as that is the vehicle adopted by some nations.⁷²

In Nigeria, the PCC was established by the Public Complaints Commission Act (PCC Act).⁷³ The Commission is headed by a Chief Commissioner at the Headquarters and has Commissioners in all the 36 States of the Federation, and the Federal Capital Territory.⁷⁴ The recent enactment of State AC laws introduces the establishment of States' Public Complaints Commissions. The establishment of PCC by the FGn is not an exclusive preserve of that government. In other words, the establishment of PCC not being on the Exclusive legislative lists means that State governments can establish State PCC. Considering that the PCACC of Lagos State is empowered to investigate administrative actions undertaken by any State-owned parastatal or officer, the public complaint arm of the PCACC may handle such administrative violations. In other words, the agency established is a two-unit agency consisting of public complaints and AC.

Nigeria is accused of having too many institutions involved in combating corruption. This is one reason for ineffectiveness and absence of coordination in Nigeria's AC administration.⁷⁵ The decision of Lagos State government to merge public complaints with AC is therefore considered a welcome development. One advantage this portends for the State is the reduction of cost of governance. It is noteworthy that Oyo State's model of AC agency does not include public complaints.

3.3 Powers of the Commission

The Commission may be considered an agency with comprehensive AC powers because

⁶⁸ W Haller, *The Place of the Ombudsman in the World Community*, (2010) 15(5) Fourth International Ombudsman Conference Papers, Canberra, Canadian Federal corrections (15-24 cited in HS Abasiokong and CC Uzoma, *The Ombudsman: An Instrument for Smooth Bureaucracy in Nigeria*' 2019 5 (1) *Journal of Humanities and Social Policy*

⁶⁹ A L Raimi and A Adesopo, *Administrative Law, Ombudsman Principle and Public Complaints Commission in Nigerian Constitutional Law and Administrative Law* ed Kunle Ajayi

⁷⁰ See Long Title, *Public Complaints Commission Act Cap P 37 Laws of the Federation of Nigeria 2004*.

⁷¹ Public Complaints Commission, *History of available* <https://pcc.gov.ng/history-of-pcc/> accessed 23 October 2022.

⁷² See Simon Coldham, 'Legal Responses to State Corruption in Commonwealth Africa' (1995) 39 *Journal of African Law* 115

⁷³ Cap P37 *Laws of the Federation of Nigeria (LFN) 2004*. Although the Commission was first established in Nigeria in 1973 when one of the states in Nigeria, Kaduna established the Public Complaints Bureau.

⁷⁴ PCC Act, ss 1-3

⁷⁵ Odusote (n 8) 16.

It is empowered to handle the various aspects of the AC process like prevention;⁷⁶ (international) collaboration;⁷⁷ asset recovery;⁷⁸ and public enlightenment.⁷⁹ However, and arguably the most extensive of the Commission's powers is its power on enforcement (criminalisation) of some acts constituting corruption.⁸⁰ Specifically, the Commission is empowered to investigate complaints on any administrative action taken by any ministry/organisation established by Lagos State or into any action taken by an employee of the State.⁸¹ Furthermore, the Commission is empowered to investigate offences under the Criminal law related to but not limited to corruption and financial crimes, abuse of office, offences connected to administration of justice and fraudulent dealing with property by debtors.⁸² The Commission has exclusive power to investigate and coordinate the investigation of corruption and financial crimes in Lagos State.⁸³ That is, agencies like the Nigeria Police Force, the ICPC and the EFCC are excluded from investigating acts of corruption and financial crimes in the State. Additionally, the Commission is empowered to take over pending 'investigation of all Anti-Corruption and Financial Crimes cases involving the finances and assets of Lagos State by other agency.'⁸⁴ The Commission's powers to coordinate matters of corruption and financial crimes involving the finances of Lagos State are akin to that of the EFCC which serves as the coordinating agency for money laundering matters in Nigeria.⁸⁵ Without prejudice to further discussion, this provision is confrontational and does not aid collaboration between the FGN and the Lagos State government in combating corruption.

