

## CHALLENGES TO INVESTIGATION AND PROSECUTION OF CORRUPTION CASES IN NIGERIA\*

### Abstract

*The prevalence of corrupt practices, economic sabotages and financial crimes in Nigeria in both public and private sectors made the country to be consistently ranked among the most corrupt countries in the world. This paper appraises the salient challenges that bedevilled fight against corruption in Nigeria. The scope of the research covers challenges from reporting corruption, its investigation and prosecution before a court of law where investigation report discloses prima facie case. The research focuses largely on corrupt practices where Politically Exposed Persons (PEPs) are involved. The major objective of the research is to identify the challenges that hinder the reportage, investigation and prosecution of corruption cases in Nigeria, particularly where PEPs are involved and to provide solutions to the challenges highlighted in the research. The research adopts doctrinal research methodology. The major finding of this research is that lack of independence and interference into the activities of ACAs by policy makers are the major challenges that bedevilled the fight against corruption. Therefore, the research suggests that before any meaningful success could be recorded in fighting corruption in Nigeria executive arm of government, legislature and the judiciary must show practical will to fight corruption not lips service.*

**Keywords:** Corruption, Anti- Corruption Agencies (ACAs), Law Enforcement Agencies (LEAs) and Politically Exposed Persons (PEPs).

### 1. Introduction

Corruption has been the major stumbling-block for the progress of Nigeria. Nigeria is the giant of Africa and the most populous black nation in the world; to the extent that every one in six Africans is a Nigerian. Nigeria has an estimated population of about 200 million people, which makes it the seventh most populous country in the world.<sup>1</sup> Nigeria's economy is mainly dependent on oil which makes up about 90 percent exports and 70 percent government revenue.<sup>2</sup> Nigeria is the fifteenth largest oil producer in the world;<sup>3</sup> it has world's eleventh largest oil reserves and ninth largest natural gas reserves.<sup>4</sup> But despite the country's vast wealth, over 60 percent of its population live in abject poverty.<sup>5</sup> The reason for that is not unconnected with corruption in public service, where public officers entrusted with public funds generated from the above commonwealth loot the funds and leave masses empty-handed. Funds appropriated to provide basic necessity of life such roads, hospitals and schools are diverted to personal use, even where such projects were carried out, they are done with inferior quality materials. Corruption is regarded as responsible for all kind of woes that shackle the progress of the country, such as abject poverty, illiteracy, abandoned projects, poor quality of education and projects implementation, ramshackle infrastructure in the country, election rigging, failed promises, high level of youths unemployment, even among the literate ones, disconnection of masses from leaders with attendant insecurity such as sectional, religious and tribal agitations, armed-robbery, kidnapping for ransom which is most prevalent disturbing crime presently, nepotism and impediment of flow of foreign direct investment.<sup>6</sup> Per SAULAWA, J.C.A. (as he then was) in the case of *Akingbola v. Chairman of E.F.C.C*<sup>7</sup> while analysing the nature and extent of corruption in Nigeria held that:

I think it would be apt for me to observe, at this point in time that corruption is the hydra-headed monster that has for several decades bedevilled the corporate existence of this beloved country, Nigeria, in particular, and the entire African continent in general. The pandemic of corruption has undoubtedly shamed and diminished us all. As the root of all evils known to man, the Pandemic of corruption has virtually brought the country to its knees. Indeed, it's a truism, that corruption is antithetic to the well cherished democratic ideals and rule of law.

---

\*By **Muhammad Mansur ALIYU, LLB, BL, LLM**, Lecturer, Department of Islamic Law, Faculty of Law, Usmanu Danfodiyo University, Sokoto. Email: mansurdtm@gmail.com . Phone No. 08066060227/08029054820

<sup>1</sup> Ngozi Okonjo Oweala, *Fighting Corruption is Dangerous: The Story behind the Headlines*, (MIT Press Cambridge 2018) p.15; Aderibigbe Victor, Nigeria: 'Is Nigeria Still the Giant of Africa?'

<<https://allafrica.com/stories/201709110005.html>>, accessed on the 28th July, 2019.

<sup>2</sup> *Ibid.*

<sup>3</sup> Among the Organization of Petroleum Exporting Countries (OPEC) Nigeria was ranked sixth largest oil producer, OPEC: Annual Statistical Bulletin, Vienna, Austria, 2018, <[http://www.opec.org/opecweb/static\\_files\\_project/media/download/publications/ASB2018\\_23072018.pdf](http://www.opec.org/opecweb/static_files_project/media/download/publications/ASB2018_23072018.pdf)>, accessed on the 28th July, 2019, p.6.

<sup>4</sup> Ngozi Okonjo Oweala, (n.1), p.17.

<sup>5</sup> A. F. Usman, 'Corruption in Nigeria Public Service: History, Analysis, Deterrent and Prospects,' in Morufu A, Bello (eds), *A Compelling Compendium, Effects of Corruption on the Nigerian Society*, (Alamori Eda Publication Ltd, 2017), p. 171.

