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7

ENFORCEMENT OF ANTI-CORRUPTION LEGISLATION IN NIGERIA: AN APPRAISAL

By

Kehinde Anifalaje*

Abstract

The paper examines the meaning of corruption, its causes and dimensions within the Nigerian context. It also explores the legal framework targeted at combating the menace. It argues that though Nigeria has a wide array of laws in this area, corruption still flourishes in the country because the due implementation of the laws is being impeded by institutional and financial constraints as well as political and ethnic factors. Suggestions are preferred on how to successfully confront the menace and enhance the socio-economic development of the nation.

I. Introduction

In the bid to ensure accountability and transparency in the affairs of government and rid the country of corrupt practices, the Constitution of the Federal Republic of Nigeria, 1999¹ (hereinafter referred to as the 1999 Constitution) in section 15(5) thereof enjoins the State to “abolish all corrupt practices and abuse of power.”² In furtherance of this constitutional mandate, a number of anti-corruption legislation have been enacted including the Code of Conduct provisions of the Constitution,³ which are all targeted at eradicating or minimising the incidence of corruption in the Nigerian society. Nigeria has also ratified the United Nations Convention on Corruption and the African Union Convention on Preventing and Combating Corruption and Related Offences since 2004 and 2006 respectively.⁴ It is disheartening; however, that these laws are being flouted with impunity and corruption has continued to flourish in the Nigerian society. Since independence, corruption and graft have virtually become an acceptable social norm in the conduct of the business of the government and it is firmly embedded and entrenched in the social and economic structure of the nation.⁵ With the advent of the current democratic dispensation in 1999, there has also been a steady increase in corruption in view of the spate of allegations of corruption that abound in almost every sector of government.⁶ In 2015, Nigeria is ranked 136th out of the 168 countries on the

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¹ (as amended)

² It is noteworthy, however, that nowhere in the Constitution is “corrupt practices” defined.

³ Part I of the Fifth Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The Code of Conduct for Public Officers was first introduced in the Constitution of the Federal Republic of Nigeria, 1979. Even at that time, corruption, bribery and abuse of office were found to be so endemic in the society that the Constitution Drafting Committee felt obliged to include the Code of Conduct in the Draft Constitution “to ensure that persons who are entrusted with public authority do not abuse their trust to enrich themselves to defraud the nation.”- O.A. Bowen ‘The Code of Conduct Provisions in the Constitution of the Federal Republic of Nigeria’ in J..A. Omotola, (ed). *Essays in Honour of Judge T.O. Elias*. (Faculty of Law, Lagos 1979)154/

⁴ These Conventions are, however, not yet in force in Nigeria as they are yet to be domesticated through appropriate legislative measures as required under section 12(1) of the 1999 Constitution (as amended).

⁵ R Wraith and E. Simpkins ‘Glimpses of Corruption’ in *Corruption in Developing Countries* (George Allen & Unwin Ltd, London 1963) 14-32

⁶ Prior to the advent of the Fourth Republic, it was estimated that about US\$400 billion was stolen between 1960 and 1999. - K. Oladele ‘Causes and Consequences of Corruption in: The Nigerian Experience’ (2013) <<http://chatafrik.com/articles/nigerian-affairs/causes-and-consequences-of-corruption-the-nigerian->

Transparency International Corruption Perception Index thereby making Nigeria one of the most corrupt countries in the world.⁷

Corruption has been defined as:

. . . the abuse of public office for private gains. Public office is abused for private gain when an official accepts, solicits or extorts a bribe. It is also abused when private agents actively offer bribes to circumvent public policies and processes for competitive advantage and profit. Public office can also be abused for personal benefit even if no bribery occurs, through patronage and nepotism, the theft of state assets or the diversion of state revenues.⁸

Similarly, Transparency International has defined corruption as “the abuse of entrusted power for private gains.”⁹ Although the Corrupt Practices and Other Related Offences Act, 2000 does not specifically define corruption, it thus provide in section 2 thereof that “corruption includes, bribery, fraud and other related offences” while section 98(1) of the Criminal Code, implicitly equates corruption with the giving and receipt of bribe. Corruption thus generally entails the exploitation of public position, resources and power for private gain. It connotes bribery, unjust enrichment, fraud, misappropriation of funds, abuse of office, nepotism, undue advantage, abuse or misuse of public or governmental power, manipulation of procurement process, falsification of financial records, sale of voters’ cards and ballot papers as well as the purchase of candidatures and seats in the election process etc.

The causes of corruption in a nation have also been aptly summed up by the World Bank thus:

The normal motivation of public sector employees to work productively may be undermined by many factors including low and declining civil service salaries and promotion unconnected with performance. Dysfunctional government budgets, inadequate supplies and equipment, delays in release of budget funds (including pay) and a loss of organizational purpose may also demoralize staff. The motivation to remain honest may be further weakened if senior officials and political leaders use public office for private gain or if those who resist corruption lack protection. Or the public service may have long been dominated by patron-client relationships, in which the sharing of bribes and favours has been entrenched. In some countries, pay levels may always have been low, with the informal understanding that staff will find their own ways to supplement inadequate pay. Sometimes, these conditions are exacerbated by closed political systems dominated by narrow vested interests and by international sources of corruption associated with major projects or equipment purchases.”¹⁰

The foregoing identified causes of corruption are largely prevalent in the Nigerian system. Other causes of corruption in the Nigerian context have been identified to include bad

[experience/1638-causes-and-consequences-of-corruption-the-nigerian-experience?start=1#.WLLyUG-LTIU](http://www.transparency.org/research/cpi/overview)> accessed 12 June 2015

⁷ Transparency International Corruption Perceptions Index 2015, <<http://www.transparency.org/research/cpi/overview>> accessed 20 September 2015

⁸ World Bank ‘Helping Countries Combat Corruption: The Role of the World Bank’, 8 (1997) <<http://www1.worldbank.org/publicsector/anticorrupt/corruptn/cor02.htm>> accessed 25 June 2015

⁹ TI, ‘What is Corruption.’ <www.transparency.org/what-is-corruption/=define> accessed 25 June 2015

¹⁰ World Bank ‘Helping Countries Combat Corruption: The Role of the World Bank’ (n. 8) 12

leadership,¹¹ weak institutions, role of formal rules and the criminal justice system, public perception, and poverty.¹² Some other causes include the cash economy nature of the country, and sharp decline in the ethical values of institutions, such as family, church or mosque, schools, government agencies and organisations, which ought to serve as the pillars of a moral society.¹³

It is intended in this paper to examine the menace of corruption within the Nigerian society, and the extent of the enforcement of some of the anti-corruption legislation. Suggestions would also be proffered on how to address any identified issues that could enhance the due enforcement of the law.

II Multi-Faceted Nature of Corruption in Nigeria

Corruption in Nigeria has become a systemic malaise that cuts across the private and public sectors as well as the social and economic spectrum of the society. In the private sector, corruption majorly entails the demand and receipt of bribes to secure undue advantage or to avoid a disadvantage. It is generally manifested, for example, in the inflation of contracts or in the offer of bribes to public officials in order to secure contracts.¹⁴ It was once revealed, through a survey conducted a few years ago, that contracts executed for Nigerian governments cost as much as thrice what they cost in other African countries.¹⁵ In the banking sector, corruption takes the form of offering of bribe to obtain credit facility and offering financial or other inducements to obtain confidential information from a customer's account as well as the offering of inducements to secure deposits from corporate entities, especially government parastatals.¹⁶ Indeed, the depreciating value of the naira and the attendant problems in the economy are not unconnected with corrupt practices in banks through sharp foreign exchange practices. Other areas that are also being affected include the telecommunication sector as well as the education sector through for example, examination malpractices and "sorting out" lecturers for academic favours including getting approval for projects or for better grades or for doctored transcripts, or being shown examination questions or having answer scripts replaced.¹⁷ There are also rampant cases of private-sector employees taking bribes to render services as well as employers paying less than the market rate to employees.

¹¹ E. Chukwuemeka, J.U. Bartholomew, and J. Ugwu, 'Curbing Corruption in Nigeria: The Imperatives of Good Leadership' (2012) 1(1) *Singaporean Journal of Business Economics and Management Studies* 67 <[http://singaporeanjbem.com/pdfs/SG_VOL_1_\(1\)/5.pdf](http://singaporeanjbem.com/pdfs/SG_VOL_1_(1)/5.pdf)> accessed 28 October 2015

¹² Oladele 'Causes and Consequences of Corruption: The Nigerian Experience' (n. 6)

¹³ R. Ekpu, 'Corruption'. *Newswatch*. (30 July 2001). 41.

¹⁴ For example, Siemens, a German Engineering Group, was fined £144 million in Germany after it emerged that it had paid more than £10 million to ministers and officials in Nigeria, Russia and Libya. Four Nigerian ministers and other officials were believed to have received the lion's share of the £10million identified by the German court. Although Siemens has sold telecoms equipment in Nigeria, it is not clear what contracts the company was seeking through the bribes which are said to have taken place between 2001 and 2004. See 'Nigeria: Siemen's Bribes Probe' <www.onlinelibrary.wiley.com/doi/10.1111/1467-6346.2007.01322x/full> accessed 25 March 2015. Similarly, in the Halliburton bribery scam, the officials of an American firm, Halliburton, were alleged to have paid over \$180 million to senior Nigerian officials, including allegedly, past Heads of State, to secure a construction contract for a liquefied natural gas plant in Bonny Island in the Niger Delta. See K. Omonobi, '\$180m Halliburton Scandal: Two Ex-Heads of State Battle Jonathan' (2012) <www.vanguard.com/2012/10/180m-halliburton-scandal-two-ex-heads-of-state-battle-jonathan/> accessed 8 August 2014.

¹⁵ See Ekpu, (n. 13) 41

¹⁶ See M Chigbo, 'Corruption'. *Newswatch*, (30 July 2001) 46

¹⁷ See The Editorial, ' "Sorting" out the University System' *The Guardian* (23. March 2005) 12; Chigbo, *Ibid* 47.

In the public sector, corruption takes place both at the political and bureaucratic levels. It has been noted that corruption in the public sector accounts for more than 70 per cent of the corruption cases in Nigeria.¹⁸ The Police, Immigration, the Nigeria Customs Service, the Nigeria Ports Authority, the Nigeria Prisons Service are also not immune to the corruption scourge.¹⁹ It was, indeed, a shocking revelation when the number one law enforcement officer at one time in the country, the erstwhile Inspector General of Police (IGP), Tafa Balogun was convicted and on a 70 count charge for his alleged theft of over ₦13 billion belonging to the Nigeria Police.²⁰ Similarly, a former National Security Adviser, Colonel Sambo Dasuki (rtd), was alleged to have diverted \$2.1 billion (about ₦32 billion) meant for the purchase of arms to fight terrorists in the North Eastern part of Nigeria into accounts of private companies and individuals.²¹ Also, a former Chief of Defence Staff, Air Marshall, Alex Badeh, has been charged to court for fraud, criminal breach of trust and money laundering involving about N3billion,²² while the former Chief of Air Staff, Air Vice Marshall Mohammed Dikko has also been charged to court over alleged diversion of N4.8billion from Nigerian Air Force accounts between 2011 and 2012.²³ The former Chairman of the Economic and Financial Crimes Commission, Ibrahim Lamorde, was also alleged to have diverted ₦1 trillion that was said to have been recovered from a former governor of Bayelsa State, Diepreye Alameyeseigha and the said former Inspector General of Police, Tafa Balogun.²⁴

Leaders of the National Assembly have also, at one time or the other, been accused of corruption. An Intelligence Report once confirmed that ministers and heads of departments and parastatals often paid bribe or other form of inducement, on demand or otherwise, to Committees and individuals in the National Assembly in order to secure approval or enhancement of budget proposals.²⁵ Similar allegations of demand for bribe from Ministries and Parastatals have been made in the past against some members of the National Assembly in the performance of their oversight functions as well as during political appointment confirmation exercise.²⁶ Similarly, the failed third-term ambition of former President Obasanjo, it has been asserted by the African Union, promoted corruption within the

¹⁸ Chukwuemeka, Barthlomew and Ugwu (n. 11) 67.