Section 13 (3) and (5) of the law are critical to the validity and powers of the Commission;⁸⁶ and it is necessary to determine the effect of these provisions considering existing legal framework on combating corruption in Nigeria. This is critical because a literal interpretation of these provisions is that the Commission is deemed to have taken over investigations pending with other State's agencies involved in investigating corruption at the commencement of the law including the investigations pending with the two foremost federal bodies - the ICPC and the EFCC provided that such relate to the finances of Lagos State.⁸⁷ The second implication is that by extension, these two foremost

⁷⁶ Section 14 (2) (d)

⁷⁷ Section 14 (2) (g)

⁷⁸ Section 14 (2) (f)

⁷⁹ Section 14 (2) (h)

⁸⁰ Section 14 (2) (a)-(c); 27-30.

⁸¹ *ibid* s 13 (1)

⁸² *ibid* s 13 (2)

⁸³ *ibid* s13 (5)

⁸⁴ *ibid* s 13 (3)

⁸⁵ EFCC Act 2004, s 1 (2) (c).

⁸⁶ CFRN 1999, as amended, s 13 (3) and (5)

'(3) The Commission shall upon the commencement of the Law take over the investigation of all Anti-Corruption and Financial Crimes cases involving the finances and assets of Lagos State Government being investigated by any other Agency...

(5) the Commission shall have power to the exclusion of any other Agency or body to investigate and coordinate the investigation of corruption and financial crime cases involving the finances and assets of the State Government.'

⁸⁷ LSPCAC Law 2021 s 13 (3).

agencies no longer have jurisdiction over corruption and economic crimes matters connected to the finances of Lagos State. If the above inferences are correct, the Lagos ACC Law 2021 departs from the existing legal framework before the law was enacted. The next section discusses the existing legal framework.

3.4 Nigeria's Constitution and combating corruption- Revisiting *AG Ondo State v AG Federation*⁸⁸

It is important to emphasise that Nigeria is a federating nation consisting of 36 States and the Federal Capital Territory (FCT) which is conferred the status of a State,⁸⁹ although Elaigwu argues that while there is a constitutional basis for federalism in Nigeria, applying its principles leaves conclusive suggestion that Nigeria in fact is implementing a unitary system.⁹⁰ The Constitution of the Federal Republic of Nigeria 1999 as amended (CFRN 1999) under its Chapter 2 on Fundamental Objectives and Directive Principles of State Policy, mandates '[t]he State' to abolish all corrupt practices and abuse of power.⁹¹ The chapter addresses the social, political and economic matters that the state ought to handle for its citizens although the provisions in this chapter are non-justiciable.⁹² They are the ideals that the government hopes to achieve for the country's citizens.⁹³ While Chapter 2 is unenforceable because of its declaratory nature, the directive principles become justiciable where an aspect of the directive principles has been legislated upon.⁹⁴ Regrettably, Nigeria is yet to adopt the position of the courts in India, which makes pronouncements on directive principles even where they (the directive principles) are not the subject matter of any legislation.⁹⁵ Furthermore, the CFRN 1999 provides that 'State', when used otherwise than in relation to one of the component parts of the Federation, includes government.⁹⁶ On its part, 'Government' refers to any of the three tiers of government (the federal, the state or the local government) in Nigeria and the context of usage will help to determine the particular tier of government being referred to as 'State' at that point in time.⁹⁷

⁸⁸ (2002) 9 NWLR (pt 772) 222.

⁸⁹ CFRN 1999 as amended, s 299

⁹⁰ JI Elaigwu, 'Nigerian Federalism Under Civilian and Military Regimes' (n 52) *ibid.* See also *Olafisoye v FRN* (2004) LPELR-2553 (SC); *Attorney General Ondo State v Attorney General Federation and 36 others* (2002) LPELR-623 (SC) where the Supreme Court held that the constitution is the reason why the CPORO Act 2000 offends federalism due to distribution of power under the legislative lists.

⁹¹ CFRN 1999 as amended s 15 (5).

⁹² The fundamental objectives and directive principles of state policy were first introduced into Nigeria's constitution in 1979. See B Obinna Okere, 'Fundamental Objectives and Directive Principles of State Policy Under the Nigerian Constitution' (1983) 32 *International & Comparative Law Quarterly* 214; Bertus De Villiers, 'Directive principles of state policy and fundamental rights: The Indian experience' (1992) 8 *S. Afr. J. on Hum. Rights* 29, 32. See also FRN 1999 as amended s 6(c).