¹⁹ See Chigbo (n. 16) 47.

²⁰ BBC, 'Nigeria's Ex-Police Chief Jailed', <http://www.bbc.co.uk/2/hi/africa/4460740.stm> accessed 11 April 2016

²¹ A. Adesomoju, 'EFCC: Dasuki Used Arms Cash to Buy Assets in London, Dubai' *The Punch* (16 December 2015) 2.

²² See 'Former Nigerian Defence Chief Denies £10m fraud charges' (2016) <https://www.theguardian.com/world/2016/mar/07/nigeria-former-defence-chief-alex-badeh-denies-10m-fraud-charges>, accessed 10 August 2016.

²³ J. Azu, 'EFCC Arraigns Ex-Chief of Air Staff Over N4.8bn Fraud' (2016) <Media Trust Ltd (Nig) <http://www.dailytrust.com.ng/news/general/efcc-arraigns-ex-chief-of-air-staff-over-n4-8bn-fraud/146...html>, accessed 23 August 2016

²⁴ N. Odebode and S. Aborisade 'N1tn Petition: Senate Rumbles; Splits Over Lamorde Probe' *The Punch* (25 August 2015) 2.

²⁵ O. Obasanjo, 'Fight Against Corruption is Real, says Obasanjo' Text of a speech delivered on March 23, 2005 by former President, Olusegun Obasanjo to the nation on the issue of transparency, accountability and eradication of corruption. Available in *The Guardian* (23 March 2005) 11; see also, A. Daniel and M.A. Jimoh, 'Bribery in High Places' *The Guardian* (23 March 2005) 1. The allegation was also confirmed by a former member of the House of Representatives, Hon. Haruna Yerima; see A. Ogbodo, 'Anti-graft Crusade: A Road Strewn With Thorns' *The Guardian*. (10 April 2005) 23.

²⁶ Obasanjo, 'Fight Against Corruption is Real, says Obasanjo' *Ibid*

legislature, describing it as “a major political corruption of monumental magnitude in the country.”²⁷

In the same vein, large-scale corruption has been a common occurrence in Federal Ministries, Parastatals and Agencies. For instance, an audit, which was carried out by the Nigeria Extractive Industries Transparency Initiative, covering the five-year period of 2007 – 2011, revealed that a staggering sum of ₦994 billion special funds, which included the Ecological Fund, National Resources Development Fund, Niger Delta Development Commission Fund, Stabilisation Fund and the Petroleum Technology Development Fund, were either not remitted as statutorily required, nor applied for the specific purposes for which they were set up.²⁸ Also, Service Wide Vote to some Federal Government Agencies in excess of ₦114 billion were said to have been lost in transit. The Service Wide Vote, which has been described as “the official conduit for stealing public funds” was said to have gulped ₦4.7 trillion instead of the ₦2.1 trillion approved by the National Assembly for the nine-year period of 2004 and 2012.²⁹

Similarly, the Nigeria National Petroleum Corporation (NNPC) audit report, made by the forensic auditors hired by the Federal Government in 2014 to probe the NNPC, indicted the Corporation of making double subsidy claims on petrol and kerosene.³⁰ The gross official reserves, which stood at \$40.20 billion as of July 2014,³¹ were also dissipated to such an extent that, as at December 31, 2014, the Federal Government’s debt officially stood at ₦9.19 trillion.³² The savings from the debt relief granted Nigeria by her international creditors³³ as well as the substantial resources from excess oil revenue from crude oil sales in the past years, which ought to have been used to boost the country’s capacity for high production and economic growth, have been squandered by those entrusted with the management of the wealth of the nation.³⁴ The excess crude account, which was nearly \$10 billion, had crashed

²⁷ C. Olayinka, ‘Africa Trapped by Corruption, Says AU Report.’ *The Guardian* (22 October 2009) 1

²⁸ For instance, a former Governor of Plateau State was alleged to have shared the State’s ₦1.8 billion Ecological Fund through unwholesome donation to the South-West wing of his political party and another chunk to some beneficiaries – Editorial, ‘Plundering of Special Funds’. *The Punch*. (14 July 2014) 28.

²⁹ The House of Representatives Committee on Public Account in March 2014 disclosed that the Office of the Head of Service of the Federation, for example, could not account for ₦35 billion it collected from the Service Wide Vote within nine years; See J. Ameh ‘Reps Uncover Fresh Missing ₦35bn.’ *The Punch* (14 March 2014) 28; Editorial, ‘Service Wide Vote: ₦114 billion Controversial Releases.’ *The Punch*. (8 April 2014) 22

³⁰ See F. Asu, ‘NNPC Audit Report Exposes Double Subsidy Payments.’ *The Punch*. (28 April 2015) 29.

³¹ I. Onuba, ‘Rising Unemployment, Income Inequality Worry CBN’ *The Punch* (23 July 2014) 27.

³² According to the Debt Management Office (DMO), the Federal Government has a stock of \$6.445 billion in external debt (₦1.29 trillion at the rate of one dollar to ₦200) and another ₦7.9 trillion domestic debt totalling ₦9.19 trillion, as of December 31, 2014. See C. Nduihe, ‘Huge Debts Await Buhari, In-coming Governors.’ *The Vanguard*. (18 April 2015) 5. Most of the States are also said to be highly indebted such that the total debt owed by the Federal Government and the 36 States of the Federation as well as the Federal Capital Territory was, according to the Debt Management Office, ₦12.06 trillion as of March 31, 2015. See E. Amaefule, Nigeria’s Debt Hits ₦12tn. *The Punch*. (11 May 2015) 30.

³³ The Year 2006 witnessed the liquidation of Nigeria’s total external debt of over US \$30 billion to the Paris Club under an external debt exit arrangement. 60 per cent of the external debt owed by Nigeria to the Paris Club, which was about \$18 billion, was forgiven while the balance of \$12 billion was settled over a period of six months; - S. Aluko, *History of External Debt of the World*. Being contributions to the Roundtable Conference on the Nigerian External Debt Issue, held at the Nigerian Institute of Social and Economic Research (NISER) Ibadan on August 9, 2005. 12..

³⁴ Before the fall of the price of crude oil in the international market in 2014, the nation’s excess crude oil account had consistently increased over a period of years. For instance, about ₦327bn excess revenue from crude oil sales accrued to the coffers of the Federal Government of Nigeria in the Year 2004 alone; - *The Guardian*. August 25, 2004 1.. In August 2008, the House of Representatives Committee on Banking and

to \$3.598 billion by November 2013.³⁵ A number of Ministers have also, at one time or the other, been alleged to be involved in misappropriation or mismanagement of public funds.³⁶ For instance, there has been a recent revelation of the sharing of ₦23 billion by the former Minister of Finance, Mrs Nenadi Usman, among State Chapters of the Peoples' Democratic Party in the North-East at the instance of the former Petroleum Minister, Mrs Diezani Alison-Madueke in order to influence the outcome of the 2015 presidential election in favour of the Peoples' Democratic Party's presidential candidate.³⁷ The old pension scheme also witnessed massive corruption, misappropriation and embezzlement of pension funds to the detriment of retirees. For instance, in February 2012, the Pension Reform Task Force announced that it uncovered ₦151 billion pension funds allegedly stolen by officials in the office of the Head of the Civil Service of the Federation. And in March 2012, no fewer than 32 public servants and private sector employees were arrested by the Task Force for allegedly swindling the Federal Government retirees under the Pensions Act, 1979 of about ₦67 billion pension funds. About ₦12 billion was said to have been found in the personal account of a former Director alone whilst another ₦4 billion was found in the personal account of a former

Currency disclosed that between January and April 2008, the sum of \$16 billion accrued to the excess crude account, a sum which, according to UNDP Country Director in Nigeria, Mr Turban Saleh is "larger than the Gross Domestic Product (GDP) and yearly revenue of more than ninety per cent of African countries put together". See S. Akhaine, 'UNDP Urges Prudent Use of Excess Crude Funds, Foreign Reserves' *The Guardian*. (24 April 2008) 96; J. Ogbodo, K. Ebri, and Y. Ebosele, 'N1.5tr Accrues to Excess Crude Account, Says Reps Panel.' *The Guardian* (12 August 2008) 1 Similarly, the nation's foreign reserve, as of August 2008, was put at \$60 billion, a sum which at that time, was also said by the UNDP Country Director in Nigeria, Mr Turban Saleh, to be more than the Gross Domestic Products of all African countries, except South Africa; - S. Akhaine, 'UNDP Urges Prudent Use of Excess Crude Funds, Foreign Reserves'; M. Okwe, 'CBN Keeps Interest Rate Benchmark at 10.25 %. Foreign Reserves Hit \$60 bn.' *The Guardian* (6 August 2008) 1

³⁵ M. Okwe and T. Daka, 'Government Withdraws \$1billion from Excess Crude Account.' *The Guardian* (15 November 2013.) 1.

³⁶ A former Minister of Petroleum Resources, Mrs Diezani Alison-Madueke was alleged to have spent ₦10 billion in three years to charter and maintain a jet for her personal use and those of her immediate family. The Minister was alleged to have spent 500,000 Euros or ₦130 million monthly to maintain the aircraft between the year 2012 and 2014. All attempts to conduct an investigation to verify the authenticity or otherwise of the allegation by the Senate Committee on Petroleum Resources (Downstream) as well as the House of Representatives Committee on Public Accounts were frustrated by the refusal of the NNPC Group Managing Director to honour the two Committees' invitation and the blunt refusal of the said Minister to respond to letters written to her by the House Committee to provide information on the sources of funding and the law that empowered her to fly in chartered jets. See J. Ameh, 'Private Jet: Reps Probe Oil Minister's ₦10bn Expenses.' *The Punch* (21 March 2014.)2; J. Ameh, and S. Aborisade, 'Chartered Jets: Diezani, NNPC GMD Shun Reps' Queries.' *The Punch* (9 April 2014) 7. Similarly, a former Minister of Aviation, Stella Oduah was alleged to have approved the expenditure of ₦643 million for the Nigeria Civil Aviation Authority to buy 54 vehicles in 2013 beyond her limit of ₦100 million. This included two BMW bulletproof cars, which was purchased with a controversial sum of ₦255 million without any budgetary appropriation. See F. Soriwei, and N. Okechukwu, 'Bulletproof Car Scandal: At Last, EFCC Quizzes Stella Oduah.' *The Punch* (3 April 2014) 2; M. Okwe, B.C. Onochie and A. Abuh, 'How Oduah Erred on Purchase of Bulletproof Cars, by Reps.' *The Guardian* (1 November 2013.) 1 Over N30 trillion was also alleged by the former Governor of the Central Bank of Nigeria, Prof. Chukwuma Soludo, to have been stolen under the watch of the former Minister of Finance, Dr. Ngozi Okonjo-Iweala, - O. Abioye, 'Over N30tn Stolen Under Okonjo-Iweala - Soludo'. *The Punch* (2 February 2015) 33. .

³⁷ S. Daniel, 'How We Shared ₦ 23b Diezani Poll Cash, Senator Nenadi Usman Tells EFCC' www.vanguardng.com/2016/08/shared-n23-b-diezani-poll-cash-sen-nenadi-usman-tells-efcc/ accessed 7 October 2016.

deputy director in the pension department, Office of the Head of Civil Service of the Federation.³⁸

The bad mismanagement of the nation's wealth at the Federal level is also being replicated at the State and Local Government level as corruption has become a major part of the decimal of governance failure.³⁹ The States and Local Governments have been allocated billions of Naira for developmental programmes with nothing much on the ground to show for such allocations as a result of fraudulent acts in the ministries such as over-invoicing, contract inflation and payment of salary to ghost workers.⁴⁰ A Performance Assessment Report on ₦48 billion allocated to about 34 States and the Federal Capital Territory from the debt relief granted Nigeria to execute debt-relief projects in health, water and sanitation as well as youth empowerment was alleged not to have been handled well by the States by the Office of the Special Assistant to the President on Millennium Development Goals.⁴¹ Indeed, it has been alleged that more than 20 per cent of capital expenditure in Nigeria end up in "private pockets" annually.⁴² Many State governors have pilfered the treasuries immediately after such federal allocations were received and run overseas with ill-gotten foreign exchange.⁴³ A former Governor of Delta State, James Ibori, was convicted by the Crown Court at Southwark London and sentenced to 13 years imprisonment for money laundering and fraud.⁴⁴

³⁸ N. Popoola, 'Four Ex-perm secs, 28 Others Arrested for ₦67 bn. Pension Fraud.' *The Punch* (9 March 2012) 19; O. Lartey 'N12.86bn pension scandals: EFCC seals off pension directors' filling stations, housing estate.' *The Punch* (7 March 2011) 1-2.

³⁹ The former chairman of the Economic and Financial Crimes Commission, Mrs Farida Waziri once lamented that between June 1999 and June 2007, for example, a whopping ₦3, 313, 856, 541,79 was allocated to the 774 Councils in the country with nothing to show for the huge funds. See M. Oloja, F. Oretade, and I. Lawal, 'Councils Wasted N3tr, says EFCC.' *The Guardian* (27 August 2008) 1. See also, L. Ugehgebe, 'EFCC Arraigns Boni Haruna Over Fraud.' *The Guardian* (6 August 2008.) 1.

⁴⁰ The former Minister of Finance, Dr. Ngozi Okonjo-Iweala revealed at a time that from June 1999 to December 2005, the sum of over ₦11tn (11 trillion naira) was distributed and received by Federal, State and Local Government. See *The Guardian* (27 April 2006) 16.

⁴¹ See T. Templer-Olaiya, 'States Yet to Execute N84b Debt-Relief Projects.' *The Guardian* (10 November 2009.) 96.

⁴² The allegation was made by the erstwhile Vice President of the World Bank for Africa and former Minister of Education, Oby Ezekwesili in a paper entitled "Corruption, national development, the bar and the judiciary" delivered at the 52nd Annual General Conference of the Nigeria Bar Association on 28 August, 2012.. She also alleged that an estimated \$400 billion of the country's oil revenue has been stolen or misspent since she attained independence in 1960. See I. Nnochiri, 'Nigeria Loses \$400bn to Oil Thieves.' (2012)

<www.vanguardngr.com/2012/08/nigeria-loses-400bn-to-oil-thieves-ezekwesili/>.accessed 26 August 2015

⁴³ For example, on a search of the London house of the former Governor of Bayelsa State, Diepreye Alamieyeseigha upon his arrest at the Heathrow Airport on 15 September 2004, about £1 million in cash was found. Also £400,000 and £470,000 were alleged to be in different bank accounts belonging to him. A British court also charged him for laundering £1.8million. Another Governor, Joshua Dariye was also alleged to have had £43,000 on him upon his arrest in London and £920,000 in a foreign account - *The Guardian* (22 October 2006) 19. Similarly, a former Governor of Adamawa State was alleged to have misappropriated ₦93 million whilst the former Governor of Edo State, Lucky Igbinedion was also alleged to have embezzled more than ₦3.6 billion. - *The Guardian* (14 March 14 2010).

⁴⁴ Indeed, at the time James Ibori was being convicted by the Southwark Crown Court in 2012 to 13 years imprisonment for laundering a sum which was estimated by the Metropolitan Police to be £250million (£157million) of public funds, Judge Anthony Pitts told the court that "In the light of other matters, perhaps this is ludicrously low figure and the figure may be in excess of £200m, it is difficult to tell." See 'Former Nigeria State Governor James Ibori Receives 13-year Sentence' <<https://www.theguardian.com/global-development/2012/apr/17/nigeria-governor-james-ibori-sentenced.>> accessed 18 March 2015. Similarly, in 2007, assets worth \$35million allegedly belonging to the former Governor were frozen by the Criminal

In the same vein, although Nigeria's military interventionists consistently cited corruption of some politicians as one of the reasons for staging a coup,⁴⁵ the military rulers themselves were not immune from this vice as their regimes were also characterised by massive corruption. For instance, it was alleged that the amount stolen by Late General Sani Abacha and his family from the nation's treasury through direct stealing from the Central Bank of Nigeria and the raking from juicy contracts mostly awarded for that purpose was about \$4billion. Indeed, the investigating judge in Geneva, George Zecchin submitted that what was found so far "is inferior to reality."⁴⁶ Efforts made by the Federal Government of Nigeria to recover some of the Late Abacha loot yielded some positive results in 2015 with the agreement made with the Swiss government to return \$380 million siphoned off by the family of the late Head of State and confiscated in 2006 on the orders of Geneva Justice Authorities.⁴⁷

The judiciary, which is generally regarded as the last hope of the common man, is also not immune from the scourge of corruption as allegations of bribery have, at one time or the other, been levied against some judges.⁴⁸

There is no gainsaying the fact therefore that, in Nigeria, corruption has wrecked havoc on institutional, legal and moral standards, retarded both social and economic development,⁴⁹ destroyed the foundations of democratic structure and development and has distorted political programmes. Resources meant to lift people from the suffocating tyranny of poverty and underdevelopment by providing them with essential social amenities, such as water supply, good roads, education, health and other basic and social services, are captured and stolen by a handful of Nigerians through corrupt practices.⁵⁰ In the candid words of former President of the United States of America (USA), Barack Obama:

Court of Appeal in London after he failed to justify buying the property with his annual salary of less than \$25,000 as Governor. See Oyibo, 'Ibora: London Court Extends Order Freezing Assets' <www.oyibosonline.com/ibora-london-court-extends-order-freezing-assets/>. accessed 2 February 2015.

⁴⁵ O. Obasanjo, *Nzeogwu* (Spectrum Books Ltd. Ibadan 1987) 9; L. Adamolekun, *The Fall of the Second Republic* (Spectrum Books Ltd. Ibadan 1985) 76; T. A. Aguda, 'Poverty, Law and Justice' in T.O. Elias and M.I. Jegede. (eds.) *Nigerian Essays in Jurisprudence*. (MIJ Publishers Ltd. Lagos 1993) 432, 436; Chukwuemeka, E, Barthlomew, J.U and , Ugwu, J 'Curbing Corruption in Nigeria (n. 11).

⁴⁶ A. Olorunfewa, 'The Wages of Sleaze' *Tell* (24 July 2000) 12. In 2014, less than a week after the former President, Goodluck Jonathan honoured the late Head of State, Sani Abacha, with an award for 'his contribution to the nation,' the United States ordered a freeze on \$458m in assets stolen by the former Head of State and his accomplice. The Justice Department said that "the corruption proceeds, stashed away in bank accounts in Britain, France and Jersey – were frozen at Washington's request with the help of local authorities." See Anon, 'US Seizes \$458m Abacha Loot' *The Punch* (6 March 2014) 26.

⁴⁷ See F. Asu, 'Switzerland to Return ₦75.2bn Abacha Loot to Nigeria' *The Punch* (18 March 2015.) 28.

⁴⁸ See A.J. Owonikoko, 'Law and Human Rights: Tackling Corruption in the Administration of justice.' *The Vanguard* (3 April 2003.) 2; F.A. Okongwu, 'Nigeria's Judiciary Requires Sanitation' *Daily Champion* (13 July 2004.) 3.

⁴⁹ In his monthly press briefing with the Nigeria Television Authority for June 2003, the former President, Obasanjo, sorely lamented the crippling force of corruption in Nigeria, which he disclosed was proved by governmental enquiries to be the cause of the paralysis and failure of strategic socio-economic assets and amenities of Nigeria, such as the National Electric Power Authority and the Nigeria Airways to mention just a few. Similarly, the former President, Late Alhaji Shehu Musa Yar'Adua once disclosed in 2008 that about \$10 billion was spent on power supply by the Olusegun Obasanjo Administration without commensurate results. See J. Ogbodo, and Y. Lawal, 'Reps Probe \$10 bn Spending on Power Projects' *The Guardian* (1 February 2008.) 1.

⁵⁰ For instance, a substantial part of \$1.005bn loan obtained from the Chinese Exim Bank by the administration of former President, Goodluck Jonathan, for the construction of a standard gauge rail line linking Lagos to Kano was alleged to have been diverted elsewhere. – O. Adetayo, 'Buhari Queries Finance Ministry Over Diversion of ₦119 bn' *The Punch* (11 August 2015) 2. The Infrastructure Concession and Budgetary

Corruption is condemned by all religions, all ethical codes, all legal systems. It hinders all development, slows all progress, impedes all advancement . . . It strikes hardest at the poor and vulnerable, siphoning scarce resources away from those most in need. It advances the selfish interests of a dishonest few over the interests of the great many who work hard and who obey the law and our common traditions. Corruption erodes trust in government and private institutions alike; it undermines confidence in the fairness of free and open market; and it breeds contempt for the rule of law. Corruption is, simply put, a scourge on civil society.⁵¹

The former USA's Ambassador to Nigeria, Robin Renne Sanders, had expressed the view that the cancer of corruption, "especially, systemic corruption, is among the most powerful forces, undermining good governance and poverty alleviation in Nigeria, siphoning financial resources and creating barriers to investment, commercial activities, economic growth, and most importantly, to development."⁵² Also, on the day of signing this ICPC Bill into Law on 13 June, 2000, the former President, Obasanjo said:

With corruption, there can be no sustainable development, no political stability. By breeding and feeding on inefficiency, corruption invariably strangles the system of social organisation. In fact, corruption is literally the antithesis of development and progress.⁵³

III. An Overview of Some Anti-Corruption Legislation

Nigeria has a wide array of laws that criminalise corruption and corrupt practices with appropriate sanctions and punishments. These laws include the Criminal Code and the Penal Code, both of which criminalise the offering and receiving of some benefit, reward or inducement, to sway or deflect a person employed in the public service from the honest and impartial discharge of his duties;⁵⁴ the Code of Conduct Provisions 1999 Constitution which prescribes a comprehensive ethical standards for Public Officers;⁵⁵ Miscellaneous Offences Act 1984 which creates a number of miscellaneous offences with stiff penalties and for the trial of offenders,⁵⁶ the Independent Corrupt Practices and Other Related Offences (ICPC)

Commission had one time disclosed that as at the year 2015, Nigeria faced a gaping infrastructure deficit of over \$300 billion, an amount which was stated, was a sharp increase over the 2011 estimate of \$200 billion given by the Urban Development Bank. According to the Commission, Nigeria would need to plough in \$15 billion annually to bring infrastructure up to scratch – Editorial, 'Closing Nigeria's \$300bn Infrastructure Gap' *The Punch* (15 May 2015.) 22.

⁵¹ Cited by E. Holder, (2009). 'The Remark of the U.S. Attorney General at the Opening Plenary of the VI Ministerial Global Forum on Fighting Corruption and Safeguarding Integrity', Doha, Qatar. 7 November 2009. <<http://www.justice.gov/opa/speech/attorney-general-eric-holder-opening-plenary-vi-ministerial-global-forum-fighting>> accessed 21 December 2015.

⁵² See E. Henshaw, and D. Oladimeji 'Poverty, Greatest Challenge to Nigeria, says U.S. envoy' *The Guardian* (24 April 2008) 96.

⁵³ Cited by Ogwuegbu, J.S.C. in *Attorney-General Ondo State v Attorney-General of the Federation*. (2002) 9 NWLR (pt. 772) 222, 338.

⁵⁴ Section 98 of the Criminal Code and sections 115 – 122 of the Penal Code. However, both Codes focus on corruption in the public sector and by public officers. Corruption in the private sector of the economy is, therefore, outside the scope of both Codes.

⁵⁵ Part I of the Fifth Schedule to the Constitution of the Federal Republic of Nigeria 1999 (as amended). The Code of Conduct for Public Officers was first included in the Fifth Schedule to the Constitution of the Federal Republic of Nigeria, 1979; see also Code of Conduct Bureau and Tribunal Act, Cap C 151, LFN 2004.