⁹³ *Report of the Constitution Drafting Committee Containing the Draft Constitution* (Federal Ministry of Information Lagos 1976) vol 1 vii, cited in Okere (n 145) 221; Bertus De Villiers, 'Directive principles of state policy and fundamental rights: The Indian experience' (1992) 8 *S. Afr. J. on Hum. Rights* 29, 34.

⁹⁴ *A-G Ondo State v A-G Federation* (n 4) 1972 (Emphasis supplied).

⁹⁵ De Villiers (n 93) 48.

⁹⁶ CFRN 1999 as amended s 318 (1).

⁹⁷ *ibid.*

Following the enactment of the CPORO Act 2000 by the National Assembly, the Government of Ondo State sought to know whether the Attorney General of the Federation (AGF) can institute legal action in any court of law in Ondo State and whether the CPORO Act 2000 is in force in Ondo State.⁹⁸ Being a federal enactment, it was argued on behalf of Ondo State and citing *Anyebe v State*,⁹⁹ that the Act could not be enforced in Ondo State without the fiat of the State's Attorney General. A combined reading of Section 15(5) of the CFRN 1999 and Item 60(a), Part 1, Second Schedule of the CFRN 1999 may reveal a complicated scenario.¹⁰⁰

The court held that since corruption was a malaise of national importance, the law was validly made and that the AGF could prosecute before any court except a court-martial. The court declared the CPORO Act 2000 valid but declared some sections void.¹⁰¹ The court interpreted Section 174 CFRN 1999 on the powers of the AGF literally and not by applying the *ejusdem generis* rule.¹⁰² This is contrary to arguments that 'before any court...' ought to have been interpreted as any court before whom the AGF can appear and that the right of the AGF ought not to have been extended to the State since each State has its own AGS and that the case negates the principle of federalism and separation among the federating States.¹⁰³

In addition, and notwithstanding the definition of the word 'State' under the CFRN 1999,¹⁰⁴ the Supreme Court of Nigeria held that with respect to the provision of Section 15(5) CFRN 1999, the word means either the Federal Government of Nigeria (FGN) or the State government. As such, either the NA or the SHA can make laws with respect to good government and corruption.¹⁰⁵ Where both legislate on the same subject matter, in the event of conflict, the court would apply the blue-pencil rule.¹⁰⁶ It is observed that ordinarily, a matter that is contained in the exclusive legislative list is for the Federal Government to the exclusion of the State governments.¹⁰⁷ Also, the Second Schedule, which provides that the tiers of government can legislate upon incidental matters relating to the matters included in the legislative lists provides that incidental matters include

⁹⁸ The court admitted that the provision of the Constitution derogated from established known principles of federalism.

⁹⁹ *Anyebe v State*

¹⁰⁰ (5) *The State shall abolish all corrupt practices and abuse of power.*

Item 60 (a) Part 1 Second Schedule

The establishment and regulation of authorities for the Federation or any part thereof –

(a) To promote and enforce the observance of the Fundamental Objectives and Directive Principles contained in this Constitution.

¹⁰¹ Trials must be concluded within 90 days. See CPORO Act 2000, s 26 (3).

¹⁰² Where specific words are used in a statute and they are followed by general words, the general words will be interpreted in the light of the specific words. See *Johnson v Edgeware etc Rly Co* (1866) 35 Beav 480. See *Oyeniran v Egbetola* (1997) LPELR-2876 (SC); *Buhari v Yusuf* (2003) LPELR-812 (SC).

¹⁰³ See Appendix G for the provisions of Section 174.

¹⁰⁴ See Section 318 (1).

¹⁰⁵ *A-G Ondo State v A-G Federation* (n 4).

¹⁰⁶ *Ibid.* See also Hakeem O Yusuf, 'Transitional Justice, judicial accountability and the rule of law- A Nigerian Case Study' (PhD Theses, University of Glasgow 2009) 147.

¹⁰⁷ See CFRN 1999 as amended s (2) and (3). See *A-G Ogun State v Aberuagba* (1985) 1 NWLR (Pt. 3) 395.

offences.¹⁰⁸ It is submitted that offences will only relate to the matters for which they can legislate, even though offences generally fall under the residual list.