⁵⁶ See e.g. sections 2, 8, 12, 15 and 16 of the Act.

Act 2003⁵⁷ as well as the Economic and Financial Crimes Commission (Establishment) (EFCC) Act 2004,⁵⁸ both of which seek to prohibit and prescribe punishment for corrupt practices and other related offences throughout the Federal Republic of Nigeria; Advance Fee Fraud and Other Related Offences Act 2006, which prohibits and punishes certain offences pertaining to advance fee fraud and other fraud-related offences, such as obtaining property or conferment of benefit by false pretence⁵⁹; Money Laundering (Prohibition) (Amendment) Act 2011 which, *inter alia*, prohibits the financing of terrorism, the laundering of the proceeds of a crime or an illegal act, the retention of proceeds of a criminal conduct, conspiracy and the aiding and abetting of the commission of an offence under the Act;⁶⁰ Nigerian Extractive Industries Transparency Initiative Act 2007 aimed, *inter alia*, at eliminating all forms of corrupt practices in the determination, payments, receipts and posting of revenue accruing to the Federal Government from extractive industry companies; Public Procurement Act 2001, aimed at harmonising the processes of public procurement in Nigeria to ensure the judicious economic and efficient use of state resources in public procurement and to further ensure that public procurement are carried out in a fair, transparent and non-discriminatory manner;⁶¹ Fiscal Responsibility Act 2007 which, *inter alia*, provides for the prudent management of the nation's resources; Freedom of Information Act 2011 which, *inter alia*, makes public records and information more freely available and provides for public access to public records. Others include the Monitoring of Revenue Allocation to Local Government Act 2006; Banks and Other Financial Institutions (Amendment) Act 1991 and the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks (Amendment) Act 1994.

However, this paper would be examining in greater details the provisions of a few of these laws which, we believe, are directly targeted at curbing the menace, with special focus on provisions relating to offences and punishments.

(i) The Criminal Code

Section 98 through section 111 of the Criminal Code criminalises official corruption and abuse of office by public officials. Section 98 for example, makes it an offence for any person employed in the public service or any judicial officer to corruptly ask, receive, or obtain, or agree or attempt to receive, or obtain any property or benefit of any kind, either for himself or any other person, on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him. A contravention of the provisions of the section is punishable with seven years' imprisonment. Although the word "corruptly" is not defined in the Code, it has been held in *Biobaku v Police*,⁶² that the word "corruptly" does not simply mean "improperly" and that more is required. In the instant case, the accused, a booking clerk at a railway terminus, was paid a shilling (to which he was not entitled) by a passenger to assist him to get a place on the bus. He was convicted under section 98(1). In quashing the conviction on appeal, Bairaiman, J, stated:

The mischief aimed at by section 98 of the Criminal Code is the receiving or offering of some benefit, reward or inducement to sway or deflect a person

⁵⁷ Cap. C. 31, LFN, 2004.

⁵⁸ Cap. E1, LFN, 2004

⁵⁹ Sections 1 – 13 of the Act. The Act repealed the Advance Fee Fraud and Other Related Offences Act, 1996 and the Advance Fee Fraud and Other Related Offences (Amendment) Act, 2005

⁶⁰ Sections 15 – 19 of the Act. The Act repealed the Money Laundering Act, 2004.

⁶¹ See section 1 of the Act

⁶² (1951) 20 N.L.R. 30; see also *Azie v State* (1973) 1 N.M.L.R. 251

employed in the public service from the honest and impartial discharge of his duties – in other words, as a bribe for corruption or its price.⁶³

Extortion by public officers, which involves the taking or acceptance from any person for the performance of the public officer's duty as such officer any reward beyond his proper pay and remuneration, or any promise of any such reward, is punishable on conviction with three years' imprisonment under section 99. Section 101 prohibits a public officer, at the risk of being sentenced to three years' imprisonment, from getting interested in contracts. Also, a public officer who acquires interest in any property of a special character or with special duties is liable on conviction to one year imprisonment under section 102 of the Code. Section 103 criminalises false claims by officials required to furnish returns or statements touching any sum payable or claimed to be payable to himself or to any other person, or touching any other matter required to be certified for the purpose of any payment of money or delivery of goods to be made to any person. A contravention of this provision is punishable with three years' imprisonment. Under section 104, a public officer who does, or directs to be done, any act which is prejudicial to the rights of another is guilty of abuse of office and is liable on conviction to imprisonment for three years.

It is however remarkable that, in spite of the foregoing provisions, no person was ever convicted in any court of law for corrupt practices under the Criminal Code for about 20 years before the establishment of the ICPC.⁶⁴ The difficulty in securing convictions for corruption under the Code has been attributed to the difficult wordings of the relevant provisions which often led to difficulties in deciding under which section to prosecute a particular case by law officers.⁶⁵ Indeed, Aguda has once lamented that:

... the risk of conviction for official corruption in this country is more than one in a million. ... In so far as corruption is concerned, the Criminal Code is a completely confused piece of legislation. I say this with the greatest sense of responsibility. Many of the sections of the Criminal Code deal with various aspects of the same matter. ... This is a legacy of the British government in Nigeria of which, most regretfully, we have not found it possible to divest ourselves ...⁶⁶

(ii) The Code of Conduct Provisions of the Constitution.

In order to achieve high standard of morality in the conduct of government business as well as to ensure that the actions and behaviours of public officers conform to the highest standard of public morality and accountability, paragraph 1 of the Code generally prohibits a public officer from putting himself in a position where his personal interest may conflict with his duties and responsibilities. Thus, unlike what obtains under the Criminal Code and the Penal Code where corruption is implicitly equated with the giving and receipt of bribes, a public officer need not have actually indulged in corruption as the Code makes him liable once it is

⁶³ This decision has been criticised as unduly restrictive and lacking clarity. See Bowen (n. 3) 156.

⁶⁴ See E. Onwubiko, 'Our Mission to Rid Nigeria of Graft and Corruption, by Akanbi' *The Guardian* (10 April 2005)25.

⁶⁵ C.O. Okonkwo, *Criminal Law in Nigeria* (2nd ed. Sweet & Maxwell, London 1980) 374

⁶⁶ T.A. Aguda, *The Judiciary in the Government of Nigeria* (New Holn. Press Ibadan 1983) 151. The Criminal Code has also been criticised for its inability to deal effectively with private and official corruption, its complex and difficulty worded provisions on corruption and kindred offences which, despite their similarity, are inexplicably scattered throughout the Code and its failure to make provision for restitution, and or forfeiture of corruptly acquired property or money; see R.A. Onuigbo, and O.I. Eme, 'Analyses of Legal Framework for Fighting Corruption in Nigeria: Problems and Challenges' (2015.) 5(3) *Kuwait Chapter of Arabian Journal of Business and Management Review* 1, 14

proven that he places himself in a position of actual or potential conflict of interest. Public officer, for the purpose of the Act, includes all members of Federal and State Executive Councils, the Judiciary, Federal and State Legislatures, staff of Local Government Councils, ministries, agencies, departments and parastatals at both the Federal and State levels.⁶⁷ Circumstances under which there could be a breach of this general provision are specifically spelt out in paragraph 2 through 11 of the Code which covers the duration of the tenure of the office and post retirement of a public officer. Thus, paragraph 2 prohibits double emoluments in respect of any public office held by a public officer as well as any full-time engagement or participation in the management or running of any private business, profession or trade except such management is in connection with farming.⁶⁸ In *Nwankwo v Nwankwo*,⁶⁹ the Supreme Court has, however, held that the provisions of paragraph 2(b) of Part I of the Fifth Schedule to the 1979 Constitution is not intended to prevent any public officer from acquiring an interest in a business (for example, a partnership). However, it does prohibit a public officer from engaging or participating in the management and running of any private business, profession or trade (to hold a managerial or other position in such an undertaking or solely to run the same.) It is a common knowledge in Nigeria that a number of public officers do flout the provisions of this section in the light of the nation's unrealistic wage policy. Paragraph 3 prohibits the President, Vice-President, Governor, Deputy Governor, Ministers and Commissioners, members of the National Assembly and State Houses of Assembly, and such other persons as the National Assembly may, by law, prescribe, from maintaining or operating a foreign bank account. The provisions of this section are being flouted with impunity, especially by some governors, who are reported to have foreign accounts.⁷⁰

Also, paragraph 4 prohibits public officers, other than members of the legislative houses, who are receiving pension from public funds, from accepting more than one remunerative position as chairman, director or employee of a company owned or controlled by any government or public authority, or receiving any other remuneration from public funds other than his pension and the emolument of one such remunerative position. The exemption given to the members of the legislative houses is perhaps based on the provisions of section 63 and section 104 of the Constitution which require a minimum of 181-days sitting in a year for the National Assembly and State Houses of Assembly respectively and which, implicitly, suggest that their elective positions are held on part-time basis. This exemption is, however, difficult to justify in view of the high salaries and allowances being paid to these officers. In order to guard against a compromise of their integrity or the trading of official secrets whilst in office, in the expectation of securing some future employment, paragraph 5 prohibits the President, Vice-President, Chief Justice of Nigeria, Governor and Deputy Governor of a State from service or employment in foreign companies or enterprises after retirement. Paragraph 6 prohibits the solicitation or receipt of any property or benefits of any kind by a public officer

⁶⁷ See also sections 172 and 209 of the 1999 Constitution which requires any person in the public service of the Federation or that of the State respectively, to observe and conform to the Code of Conduct.

⁶⁸ See *Okoya v Santilli* (1994) 4 NWLR (Pt 338) 256 at p. 289 where the Supreme Court held that a public officer is precluded by the Code of Conduct from engaging in any other business, in violation of section 20(1) of the Code of Conduct Bureau and Tribunal Act. This provision of the Act is *in pari materia* with section 2 of the Code of Conduct.

⁶⁹ (1995) 5 NWLR (Pt394) 153

⁷⁰ See *infra* (n. 43). Similarly, on 28 June 2012, the United States Department of Justice announced that it had executed an asset forfeiture order on \$401,931 in a Massachusetts brokerage fund, traceable to the former governor of Bayelsa State, Diepreye Alamiyeseigha. See S. Awoyinfa., 'Alam's Pardon: Deadly Blow to Anti-graft War' *The Punch* (14 March 2013) 19

either for himself or any other person on account of anything done or omitted to be done by him in the discharge of his duties. The exception to this prohibition, in respect of personal gifts or benefits from relatives or personal friends to such extent and on such occasions as are recognised by custom, as well as gifts or benefits by a public officer on any public or ceremonial occasion on behalf of his institution, needs to be reconsidered as it could serve as haven for the retention of proceeds of abuse of office and corrupt practices. There is a dire need for the legislature to make appropriate amendment to this provision to clarify the kind of gifts that could be given or accepted by public officers, especially from those with whom they have had contractual dealings..

Similarly, paragraph 7 prohibits some categories of public officers, including the president, vice-president, governor, deputy-governor, minister, commissioner or any other officer in the rank of a director-general, or head of any public corporation, University or other parastatal organisation, from accepting a loan, except from government or any of its agencies or a bank, building society or other financial institution recognised by law, or any benefit of whatever nature from any company, contractor, businessman or the nominee or agent of such person. However, the head of a public corporation or of a University or other parastatal organisation are permitted to accept a loan from such body if, it would not be in breach of the rules and regulations establishing the body. Paragraph 8 prohibits any person from offering a public officer any property, gift or benefit of any kind as an inducement to securing a favour, or obtaining an undue advantage. Paragraph 9 prohibits a public officer from doing or causing to be done, in abuse of his office, any act which is prejudicial to the right of any other person, knowing that such act is unlawful or contrary to any government policy. Paragraph 10 bars a public officer from membership of any society which is incompatible with the function or dignity of his office.