In effect, *A-G Ondo State v A-G Federation* holds that it is only the National Assembly that can legislate on corruption as a concept and establish institutions to handle corruption cases. The court overlooked the fact that acts constituting corruption are offences. In addition, the court held that the AG Federation can prosecute corruption offences in the States and can delegate its power to the State AG where necessary.

Ordinarily, the AG Federation prosecutes federal offences while the State AG prosecutes state offences. As such, the decision in *A-G Ondo State v A-G Federation* has been justified as a pragmatic way of distinguishing between the concept of federalism on one hand, and addressing an urgent social need on the other.¹⁰⁹ The judgment has also been justified to have been delivered taking into consideration the purposive rule of interpreting the constitution, notwithstanding the departure from conventional principles.¹¹⁰ The learned justices acknowledged the challenges and held *inter alia* as follows:

It has been pointed out that the provisions of the Act impinge on the cardinal principle of federalism, namely, the requirement of equality and autonomy of the State government and non-interference with the functions of State government. This is true, but as seen above, ***both the Federal and State Governments 'share the power to legislate in order to abolish corruption and abuse of office. If this is a breach of the principles of federalism, then, I am afraid, it is the Constitution that makes provisions that have facilitated breach of the principles.*** As far as the aberration is supported by the provisions of the Constitution, ***I think it cannot rightly be argued that an illegality has occurred by the failure of the Constitution to adhere to the cardinal principles which are at best ideals to follow or guidance for an ideal situation.***¹¹¹

Over two decades later, some States in Nigeria now have AC legislations and Lagos State perhaps seeks a means of challenging the decision of *AG Ondo State v AG Federation*.¹¹² It is conceded that after over two decades, it is imperative that the faulty Constitutional foundation on which Nigeria's AC reforms is based ought to be corrected. That should not be difficult since the facts surrounding the decision in *AG Ondo State V AG Federation* are different from the existing realities in Nigeria presently. First, the pressure on Nigeria to be seen as combating corruption aggressively is not as high as what existed in the wake

¹⁰⁸ See CFRN 1999 as amended, Second Schedule pt III, para 2.

¹⁰⁹ Andrew I Chukwuemerie, 'An appraisal of the Nigerian Corrupt Practices and Other Related Offences Act 2000 as an instrument against financial crimes' (2003) 10 Journal of Financial Crime 275.

¹¹⁰ Hakeem O Yusuf, 'Transitional Justice, judicial accountability and the rule of law- A Nigerian Case Study' (PhD Theses, University of Glasgow 2009) 148.

¹¹¹ Per Uwais, CJN page 308. Emphasis supplied.

¹¹² Peter Dada, 'You can't prosecute me, Ondo Speaker tells EFCC' (Punch Newspaper, Lagos) 16 November 2022 available <https://punchng.com/fraud-you-cant-prosecute-me-ondo-speaker-tells-efcc/> accessed 22 November 2022.

of President Obasanjo's government when the legal and institutional frameworks were put together. Second, in 2000, no State had enacted its AC legislation to complement the Federal government's AC initiatives. But now, some States government have AC legislations thereby enabling the State AG to rightly prosecute state corruption related offences. Third, although the judiciary's pragmatism in interpretation of the law is highly recommended, it is important that such should be founded in the law and without indulging the excesses of the ACCs established by the federal government.¹¹³

Equally, there are two broad views on whether the Federal ACs can investigate the States. The first argues that this is possible in view of the decision of *AG Ondo v AG Federation*.¹¹⁴ The other argues that it is not possible.¹¹⁵ Therefore, it is inevitable, but the Supreme Court should reconsider its decision in *AG Ondo v AG Federation* and restate its decision in *Anyebe v State* (a case that was not referred to in the *AG Ondo* case).¹¹⁶ In *Anyebe's case*, a State AG prosecuted an accused under a federal law without the delegation from the Federal AG. The conviction and the subsequent judgment on appeal were overturned by the Supreme Court. In the light of existing State laws criminalising corruption affecting a State's finances, the interpretation given by the Supreme Court in *AG Ondo v AG Federation* is overtaken by current events.