Furthermore, a very significant provision of the Act geared towards curbing inordinate and corrupt enrichment of public officers at the public expense is contained in paragraph 11, which requires declaration of assets by public officers. Thus, every public officer is required to make a written declaration of his assets in the prescribed Form to the Code of Conduct Bureau (CCB), immediately on assumption of office, at intervals of four years during tenure and at the end of term of office.⁷¹ It also requires declaration of the assets of spouses and unmarried children under the age of 21 years. Furthermore, any property or assets acquired by a public officer after such declaration, which is not fairly attributable to income, gift, or loan approved by the Code shall, unless the contrary is proved, be deemed to have been acquired in breach of the Code.⁷² It is lamentable, however, that this provision is honoured more in its breach than in its observance as public officers, who are not holding elective positions, hardly comply. Also, in cases where there is a seeming compliance with the provisions of this section, the declaration is, most often, overrated in order to make space for

⁷¹ Sections 140(1), 185(1), 149 and 194 of the 1999 Constitution also mandate the President, the Governor, a Minister of the Government of the Federation and a Commissioner of the Government of a State respectively to declare their assets and liabilities, as prescribed in the Constitution, and to take and subscribe the Oath of Allegiance and the Oath of Office prescribed in the Seventh Schedule to the Constitution, before performing the functions of their offices. The Code of Conduct Bureau is charged with the responsibility for the receipt of assets declaration by public officers, examination of the assets declarations in order to ensure that they comply with the requirements of the Code of Conduct or any law for the time being in force, the taking and retaining custody of such assets declaration; receipt of complaints about non-compliance with or breach of the provisions of the Code of Conduct or any law in relation thereto, investigation of the complaint and, where appropriate, referring such matters to the Code of Conduct Tribunal – Part 1 (A) of the Third Schedule to the 1999 Constitution; section 3 of the Code of Conduct Bureau and Tribunal Act, Cap C 151, LFN 2004.

⁷² Para. 11(3) of the Code.

looting of public treasury.⁷³ The non-compliance with this provision is explicable by its wide application to all the rank and file of public officers which has made implementation virtually impossible. Although paragraph 14(b) gives the National Assembly the power to make law exempting any cadre of public officers from the requirement of assets declaration, it is doubtful if any such exemption has ever been made. It is suggested that the requirement of routine declaration of assets and properties under this section should be limited to public officers within a specified cadre, while those below such cadre should only be required to declare their assets if, there is any justifiable reason to believe that, their assets and properties are not fairly attributable to their income, gifts or loan approved by the Act. Also, while the Code requires immediate declaration on assumption of office it is silent on the timeframe within which the declaration should be made after completion of the term of office. This is a major lacuna which should be addressed through appropriate legislative measures. One is also of the view that the law should allow for open and public declaration of assets by key public officers holding elective or appointive posts.⁷⁴

By paragraph 13 of the Code, a public officer who does any of the prohibited acts through a nominee, trustee, or other agent is, *ipso facto*, deemed to have committed a breach of the Code.

The punishments for contravention of any of the provisions of the Code by a public officer, after due trial by the Code of Conduct Tribunal, include the vacation of office or seat in any legislative house, as the case may be; disqualification from membership of a legislative house and from the holding of any public office for a period not exceeding ten years; and seizure and forfeiture to the State of any property acquired in abuse or corruption of office.⁷⁵ These sanctions are without prejudice to any penalty that may be imposed by any law where the conduct is also a criminal offence.⁷⁶ The Constitutional provision on prerogative of mercy is also not applicable to any punishment imposed by the Tribunal.⁷⁷

The Code of Conduct for Public Officers, no doubt, is a major legislative effort aimed at curbing corrupt practices among the rank and file of public officers. Notwithstanding the shortcomings thereof, if the Code is duly implemented, it would go a long way in addressing some of the vices which have become endemic in the public service.

⁷³ For instance, the Senate President, Senator Bukola Saraki is currently facing trial at the Code of Conduct Tribunal on a 13-count criminal charge that bordered on corruption, false declaration of assets and illegal operation of a foreign bank account while in office as a public servant. He was alleged to have corruptly acquired many properties while in office as Governor of Kwara State but failed to declare some of them in the forms earlier filed and submitted to the Code of Conduct Bureau. He was equally accused of making an anticipatory declaration of assets upon his assumption of office as Governor which he later acquired. – A. Adesomoju, ‘CCT Trial: FG Lines up Eight Witnesses Against Saraki’, *The Punch* (6 February 2016) 3; O. Ayorinde, ‘Bukola Saraki at dead end, it’s time to go’ *The News* (6 February 2016) <<http://www.thenewsnigeria.com.ng/2016/02/bukola-saraki-at-dead-end-its-time-to-go>> accessed 14 May 2017/

⁷⁴ However, for a lucid discussion on the implications of the proposed reform measure on the right to privacy, freedom of information and right to democratic governance, see I.B. Lawal, ‘Public Declaration of Assets in Nigeria: Conflict or Synergy Between Law and Morality?’ (2009) 9(1) *African Human Rights Law Journal* 224, 238-256.

⁷⁵ Para. 18 of the Code. The Code of Conduct Tribunal is established under para. 15 of the Code of Conduct.

⁷⁶ See para. 18(3), *Ibid.* The laws include the Criminal Code for example.

⁷⁷ Para (18)7, *Ibid*

(iii) Corrupt Practices and Other Related Offences Act

In realisation of the inadequacies of some of the provisions of the earlier legislation, the Corrupt Practices and Other Related Offences Act was enacted to prohibit and prescribe punishment for corrupt practices and other related offences.⁷⁸ The Act is generally aimed at the maintenance of integrity in public life. The Act in section 3 thereof establishes the Independent Corrupt Practices and Other Related Offences Commission (ICPC). The duties of the ICPC as spelt out in section 6 of the Act are, *inter alia*, to receive and investigate any report of the conspiracy to commit, attempt to commit or the commission of an offence under the Act or any other law prohibiting corruption and, in appropriate cases, to prosecute the offenders; to examine the practices, systems and procedures of public bodies and where, in the opinion of the Commission, such practices, systems or procedures aid or facilitate fraud or corruption, to direct and supervise a review of them and instruct, advise and assist any officer, agency or parastatals on ways by which fraud or corruption may be eliminated or minimised by such officer, agency or parastatal.

The Act criminalises most of the prohibited acts under the Code of Conduct, such as corruption and abuse of office, and also creates new offences. Like the Code of Conduct for Public Officers, the Act is majorly focussed on public officers but also extends its application to private business transactions and other interpersonal relationships among individuals and persons. Public officers, for the purpose of the Act, is any person employed or engaged in any capacity in the public service of the Federation, State or Local Government, public corporations or private company, wholly or jointly floated by any government or its agency, including the subsidiary of any such company, whether located within or outside Nigeria, as well as judicial officers serving as Magistrate, Area or Customary courts or Tribunals.⁷⁹ Thus, the Act is applicable not only to public officials as it were but also staff of private organisations in which government has interest as shareholders.

Section 8 through 26 of the Act contains wide provisions criminalising acts or conducts that tend to promote corrupt practices.

The first category of offences created under the Act would be found in section 8 through 11 which prohibit the offering or the receipt of any form of gratification in order to influence a public officer in the discharge of his duties.⁸⁰ For example, section 8 criminalises the corrupt solicitation and receipt, or the attempt to solicit or receive property or benefit of any kind by an official for himself, or for any other person, on account of any act or omission done or to

⁷⁸ The Independent Corrupt Practices and Other Related Offences Commission (ICPC) Act 2000 was the first legal foundation that was set up to fight corruption in the current democratic dispensation. The initial controversy about its constitutional status was laid to rest in *Attorney-General of Ondo State v Attorney-General of the Federation* (2002) 9 NWLR (Pt 772) 222 S.C wherein the Supreme Court held, *inter alia*, that going by the definitions of "State" and "Government" in section 318(1) of the 1999 Constitution and the directive under section 15(5) thereof, the power to legislate in order to prohibit corrupt practices and abuse of power is concurrent and can be exercised by the Federal and State Governments by virtue of sections 49(2); 4(4)(b) and 4(7)(c) of the Constitution. However, where there is any inconsistency between a law made by the National Assembly and that of the State, the former shall prevail by virtue of section 4(5) of the Constitution. It was further held that, reading section 4(2) and section 15(5) as well as Items 60(a), 67 and 68 in the Exclusive Legislative List of the 1999 Constitution together, and construed liberally and broadly, the National Assembly possesses the power both "incidental" and "implied" to promulgate the ICPC Act 2000, to enable the State, that is the Federal Republic of Nigeria, to implement the provisions of Item 68 read together with section 15(5) of the Constitution which confers power on the National Assembly to enact the Act. See also *Olafisoye v Federal Republic of Nigeria* (2004) 4 NWLR (Pt. 864) 580.

⁷⁹ See section 2 of the Act

⁸⁰ Under section 2 of the Act, gratification is not limited to pecuniary or other valuable consideration but also includes office, dignity, employment, contract of empowerment or service, offer, undertaking, promise etc.

be done, favour or disfavour shown or to be shown by the public officer pertaining to the discharge of his duties. Under this section, mere request without receipt is enough to make the public officer liable. Thus, it is not a defence, in any proceedings for the offence, for the public officer who corruptly solicits or receives such gratification, that he did not subsequently carry into effect the act or omission, favour or disfavour in question, or that he never intended to do, make or show the act, omission, favour or disfavour.

Section 17 criminalises the offering or the taking of any gift or consideration by, and through agents, as an inducement or reward for doing or forbearing to do, or for having done, or forborne to do, any act or thing in relation to his principal's affairs or business.⁸¹ Also, section 19 criminalises the act of using office or position to gratify or confer unfair advantage. A contravention of these provisions attracts seven years imprisonment on conviction for the acceptor or the giver.⁸² Sections 18, 21 and 22 cover the act of bribery. Section 18 criminalises the offering to or the solicitation, counselling or acceptance of any gratification by a public officer with intent to influence decision making and other related official acts of a public body. Section 21 covers bribery in relation to auctions when such bribe is offered with the intention of inducing a person to refrain from bidding at any public auction conducted by or on behalf of any public body, while section 22 covers bribery in order to influence contract awards. Section 16 criminalises the making of false statement or returns, especially, in regards to public revenue or property.

Another set of offences created under the Act would be found in sections 12 and 13 which respectively criminalise the fraudulent acquisition and receipt of property. Section 12 criminalises the acquisition or holding by a public officer, directly or indirectly, otherwise than as a member of a joint stock company consisting of more than twenty persons, a private interest in any contract, agreement or investment emanating from or connected with the department or office in which he was employed, or which is made on account of the public service. A contravention of this provision attracts seven years' imprisonment on conviction. Similarly, section 13 criminalises the fraudulent receipt of anything, whether within or outside Nigeria, which has been obtained by means of any act constituting a felony or misdemeanour. Knowledge that the thing has been so obtained is, however, a condition precedent to liability under the section. A contravention of the provisions attracts three years imprisonment if the offence, by means of which the thing was obtained, is a felony and seven years imprisonment if the thing so obtained, was postal matter, or any chattel, money or valuable security contained therein⁸³

A contravention of any of the foregoing provisions of the Act is punishable with a term of imprisonment, which ranges from five to seven years. In addition, a public officer, or any other person, found guilty of soliciting, offering or receiving gratification, is to forfeit the gratification and pay a fine of not less than five times the sum of the value of the gratification, which is the subject matter of the offence where such gratification is capable of being valued or is of a pecuniary nature, or ₦10, 000, whichever is higher.⁸⁴

Another category of offences created under the Act relates to the frustration of investigation by the Commission and concealment of information. Thus, section 15, *inter alia*, criminalises the deliberate frustration of investigation by the Commission through the destruction,

⁸¹ An agent is defined under section 17(2) of the Act as including any person employed by or acting for another, while principal is defined to include an employer.

⁸² See sections 9 and 10 of the Act

⁸³ Section 14 of the Act

⁸⁴ Section 20 of the Act

alteration, mutilation or falsification of any book, document, valuable security, account, computer system that could be used as evidence in a trial. Section 24 makes it an offence for any person, within or outside Nigeria, whether directly or indirectly, and whether by himself or through an agent, to enter, or cause to be entered into, any dealing in relation to any property, or otherwise using or causing to be used, or holding, receiving, or concealing any property, which was the subject matter of specified offences under the Act. A contravention of this provision is punishable, on conviction, with five years' imprisonment. Section 25 criminalises the act of making, or causing to be made, to the Commission or to any other public officer in the discharge of his duties, any false or misleading statement. To be liable, however, it must be shown that the person has knowledge that the statement is false or misleading. A contravention of this provision attracts a fine, not exceeding ₦100,000.00 or a maximum term of two years' imprisonment, or both.

Section 23 imposes a duty on any public officer, to whom any gratification is given or offered, as well as any person, from whom gratification has been or attempted to be solicited or obtained in contravention of the provisions of the Act, to make a report to the nearest officer of the Commission or a Police Officer. Failure to comply with this duty shall, on conviction, attract a fine, not exceeding ₦100,000.00 or two years' imprisonment, or to both such fine and imprisonment.

It is noteworthy that offences created under the Act need not have been committed as the Act, in section 26 thereof, criminalises the attempt to commit any of such offences, the doing of any act preparatory to or in furtherance of the commission of such offence, abetting or engaging in a criminal conspiracy to commit any such offence, or the actual commission of such offence. Similarly, under section 53 of the Act, in respect of offences of gratification and bribery created under sections 8 to 19 of the Act, there is a general presumption of an intention to corruptly give or receive gratification if it is proved in any proceedings that any property or benefit of any kind or any promise thereof was given to a public officer, or some other person, at the instance of a public officer, by any person. This provision is generally geared towards addressing the difficulty, being encountered by the prosecution, of proving the fact that the public officer received or demanded the property "corruptly" under the Criminal Code.⁸⁵

The power to investigate, search, seize and arrest any person for any offence under the Act is vested in the Commission.⁸⁶ The Attorney-General of the Federation, or any person or authority to whom he shall delegate his authority, is vested with the power to initiate prosecution for an offence under the Act.⁸⁷ In order to ensure the timely disposition of cases, section 26(2) generally requires a prosecution for any offence to be concluded within ninety working days of its commencement unless there are good grounds for extending trials beyond this stipulated period.

(iv) Economic and Financial Crimes Commission (Establishment) Act

The Economic and Financial Crimes Commission (Establishment) Act 2004, in section 1 thereof, establishes the Economic and Financial Crimes Commission (EFCC). The wide functions of the Commission, as spelt out in section 6 of the Act, include the enforcement and the due administration of the Act; the investigation of all financial crimes, including advance fee fraud, money laundering, counterfeiting, illegal charge transfers, fraudulent encashment

⁸⁵ See for example, *Biobaku v Police (Supra)*

⁸⁶ Section 27 to 42 of the Act.

⁸⁷ Section 26(2) of the Act.

of negotiable instruments, computer credit card fraud, contract scam etc; the co-ordination and enforcement of all economic and financial crimes laws and enforcement functions conferred on any other person or Authority; the adoption of measures to identify, trace, freeze, confiscate, or seize proceeds derived from terrorist activities, economic and financial crime-related offences or the properties, the value of which corresponds to such proceeds and the adoption of measures to eradicate the commission of economic and financial crimes. Under section 7 of the Act, the Commission is conferred with the power to cause investigations to be conducted as to whether any person, corporate body or organisation has committed an offence under the Act, or any other law relating to economic and financial crimes, as well as to cause investigations to be conducted into the properties of any person if it appears to it that the person's life style and extent of the properties are not justified by his source of income.⁸⁸ Furthermore, the Commission is saddled with the responsibility of co-ordinating the enforcement of other anti-corruption legislation such as the Money Laundering Act, the Advance Fee Fraud and Other Related Offences Act, the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act, the Bank and Other Financial Institutions Act; Miscellaneous Offences Act and any other law or regulation relating to economic and financial crimes, including the Criminal Code and the Penal Code.

Economic and Financial Crimes under the Act is defined comprehensively in section 46 of the Act as:

the non-violent criminal and illicit activity committed with the objectives of earning wealth illegally, either individually or in a group or organized manner, thereby violating existing legislation governing the economic activities of government and its administration, and includes any form of fraud, narcotic drug, trafficking, money laundering, embezzlement, bribery, looting and any form of corrupt malpractices, illegal arms deal, smuggling, human trafficking and child labour, illegal oil bunkering and illegal mining, tax evasion, foreign exchange malpractices, including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic wastes and prohibited goods, etc.

Offences under the Act may be grouped into four categories. The first is financial malpractices under section 14, which makes it an offence for any officer of a bank or other financial institution or designated non-financial institution, to either fail or neglect to secure compliance with the provisions of the Act, or secure the authenticity of any statement submitted pursuant to the provisions of the Act. A contravention of this provision is punishable with imprisonment for a term not exceeding 5 years or to a fine of ₦500, 000.00, or to both such fine and imprisonment.

The second is the aiding or funding acts of terrorism under section 15 of the Act. It is an offence for any person to wilfully provide, or collect by any means, directly or indirectly, any money from any other person, with intent that the money should be used, or has knowledge that the money is to be used, for any act of terrorism. Furthermore, it is an offence for any

⁸⁸ *Ahmed v Federal Republic of Nigeria* (2009) 13 N.W.L.R (Pt. 1159) 536 C.A. In *Obiegue v Attorney-General of the Federation & Ors* (2014) 5 NWLR (Pt. 1399) 171 CA, it was held, *inter alia*, that the EFCC, like the police, has the right to investigate, arrest and detain any person who is suspected of the commission of any offence under the EFCC (Establishment) Act. It was, however, further held that any proved detention must be justified in law and must be exercised in good faith in the light of the important right of each individual and that, the power of the Commission is subject to judicial control and the court must not shy away from such sacred responsibility.

person to commit, attempt to commit or participate in or facilitate the commission of a terrorist act. Similarly, the Act criminalises the making of funds, financial assets or economic resources or financial or other related services available for use of any other person to commit or attempt to commit, facilitate or participate in the commission of a terrorist act. A contravention of the foregoing provisions is punishable, on conviction, with imprisonment for life.

The third category of offences is the retention of the proceeds of a criminal conduct under section 17. It is an offence for any person to retain the control of the proceeds of an economic or financial crime on behalf of another person by concealment, removal from jurisdiction, transfer to nominees or otherwise, with the knowledge that the proceeds are as a result of criminal conduct by the principal. Similarly, it is an offence for any person to acquire or use, or be in possession of any property, with the knowledge that such property in whole, or in part, directly or indirectly, represents another person's proceeds of an economic or financial crime. It is noteworthy that knowledge that the property is acquired through some illegal act is required before a person can be found liable for the offence. A contravention of this provision is punishable, on conviction, with a minimum of three years imprisonment or a fine equivalent to 100 per cent of the value of the proceeds of the economic or financial crime, or both.

Another type of offence under the Act is that relating to economic and financial crimes generally under section 18 thereof. It is an offence for any person to engage in (i) the acquisition, possession or use of property knowing at the time of such acquisition, possession or use that such property was derived from any offence under the Act; (ii) the management, organisation or financing of any of the offences under the Act; (iii) the conversion or transfer of property with the knowledge that such property is derived from any offence under the Act and (iv) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to or ownership of property, with the knowledge that such property is derived from any offence under the Act. A contravention of this provision is punishable, on conviction, with a minimum of two years imprisonment or maximum of three years imprisonment.

In addition to the prescribed punishments for the specific offences under the Act, all the assets and properties of a person convicted of an offence under the Act and shown to be derived or acquired from economic or financial crime are to be forfeited to the Federal Government.⁸⁹ This is aimed at preventing the convict from retaining the proceeds of his crime and to deprive him of whatever benefit he may have derived from his criminal conduct.

There is no gainsaying the fact that, Nigeria has a very comprehensive legislative and institutional anti-corruption mechanism which addresses institutional issues, definitions of offences and rules governing the prosecution of offenders. Also, the offences and prescribed punishments in these laws are no doubt, sufficiently grave to deter offenders. It is, however, disheartening that these laws are seemingly ineffective in curbing the menace as there has not been much positive impact on systemic corruption confronting the nation. Many people, especially public officers who ought to know better, are still flouting the law with impunity.

⁸⁹ See section 20 – 26 of the EFCC Act. See also *Dangabar v Federal Republic of Nigeria* (2014) 12 NWLR (Pt. 1422) 575, CA.

IV. Perceived Impediments to the Due Enforcement of Anti-Corruption Laws

Several factors account for the seemingly ineffectiveness of the anti-corruption laws in fighting the menace of corruption in Nigeria. The first is the constitutional immunity from prosecution granted to incumbent elective public officers, such as the president, the vice-president, governors and their deputies under section 308 of the Constitution of the Federal Republic of Nigeria, 1999.⁹⁰ The rationale behind the immunity is the protection of these public officers from politically-motivated prosecutions and to afford them quiet tenure free from coercive personal harassment.⁹¹ Thus, no civil or criminal prosecution can be initiated against such public officers in their personal capacities until they leave office either at the expiration of their term of office or by impeachment. Indeed, the Supreme Court in *I.M.B. Securities Plc v Tinubu*,⁹² has held that, the immunity granted to the incumbent of the relevant office under section 308(1)(a) of the Constitution prescribes an absolute prohibition on the courts from entertaining any proceedings, civil or criminal, in respect of any claim or relief against a person to whom that section of the Constitution applies during the period he holds office. The court further held that no question of waiver of the relevant immunity by the incumbent of the offices concerned or, indeed, by the courts may therefore arise. The Supreme Court has, however, held in *Fawehinmi v I.G.P*⁹³ that immunity clause does not shield a governor, or indeed president, from criminal investigation, warning however that any such investigation must take judicial notice of the dignity of executive office. The Court further stated that investigation into a criminal complaint is not tantamount to instituting or bringing criminal proceedings. Similarly, in *Alliance for Democracy v Fayose & Ors*,⁹⁴ it has been held that the immunity provided by the provisions of section 308 of the 1999 Constitution on a State governor is put in abeyance when his election is being disputed before an Election Tribunal as to make him amenable to being compelled by a *sub poena* to tender document(s) or give evidence before the Election Tribunal.

Undoubtedly, the constitutional immunity has been turned into impunity as it has been greatly abused by most of the public office holders entitled thereto to corruptly amass public wealth into their private coffers. Moreover, the constitutional immunity is fraught with the danger of making successful prosecution of any such public officer alleged to have corruptly enriched himself/herself, almost impossible. This is because by the time such public officer vacates the office; most of the evidence that might be tendered in court might have been doctored or lost. Also, it is not unlikely that some of the prospective witnesses that could testify in court proceedings might have died or no longer available to give their testimonies.

Secondly, there is the occasional misuse of section 174(c) of the 1999 Constitution by the Attorney-General. This constitutional provision empowers the Attorney-General to enter a *nolle prosequi*, at any stage before judgement is delivered, to discontinue any criminal proceedings that may have been instituted or undertaken by him or any other authority or person. In spite of the provisions of section 174(3) of the 1999 Constitution which enjoin the Attorney-General, in the exercise of the power, to "have regard to the public interest, the interest of justice and the need to prevent abuse of legal process" the power has been

⁹⁰ (As amended)

⁹¹ *I.M.B. Securities Plc v Tinubu* (2001) 45 W.R.N. 1.,40.

⁹² *Supra*. See also *Colonel Olu Rotimi & Ors v Macgregor* (1974) 11 S.C. 133 wherein section 161(1)(c) of the Constitution of the Federal Republic of Nigeria 1963, which is *in pari materia* with section 308(1)(a) of the 1999 Constitution was considered and applied.