This author argues that Section 13 (3) and (5) of the State's AC law be preserved as consistent with the principle of federalism. Where a State official deals with the finances of the Federal government, the appropriate federal ACC may prosecute the state official. Also, assuming the Constitutional provision is interpreted that both the Federal and State governments can legislate on corruption, once the Federal government has legislated on a subject matter, the State is estopped from legislating contrary to the federal legislation.¹¹⁷ Consequently, it is suggested that this legislative/jurisdictional quagmire may be resolved by a Constitutional amendment. While Section 15(9) of the 1999 Constitution is retained as a directive principle, it is taken from the Exclusive list, but included in the Concurrent list. In addition, the ICPC Act and the EFCC Act are amended and should only extend to corruption within the Federal Government. In other words, the ICPC and EFCC Acts deal with federal offences and the AC legislations of the States would relate to corruption within the State and local government. The Federal government, in conjunction with States government may set up an agency to oversee AC activities across the country for the purpose of better enforcement of obligations under the UNCAC etc. It is noteworthy that Oyo State's AC law mandates coordination and harmonisation of AC activities between the ICPC and the EFCC.¹¹⁸ Short of mandating all States to enact AC laws, the absence of a State's AC law should permit the operation of the federal ACA working with

¹¹³ See *Nganjiwa v FRN* (2017) LPELR-43391 (CA). The prelude to this case is that officials of the EFCC raided judges' homes and arrested some of them on grounds of corruption.

¹¹⁴ (2002) FWLR (pt 111) 1972.

¹¹⁵ See *Anyebe v State* (1986) 1 SC 87; *Emelogu v State* (1988) 2 NWLR (Pt 87) 524; *Sadiku V State* (2013) 11 NWLR (Pt. 1364) 191.

¹¹⁶ (1986) LPELR-520 (SC). Going by events in some of the States, it is likely that the SC reconsidering its decision in *AG Ondo v AG Federation* is a matter of time.

¹¹⁷ *AG Abia State v AG Federation* (2002)6 NWLR (Pt 763) 264, 463; *Olive v Kogi State INEC and others* (2009) LPELR-4759 (CA) 54-8.

¹¹⁸ Oyo State law s 15 (1) (l) and (m).

a fiat of the State AG and applying relevant criminal State laws.¹¹⁹ This is to harmonise the two interpretations.

3.5 Independence of the Commission

The Lagos State Public Complaints and Anti-Corruption Commission consists of a Chairman who is the Chief Executive Officer of the Commission and six others,¹²⁰ and they are all appointed by the Governor of the State for a term of five years in the first instance, subject to renewal for another term of five years.¹²¹ The author argues that a renewal should only be granted to members with outstanding performance because ten years is a long period to keep a non-performing individual where corruption is not addressed effectively.

It is remarkable that three members of the Commission are the Chairman, Lagos State Inland Revenue Service, the Accountant-General and the Auditor-General of the State.¹²² Ensuring the active participation and engagement of these senior officials in the activities of the Commission may be challenging with the affairs of the Commission hence, the law recognises that being senior officials of the State with busy schedules, these officers may be represented by an officer at the directorate level.¹²³ The nomination of the Auditor-General of the State is understandable as he is considered as the custodian of the State finances,¹²⁴ however, it is hoped that his membership together with those of other senior officers on the Board of the Commission will not compromise the Commission's integrity where the investigation relates to the finances of any of these agencies. (Lagos State Inland Revenue Services and Accountant-General). The Oyo State AC law in comparison provides for the appointment of representatives of the Auditor-General, the Police Force (not below the rank of Chief Superintendent of Police) and Department of State Security Service;¹²⁵ this suggests more likelihood for impartiality for the Agency.

The independence of any ACC contributes appreciably to the effectiveness of the nation's AC regime.¹²⁶ It is noteworthy that the Lagos State law does not expressly guarantee the independence of the PCCACC.¹²⁷ However, the extent of the Commission's independence can be conjectured from three factors- appointment, removal of an official of the Commission especially the head and the funding of the Commission.

¹¹⁹ This is thus to maintain the decision in *AG Ondo v AG Federation*.

¹²⁰ *ibid* s 3.

¹²¹ *ibid* s 3 (3); s 4. In Oyo State, the members of the Agency shall hold office for a single term of five years. See Oyo State Agency, s 5.

¹²² *ibid* s 3 (1) (b)

¹²³ *ibid*

¹²⁴ Constitution FRN 1999, ss 126-129

¹²⁵ Oyo State Law, s 4 (1).

¹²⁶ Jon ST Quah, 'Comparing Anti-Corruption Measures in Asian Countries: Lessons to be learnt' (1999) XI Asian Review of Public Administration 71, 85.

¹²⁷ See in contrast, the Oyo State Law, s 8

In all, the Governor,¹²⁸ the Attorney-General of the State¹²⁹ and the House of Assembly,¹³⁰ exercise oversight over the activities of the Commission in varying degree. The effect is that the Commission being an agent has three principals.¹³¹ This may put the Commission in conflicting position/s between two or all the principals.

The Chairman or any member of the Commission may cease to hold office for reasons that include resignation and upon conviction by a court of law.¹³² In addition, the Governor may remove any of these aforementioned officers in public interest.¹³³ Although the law does not state what constitutes public interest, the phrase has been defined to include ‘the interest of Nigerian society or any segment of it in promoting human rights and advancing human rights law.’¹³⁴ It is conjectured that the Governor may refrain from disclosing the reasons for removing a member of the Commission in the public interest.¹³⁵ A corrupt governor will most likely abuse the exercise of this discretionary power of removal in public interest because such will be uncomfortable with positive strides being taken by the Commission. An acceptable option would have been for the power to remove any such person subject to the confirmation of the House of Assembly.

On the power of the House of Assembly confirming the appointment made by the Governor, a reasonable provision regarding the independence of the Commission ought to be the provision of a time frame within which the House of Assembly confirms or rejects the Governor’s nomination. In other words, a member or Chairman of the Commission may only occupy the office in acting capacity for a maximum of three (3) months. In the absence of the House of Assembly confirming the appointment, the power to do so should be given to the Chief Judge of the State.¹³⁶ It is unlikely that members of the House of Assembly would want this power to be exercised by the CJ and a way of compelling the members of the House to do the needful.

Closely related to the independence of the Commission is the funding of the Commission. The funding of the Commission ‘consist of moneys budgeted to it by the State Government in the Appropriation Law, ...and other sums accruing to the Commission by way of donations with testamentary dispositions, endowments and contributions from philanthropists and other organisations.’¹³⁷ Time would reveal whether the funding appropriated to the Commission is adequate but if the experiences of ACs established by the FGN is anything to go by, such funding appropriated is usually inadequate.¹³⁸ To boost

¹²⁸ LSPCAC Law 2021 s 11.

¹²⁹ *ibid* s 15

¹³⁰ *ibid* s 16

¹³¹ See Robert E Klitgaard, 'Political Corruption Strategies for Reform', (1991) 2 (4) *Journal of Democracy* 86, 91-93; Iana-Maria Branduse, 'Anti-Corruption Agencies, Multiple Principals, and the Institutional Framework' (PhD, Binghamton University State University of New York 2016) 28.

¹³² LSPCAC Law 2021 s 11 (1) (a)-(e).

¹³³ *ibid* s 11 (2).

¹³⁴ Fundamental Right (Enforcement Procedure) Rules 2009, s 2. See also CFRN 1999 as amended s 174 (3).

¹³⁵ *State v Ilori* (1983) 1SCNLR 94.

¹³⁶ See Odusote (n 8) 116

¹³⁷ LSPCAC Law 2021 s 25 (1) and (2)

¹³⁸ Reason Onya and A Vincent Elemanya, 'Analysis of President Buhari's Anti-Corruption Policy: A Reality or an Illusion?' (2016) 2 (11) *International Journal of Advanced Academic Research* 77, 80; A Awopeju, S Olowu and I Jegede,

the Commission's funding, the Commission may receive gifts and donations,¹³⁹ it is important that the Commission exercises caution and establishes laid down criteria on the sources of such gifts/donations so that it is not placed in a compromising position.¹⁴⁰ The Commission should exercise restraint when receiving gifts *inter vivos*, but may not exercise much restraint with respect to testamentary gifts obtained following the death of the testator because it is doubtful if a charge can be instituted against the estate of a deceased person for acts of corruption committed by the testator in his/her lifetime.