⁹³ (2002) 7 N.W.L.R (Pt. 767) 606

⁹⁴ (2004) 26 W.R.N 34 C.A.

exercised by the Attorney-General on a few occasions to prevent justice from running its full course.⁹⁵

The third factor is attributable to the weakness of institutions as exemplified in their lack of complete independence from political interference of the ruling party. In order to ensure the independence of the anti-graft agencies in the discharge of their duties, the ICPC Act in section 3(14) provides that the Commission is not to be subject to the direction or control of any other person or authority and section 37 requires the EFCC to submit to the National Assembly, a report of its activities during the immediately preceding year. However, the close proximity of these agencies to the Presidency has made them ready tools of victimisation, persecution and prosecution of perceived opposition in the hands of the former.⁹⁶

Furthermore, there is the crippling concept of plea bargaining which has been employed to conclude some high profile cases, such as those of the former IGP, Tafa Balogun, Diepreye Alamiyeseihga, Lucky Igbinedion and the ex-Oceanic Bank Managing Director, Cecilia Ibru. Diepreye Alamiyeseihga, after pleading guilty to charges of graft, forfeited billions of naira in assets and got meagre jail terms;⁹⁷ the IGP Tafa Balogun pleaded guilty to eight charges of corruption and was sentenced to six months imprisonment and ordered to pay a fine of N4million while some \$150million worth of cash and property was seized by the government;⁹⁸ Lucky Igbinedion was convicted and fined \$25,000 after the EFCC bargained away 142 counts of corruption amounting to \$24million filed against him and substituted them for one,⁹⁹ whilst Cecilia Ibru, the former Oceanic Chief Executive, got three concurrent six-month jail terms and forfeited over ₦150billion in assets and cash to the government on

⁹⁵ For example, the prosecution of a former permanent secretary in the Federal Ministry of Defence, Dr Julius Makanjuola, who was charged with stealing the sum of ₦ 420 million at the Wuse Magistrate Court abruptly came to an end when the former Federal Attorney-General entered a *nolle prosequi* on the eve of judgement being delivered and after almost three years of prosecution. See *The Guardian* (10 April 2005) 26; Similarly, the former Attorney-General of the Federation, Michael Aondoakaa allegedly exercised this power to terminate many cases of corruption during the tenure of former President, Late Umar Yar'Adua. – B.O. Igwenyi, 'Jurisprudential Appraisal of *Nolle Prosequi* in Nigeria' (2016) 4(4) *Global Journal of Politics and Law Research* 10, 19.

⁹⁶ For instance, the government's much-vaunted EFCC lost much of its credibility through selective targeting of government oppositions in the run-up to the 2007 elections as much of the investigation and prosecution of corrupt politicians focused on the enemies of the Obasanjo Administration; see P. Takirambudde, 'Criminal Politics, Violence, God-fathers and Corruption in Nigeria' *Human Rights Watch Report* of 9 October 2007, available in *The Guardian* (10 October 2007) 12; see also B. Ibidolapo, 'The Anti-Corruption Legal Framework and Its Effect on Nigeria's Development.' (2016.) <http://www.spaajibade.com/resources/wp-content/uploads/2016/04/DBolu.THE-ANTI-CORRUPTION-LEGAL-FRAMEWORKDRAFT.pdf?utm_source=Mondaq&utm_medium=syndication&utm_campaign=View-Original> accessed 8 March 2016.

⁹⁷ Diepreye Alamiyeseihga pleaded guilty to the charges brought against him by the EFCC in exchange for the two-year imprisonment to which he was sentenced by the trial judge. On July 27, a few hours after being taken to prison, he was released due to the time he had already served in the course of trial; see S. Awoyinka, 'Alam's Pardon: Deadly Blow to Anti-graft War.' (n. 64); R. Oladimeji, 'EFCC to Amend Charges in Nnamani's ₦5bn Fraud Case' *The Punch* (12 May 2015.) 8.

⁹⁸ See BBC, 'Nigeria's Ex-Police Chief Jailed' (n. 20)

⁹⁹ Premium Times, 'Ibori Gets 13 Years in Jail.' (2007) < www.premiumtimesng.com/news/4682-ibori-gets-13-years-in-jail.html> accessed 14 March 2014; see also Editorial, 'Corruption, Pension Thief and Justice' *The Punch* (6 February 2013):22.

being convicted of bank and security frauds amounting to ₦191 billion.¹⁰⁰ Also, Lieutenant-General Jeremiah Useni (rtd) forfeited to government, properties worth over N10 billion in a quiet deal to avoid prosecution in the law court.¹⁰¹ Julius Berger, one of the companies indicted in the Halliburton's \$180 million bribery scandal also opted for a plea bargain and paid \$26.5 million in order to avoid prosecution. Indeed, it is quite alarming to note that the whereabouts of the money paid by Julius Berger is yet to be ascertained and while several foreigners involved in the matter have been prosecuted in their home countries, Nigeria is yet to prosecute the senior government officials involved in the matter.¹⁰² If corruptly-minded officials know that they can avoid prosecution or being sentenced to a term of imprisonment by plea bargaining, corruption may continue unabated.¹⁰³

Another factor militating against the due enforcement of these laws is ethnic or tribal loyalty and political consideration or interest. Once the person alleged to be involved in some financial impropriety hails from a particular ethnic community different from those at the helm of affairs, several allegations of bias and victimisation trail any attempt to investigate or prosecute the person.¹⁰⁴ In the same vein, if such person belongs to the ruling party and appears to be influential amongst his/her ethnic group, there is always reluctance on the part of government to charge such person to court in order not to lose the support of the people from his area and those of other party members.¹⁰⁵ Indeed, some of those who have been successfully prosecuted and jailed for stealing public money have been granted state pardon.¹⁰⁶

¹⁰⁰ Sahara Reporters, 'Former MD of Oceanic Bank, Cecilia Ibru, Convicted of Bank Fraud'(2010), <http://www.saharareporters.com/2010/10/08/former-md-oceanic-bank-cecilia-ibru-convicted-bank-fraud> accessed 27 May 2016

¹⁰¹ See A. Okolo, 'Bad Times for the General' *Tell* (24 July 2000) 29.

¹⁰² See Omonobi "\$180m Halliburton Scandal (n. 14)

¹⁰³ It is rather unfortunate that the Administration of Criminal Justice Act, 2015 has also made provision for plea bargaining in section 270 thereof.

¹⁰⁴ For instance, the Peoples' Democratic Party has accused President Muhammed Buhari of "hypocrisy, double standards and dictatorial proclivities" in the anti-graft war. – H. Adebayo, 'Akpabio's Corruption Investigation: Buhari's Anti-Graft War is Selective - PDP', *Premium Times* (18 October 2015), <https://www.premiumtimesng.com/news/top-news/191728-akpabio-corruption-investigation-buhari-anti-graft-war-is-selective-pdp.html>, accessed 20 February 2016. Also, the compromise deal that eventually led to the release of Muhammed Sani Abacha, who was arraigned in court on charges of embezzlement, amounting to about \$4.3 billion, committed while his father was in office as the Head of State, was brokered by a powerful delegation led by the Emir of Kano, the late Ado Bayero and some other respected persons in the polity. Also, some Senators from the North, who called themselves "Northern Senators' Forum" issued a press statement accusing the Federal Government of being bias. While calling for the release of Muhammed Abacha, the members wondered aloud that "justice has been sacrificed on the altar of victimisation." See *Tell Magazine* (7 October 2002) 32

¹⁰⁵ Indeed, a former Minister of Information, Prof Jerry Gana once stated that some Ministers who were sacked for corruption in 2001 were not prosecuted so as not to discourage other people from accepting public office. See *NewsWatch* (30 July 2001) 51. Similarly, it was once reported that the former Attorney-General, Michael Aondoakaa's spirited efforts to frustrate corruption cases was done on the instruction given to him by the former President, Late Umar Yar'Adua, to protect serving and former governors accused of money laundering and graft.- Sahara Reporter, 'Attorney General Michael Aondoakaa Moves to Stall Peter Odili's Corruption Case in Port Harcourt@ (2007) <https://www.saharareporters.com/2007/10/06/attorney-general-michael-aondoakaa-moves-stall-peter-odilis-corruption-case-port-harcourt>, accessed 28 July 2016

¹⁰⁶ An example of this could be seen in the state pardon granted by the former President, Goodluck Jonathan to the former Governor of Bayelsa State, Chief Diepreye Alamieyeseigha, who was convicted and sentenced to a two-year imprisonment for money laundering and corrupt enrichment. It was generally believed that the State pardon was granted to the former governor as a payback gesture for Alamieyeseigha, to whom the former President, Goodluck Jonathan was deputy governor in Bayelsa State. Indeed, the former President was quoted to have referred to him as his "benefactor". A state pardon was also granted Shetima Bulama, a

Furthermore, lack of diligent prosecution of corruption cases by the anti-graft agencies is another crucial factor. It is disheartening to note that despite the wide array of anti-corruption legislation, these agencies, especially the EFCC and the ICPC, have not duly enforced the laudable provisions of the laws, given the lacklustre manner with which the agencies have handled legal actions instituted against some public officers who were alleged to have embezzled public funds. For instance, with the exception of former governors Lucky Igbinedion and Diepraye Alamiyeseigha of Edo and Bayelsa States respectively, who pleaded guilty to the charges against them, none of the other alleged corrupt governors, against whom actions have been instituted since 2003, has been successfully prosecuted. Legal actions that were commenced since 2007 against some former governors, such as Uzor Kalu of Abia State, Chimaroke Nnamani of Enugu State, Saminu Turaki of Jigawa State and Joshua Dariye of Plateau State are still pending in court till – date. The former governor of Delta State, James Ibori, against whom 170 count charge of corruption involving the laundering of millions of dollars were brought by the EFCC, was discharged and acquitted of all by a Federal High Court in Asaba, Delta State in 2009.¹⁰⁷ However, two years later, the same former governor, after pleading guilty to ten counts bordering on conspiracy to launder funds from the state, substantive counts of money laundering and one count of obtaining money transfer by deception and fraud of nearly £50 million, was sentenced by a Southwark Crown Court in London to 13 years' imprisonment.¹⁰⁸ Furthermore, the court ruling of 2007 which granted perpetual injunction restraining the EFCC from investigating alleged diversion of over ₦100 billion Rivers State funds by former Governor of Rivers State, Peter Odili to his personal use, and which ruling has been described as “legally tenuous” was never appealed against by the EFCC.¹⁰⁹

Some other factors have been identified to include under-funding of the anti-corruption agencies,¹¹⁰ weak and over-burdened judiciary which offers seemingly endless opportunities

former Managing Director of Bank of the North who was convicted of misappropriating the bank's funds - see Awoyinfa 'Alam's Pardon: Deadly Blow to Anti-graft War' (n. 70); see also E. Edukugho, 'Alamiyeseigha: Unpardonable Pardon.' (2013.) <www.vanguardngr.com/2013/03/alamiyeseigha-unpardonable-pardon> accessed 23 May 2015. In the same vein, the former Head of State, Late General Sani Abacha, whose regime was characterised by massive corruption and state-sponsored murder and assassination, was posthumously awarded with the Centenary Award in 2014 by President Goodluck Jonathan for his contributions to the development of the nation - see The Paradigm, 'Dictator Gen. Sani Abacha Deserves to be Honoured - President Jonathan' (2014) <www.theparadigm.com/2014/08/01/dictator-gen-sani-abacha-deserves-to-be-honor-pres-jonathan/> accessed 2 Feb. 2015

¹⁰⁷ The Federal High Court Judge, Marcel Awokulehin, on 17 December 2009, dismissed the case for lack of evidence. See 'Federal Court in Asaba Discharges and Acquits Ibori, Says 'No Clear Evidence Against James Ibori'' <www.ngex.com/news/public/newsinfo.php?nid=8709> accessed 29 March 2014

¹⁰⁸ See 'Former Nigeria State Governor James Ibori Receives 13-year Sentence.' (n. 44)

¹⁰⁹ A. Ogbu, 'Nigeria: Odili Secures "Perpetual Injunction" Against EFCC' (2007) <www.allafrica.com/stories/20080306103.html>; Human Rights Watch, 25 August 2011 'Corruption on Trial?: The Record of Nigeria's Economic and Financial Crimes Commission' <<https://www.hrw.org/report/2011/08/25/corruption-trial/record-nigerias-economic-and-financial-crimes-commission>> accessed 9 July 2016.