4.0 Recommendations

The consequences of corruption are not unique to a geo-political zone alone. The entire nation is affected. Therefore, it is important that there is a proper appreciation of the fact that combating corruption is the joint responsibility of the various tiers of government in a nation. The measures proffered by each tier should complement that proffered by the other as none should be in competition one with the other. Therefore, the measures adopted by the State should not conflict with the Federal Government's AC agenda. The drafters of the Lagos State AC law do not appear to appreciate this assumption because of the disharmony to the nation's AC campaign that the law has introduced. While this author welcomes improvement to the *status quo* the Lagos State AC law will invariably cause a delay to the administration of criminal justice where an individual is being prosecuted for offences related to acts of corruption.

Additionally, the law has not put in place any protocol to aid easy administration of the law. For example, there is no provision for zonal offices across the State for better coordination of any offence or any administrative lapse. Leaving such matters to be dealt with at the headquarters will overwhelm and hinder the Commission's effectiveness. In effect, this paper recommends the establishment of administrative centres in all the LCDAs for easy or efficient coordination.

Also, there is no provision for periodic assessment to determine the Commission's effectiveness or to address areas of challenge, if any. It is noted that the UNCAC provides for a review mechanism on the implementation of the Convention by State Parties.¹⁴¹ In the absence of the stipulated criteria for assessment, an insincere government may deny areas of lapses and accredit itself to be successful.

The Commission's jurisdiction is unwieldy because it affects acts constituting corruption irrespective of the amount involved. The Commission may consider addressing some matters administratively and not clog the administration of criminal justice process by attempting to address such matters using the criminalisation approach.

'Significance of funding the Nigerian Anti-Corruption Agencies: Lessons from Singapore and Hong Kong' (2018) 6 (1) Africa's Public Service Delivery and Performance Review 1, 3.

¹³⁹ LSPCAC Law 2021 s 24 (1)

¹⁴⁰ Ibid s 24 (2)

¹⁴¹ UNCAC, art 63 (4) (e) – (g).

5.0 Conclusion

Corruption is a complex phenomenon that cuts across a society's economies and sectors. It is challenging to find a single all-encompassing approach that will effectively combat the phenomenon. What should be important is to ensure that the approach/es designed is/are effective to avoid unnecessary dissipation of energy and resources. This is the backdrop for this paper. The question that this paper answered is the extent to which the Lagos State Public Complaints and Anti-Corruption Law can effectively combat corruption. This question was answered in the light of existing approaches, legal and institutional frameworks in the country or that are recommended by leading institutions. Regrettably, the approach adopted by Lagos State, is grossly inadequate.

The need to combat corruption in Nigeria is both urgent and long overdue. It is however important that legal steps be taken so that the results are recorded, and the goal is achieved. If the records in the past two decades are anything to go by, it should be obvious that more needs to be done. Continuing the path of glaring conflicts in the legal framework and expecting that corruption would be successfully combated in Nigeria is delusional. It is not too late to correct the legal framework and ensure that each arm of government is given the requisite legal and institutional framework to combat corruption within its remit. This step will help improve the administration of justice process and ensure that defendants are not exonerated on grounds of avoidable technicalities. Secondly, there are enough federal institutions within the remit of the federal ACs. They should concentrate on those and allow the State governments to focus on corruption acts within the States. In amending the laws, including the constitution, certain acts of corruption may however be the exclusive preserve of the federal ACs.

This paper considers excluding the private sector from the law's jurisdiction is a limitation which may affect the effectiveness of the law. This is because corruption between both sectors is linked. In a commercial city like Lagos, the private sector is responsible for a large percentage of the growth of Lagos State.

NIGERIA'S FIVE-YEAR CPI RANKING¹⁴²

S/NO	YEAR	SCORE	RANKING
1	2018	27	144
2	2019	26	146
3	2020	25	149
4	2021	24	154
5	2022	24	150

¹⁴² Transparency International, Corruption Perception Index available <https://www.transparency.org/en/cpi/2018> accessed 5 May 2023