¹¹⁰ Onwubiko, 'Our mission to Rid Nigeria of Graft and Corruption, by Akanbi' (n. 64); see also Onuigbo and Eme, 'Analyses of Legal Framework for Fighting Corruption in Nigeria: Problems and Challenges.' (n. 66). 24

for skilled defence lawyers to secure interminable and sometimes frivolous delays,¹¹¹ lack of societal cooperation, poor staff training and systemic disorder.¹¹²

V. Proposed Remedies

Section 308 of the 1999 Constitution which gives criminal immunity from prosecution to the president, vice-president, governor and deputy-governor should be expunged from the Constitution as it gives unfettered power to those alleged to have misappropriated public funds to continue in their nefarious activities. It is preposterous that even where there is credible incriminating evidence of financial impropriety against any of these public officers, such public officer could still hide under the immunity clause to continue to loot the treasury until the expiration of his term of office. It is, however, important that before any of these public officers is removed from office on allegation of financial impropriety, due process should be followed in order to prevent the process from being used as an instrument of witch-hunting of public officers which could heat up the polity.

The role of the judiciary in winning the war against corruption is particularly of crucial importance. The judiciary must remain committed to fidelity to the law and must consistently demonstrate the judicial virtues of honesty and integrity in handling corruption cases. The conviction of the former governor of Delta State by a London court after an unsuccessful prosecution and conviction by the Nigerian court is a clear testimony of the inherent weakness of the administration of justice system in particular and the Nigerian legal system in general. Also, the arbitrary exercise of the power to enter *nolle prosequi* by the Attorney-General of the Federation should be curtailed by subjecting such exercise to judicial review as it is obtainable in some other common law jurisdictions.¹¹³ Moreover, the judiciary must ensure that sentencing is not disproportionate to the offence of which an accused is convicted. Those who have been found guilty of corruption should be awarded prescribed punishments that are commensurate with the offences to serve as deterrent to others.¹¹⁴

In the same vein, the concept of plea bargaining should be discarded with. Those found culpable of corruption should be made to serve the maximum term of imprisonment

¹¹¹ Human Rights Watch, 25 August 2011 (n. 109).

¹¹² I.C. Nnado, and C.C. Ugwu, 'Effectiveness of the Economic and Financial Crimes Commission (EFCC) in Enhancing Accountability in the Nigerian Public Sector.' (2015.) 5(8) *Developing Countries Studies*. 145, 150.

¹¹³ For instance, under Rule 48 of the United States' Federal Rules of Criminal Procedure, Title IX, the government may dismiss an indictment, information, or complaint through *nolle prosequi* only with the leave of court. In *United States v Shoemaker*, C.C.D. III.1840, 27 Fed. Cas. Page 1067, No. 16, 279, it was held that there can be no doubt that, before the trial is gone into, the prosecuting attorney has a right, under leave of the court to enter a *nolle prosequi* on an indictment, however, such attorney was one to be exercised subject to a sound judicial discretion. Similarly, in the Kenyan case of *Alielo v Republic* (2004) eKLR, it was held that where the court is of the view that any criminal prosecution or the termination thereof, is an abuse of the process of the court and/or is oppressive or vexatious, that is, where it has no foundation or is brought recklessly and for extraneous purpose, the court will interfere with it. - <<https://www.kenyalaw.org/caselaw/cases/view/34868>> accessed 28 July 2016. See also *Crispus Karanja Njogu v The Attorney-General, Civil Suit 574 of 2002*, <https://www.kenyalaw.org/caselaw/cases/view/14302>, accessed 28 Jul 2016

¹¹⁴ For example, in the corruption case filed by the EFCC against one John Yakubu Yusuf, a former assistant director of the Police Pension Office, who pleaded to conniving with other members of staff to steal N27. 2 billion police pension funds, a Federal High Court Judge, Justice Abubakar Talba, acting on a dubious plea bargain arrangement, sentenced Yusuf, who admitted to receiving ₦3.3 billion as his share of the loot, to two years each on three counts, to run concurrently or, in the alternative, to pay ₦250,000 fine on each count. The felon promptly paid the ₦250,000 fine and zoomed off, only to be re-arrested a day later by the bungling EFCC and arraigned on fresh charges. - See The Editorial, 'Corruption, Pension Thief and Justice.' *The Guardian* (6 February 2013) 22.

prescribed by law. The anti-corruption laws should be applied to all manners of men consistently and impartially.

There is the need to comply with the provisions of section 3(14) of the ICPC Act and section 37 of the EFCC (Establishment) Act which seek to give relative autonomy from political interference to the anti-graft agencies in the discharge of their statutory functions. Also, there is the need for all the anti-graft institutions, including the EFCC, the ICPC and the CCB, to collaborate and complement one another's effort to achieve the desired results. Furthermore, the capacity of the anti-graft agencies, especially the EFCC and the ICPC should further be bolstered through adequate funding and amendment of the enabling laws to ensure quick and swift prosecution of corrupt individuals, especially public officers.

The call for the establishment of special courts to handle corruption cases¹¹⁵ as a means of expediting trial has, perhaps, been partly solved by the provisions of section 19(3) of the EFCC (Establishment) Act which empowers the Chief Judge of the Federal High Court or a High Court of a State or the High Court of the Federal Capital Territory, as the case may be, to "designate a court or judge or such number of courts or judges as he shall deem appropriate to hear and determine all cases under the Act or other related offences arising under the Act " Nevertheless, the problem with the designation of these special courts or judges is that they are still subject to the general Rules of Court applicable in the regular courts. Thus, it is imperative to establish special courts with special rules for swift and effective prosecution such as we have for election matters by the establishment of Election Tribunals under section 285 of the 1999 Constitution and in some other jurisdictions.¹¹⁶

Furthermore, there is a compelling need to have specially-trained prosecutors, who are trained in the art of prosecution, to handle corruption cases. As rightly noted by the Chief Justice of Nigeria, Justice Mahmud Mohammed, the failure of the anti-graft agencies to successfully prosecute high-profile corruption cases is attributable to too many charges tied to them which, according to him, "makes mockery of the Constitution and the laws".¹¹⁷ The CJN further admonished the anti-corruption agencies to carry out "investigation-led arrest and not arrest-led investigation" since the court cannot itself carry out investigation.¹¹⁸

Nigeria should speedily domesticate the United Nations' Convention Against Corruption and the African Union's Convention on Preventing and Combating Corruption and Related Offences in order to be able to access the benefits embedded in these international treaties in the struggle to combat the menace.

In all, there is also the need for re-orientation of the Nigerian populace in order to regenerate a new social ethos for the society. As it has been rightly noted, a widely shared cultural belief that the law should rule is the essential element of the rule of law.¹¹⁹ And for the cultural

¹¹⁵ See e.g. K. Oladele 'Causes and Consequences of Corruption : The Nigerian Experience' (n. 6)

¹¹⁶ See for example, the Anti-Corruption Courts of Kenya established under the Anti-Corruption and Economics Crime Act 2003 and presided over by special Magistrates.

¹¹⁷ k. Olapoju, 'Why EFCC, ICPC Fail to Successfully Prosecute Corrupt Politicians – CJN' <www.ynaija.com/why-efcc-icpc-fail-to-successfully-prosecute-corrupt-politicians-cjn/> accessed 5 November 2015

¹¹⁸ Olapoju *Ibid*.

¹¹⁹ B.Z. Tamanaha, 'The history and elements of the rule of law.' (2012). *Singapore Journal of Legal Studies* 232, 247

belief to be viable, people must identify with the law and perceive it to be worthy of ruling and must also believe that the law reflects their values and serves their interests.¹²⁰

VI. Conclusion

To have any meaningful results in the fight against the scourge of corruption in Nigeria, the co-operation and support of all and sundry are crucial. Government must not only fight corruption with all the sincerity of purpose it requires, but must be seen to continually demonstrate the requisite political will in order to motivate and influence the citizens in the fight against the scourge. Holding public office should no longer be seen as an avenue to amass illicit wealth to the detriment of the welfare of the citizenry and of the nation. Leaders across all levels of the society should strive to enthrone good governance by being more transparent and accountable in all their dealings with the affairs of the state in the interest of all and sundry. Also, it is essential for civil organisations to be more involved in the struggle to eradicate corruption within the society by serving as the watchdogs and whistle blowers for the anti-graft agencies as well as platforms for effective mobilisation of the citizenry. As it has been rightly noted by Transparency International, “any attempt to develop an anti-corruption strategy that fails to involve civil society neglects one of the most potentially-useful and powerful tools available.”¹²¹ When society is sufficiently sensitised on the damaging effect of corruption on the economy and the consequential effects thereof on standards of living and developmental efforts, the tendency to continue to extol or pour accolades on leaders who have stolen the common wealth of the nation would be greatly reduced.¹²² Conversely, when the citizenry begin to regard treasury looters as thieves and lepers that they actually are, the tendency to want to get to power by all means and at all cost for the sole purpose of amassing illicit wealth would be significantly minimised.

In every civilised community, one of the most cherished and prized value is the proper administration of justice since justice, as it were, is the bedrock of any democratic, orderly and peaceful polity. To deny a society the rule of law and justice is to emasculate that society and make it anaemic, the consequences of which are fraught with danger. As it has been rightly noted in some quarters, corruption compromises national development, contaminates collective morality and values, distorts national planning, corrodes integrity and discipline, and destroys the foundation of creativity, innovation and democratic structure and development.¹²³ Nigeria cannot afford and should not allow the nascent democracy and her developmental strides to be derailed by failure to administer justice to all manners of men irrespective of family or ethnic background, official position or political leaning. A legal luminary, Fawehinmi had once admonished that:

¹²⁰ *Ibid*

¹²¹ See TI Source Book. J. Pope, “Confronting Corruption: The Elements of a National Integrity System” (2000) <www.transparency.org/publications/sourcebook> accessed 28 June 2015

¹²² The return of Muhammed Sanni Abacha to Kano after three years in detention was celebrated with so much pomp and pageantry by highly-placed individuals and commoners in Kano - see M. Ali, ‘Return of the Native’ *Tell* (7 October 2002) 38. Also, when Chief Olabode George, a Peoples Democratic Party’s chieftain was released from prison after serving a two-and-a-half year sentence for multiple corruption charges, a rapturous reception was given to him by the party’s officials and a cross section of the Nigerian society. He was convicted in 2009 by a Lagos High Court on charges of contract splitting, abuse of office and award of about N100bn contracts without due process. See E. Aziken *et al*, ‘Anger, Shock Greet Lavish Reception for Bode George’ (2011) www.vanguardngr.com/2011/02/anger-shock-greet-lavish-reception-for-bode-george/ accessed 28 April 2016. The conviction has however been set aside by the Supreme Court for failure to prove the charges against him.- *George v Federal Republic of Nigeria* (2013) LPELR, 21895

¹²³ See Obasanjo, ‘Fight Against Corruption is Real, says Obasanjo.’ (n. 25)

All legal practitioners can best serve the cause of the country if they uncompromisingly protect, defend, advance and observe the rule of law. The rule of law is the bastion of democratic stability in any nation. Lawyers must ensure that the law not only rules but that it is seen to rule. And the law can only rule if everybody is brought under the law and nobody is made to be above the law. The same law must apply to the rich and to the poor alike, the highly placed and the lowly placed, the powerful and the weak.¹²⁴

Certainly, it is justice that gives law its meaning.

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¹²⁴ G. Fawehinmi, 'The Way the Law Should Go.' Excerpts from Chief Gani Fawehinmi's acceptance speech at his swearing in ceremony as a Senior Advocate of Nigeria on 10 September 2001; cited by Hon Justice Amina Adamu Augie, "The Role of the Judiciary in the Maintenance of Law and Order in a Democracy", being text of a paper presented at 2002 Annual General Conference of the Nigeria Bar Association held in Ibadan between 26 and 30 August 2002, 21, 24.