<sup>6</sup> *Ibid.*

<sup>7</sup> (2012) 9 NWLR (Pt. 1306) 475

Fight against corruption in Nigeria particularly where high-profile persons i.e., Politically Exposed Persons (PEPs) are involved suffers a lot of setbacks, from detecting the commission of corrupt practices, inviting the suspect, full scale investigation, arraignment and trial up to judgment. Their cases mostly ended in acquittal after inordinate delay during trial or sometimes their trials end with unfair plea bargain. Anti – Corruption Agencies (ACAs) and Law Enforcement Agencies (LEAs) find it difficult in investigating and prosecuting corrupt practices where PEPs are involved.<sup>8</sup> There is no general unified international standard on the role of detectives and prosecutors of corruption cases. However, international instruments like the United Nations Convention Against Corruption (UNCAC) contains provisions in respect of role of investigators and prosecutors of corruption.<sup>9</sup> There is also a body of best practice developed in different countries around the world, which do not constitute legally binding international standards, but it provides useful benchmark for reforms at the national level.<sup>10</sup>

The major objectives of the study are to identify salient challenges that hinder investigation and prosecution of corruption cases in Nigeria, particularly where PEPs are involved and to provide solution to the challenges so identified. The research adopts doctrinal research methodology. The research is divided into five parts, part one deals with the introduction, part two, investigation of corruption cases, part three prosecution of corruption cases, part four discusses major challenges for investigation and prosecution of corruption cases and finally part five which is conclusion which contains findings and recommendations of the research.

## 2. Investigation of Corruption Cases

In the case of *Dangabar v. FRN*<sup>11</sup> the word ‘investigation’ was defined as careful search, study, close inquiry, scrutiny, detail examination, collection of facts, inquiry to ascertain facts, exhaustive study and systematic search.<sup>12</sup> However, criminal investigation means study of facts that are then used to inform criminal trials which consists of arrests searches, interviews, interrogations, evidence collection and preservation, and various methods of investigation.<sup>13</sup> An investigator seeks to ascertain the methods, motives, and identities of criminals and the identity of victims and may also search for and interrogate witnesses.<sup>14</sup> Modern-day criminal investigations commonly employ many modern scientific techniques known collectively as forensic science.<sup>15</sup> On the other hand, the word ‘corruption’ is derived from the Latin word ‘*corruptus*’ which means to abuse or destroy, or rather to make bad or impure.<sup>16</sup> People sometimes do say ‘Do not corrupt your child,’ it is presumed that children are innocent, pure and not debauched in anyway, therefore, to corrupt a child means to change him negatively from innocence and purity to defiled and debased.<sup>17</sup> From this angle, corruption ‘is a state of being or becoming decayed, spoiling or deteriorating’.<sup>18</sup> In Nigeria corrupt practices are called many names in slang such as *kickbacks, to shake hands, to understand, to be wise, returns breakfast, drinks, kola, brown envelopes* etc, sometimes you can hear someone saying ‘our share of the national cake’, not minding whether it is obtained fairly and just or otherwise.<sup>19</sup> In legal parlance, corruption normally means conduct prohibited by law.<sup>20</sup> United Nations Convention against Corruption (UNCAC) defines corruption by simply identifying and describing ed the specific conducts that are generally considered as corrupt practices, the practices include embezzlement, misappropriation or other diversion of property by a public official, bribery, favouritism, illicit enrichment, abuse of office, nepotism and laundering of proceeds of crime.<sup>21</sup> Corrupt Practices and Other Related Offences Commission Act, defines

---

<sup>8</sup> Matthew T. Page, *Innovative or Ineffective? Reassessing Anti-Corruption Law Enforcement in Nigeria*, Gi-Ace Project: Fighting High-Level Corruption in Africa: Learning from Effective Law Enforcement, [2021], 9, *Chatham House Working Paper*, 33.

<sup>9</sup>OECD, ‘Investigation and Prosecution of Corruption Offences: Materials for the Training Course’, 2012, <http://www.oecd.org/dataoecd/31/55/46832397.pdf> p.12

<sup>10</sup> *Ibid.*

<sup>11</sup> (2014) 12 NWLR (Pt. 1422) 575

<sup>12</sup> *Ibid.*

<sup>13</sup> Charles E. O'Hara and Gregory L. O'Hara, *Fundamentals of Criminal Investigation* (Oxford Press, 6<sup>th</sup> Ed, 1994).

<sup>14</sup>Encyclopaedia Britannica, ‘Criminal Investigation’, <<https://www.britannica.com/topic/criminal-investigation>> accessed 29<sup>th</sup> September, 2021.

<sup>15</sup>*Ibid.*

<sup>16</sup> A. C. Ekweme and C. O. Attah, *The mass media in the Campaign against Official Corruption*, in Victor Egwemi, (eds), *Corruption in Nigeria Issues, Challenges and Possibilities*, (Aboki Publishers Makurdi 2012), p.76.

<sup>17</sup> *Ibid.*

<sup>18</sup> I. O. Babatunde and A. O. Filani, ‘Corruption in Nigerian Courts: Fashioning the Way Out Through Legal and Institutional Mechanisms,’ *Journal of Law and Global Policy*, (2017), 3, 1, p.2.

<sup>19</sup> Omenka, Iba Jacob, ‘The Effect of Corruption on Development in Nigeria’, *Journal of Humanities And Social Science (IOSR-JHSS)* (2013), 15, 6, p.40.

<sup>20</sup> Osita Nnamani Ogbu, *Combating Corruption in Nigeria: A Critical Appraisal of the Laws, Institutions, and the Political Will*, *Annual Survey of International & Comparative Law* [2008] 14, 1, 6, p.103.

<sup>21</sup> Abdullahi. Y. Shehu, *Economic and Financial Crimes in Nigeria: Policy, Issues and Options* (Express Image Limited 2006), pp. 75-76; Ismaila Idris, *A Critical Appraisal of the Legal And Institutional Framework For Anti-Corruption Crusade*

Corruption to 'include bribery, fraud and other related offences';<sup>22</sup> Black's Law Dictionary defines corruption as the act of doing something with an intent to give some advantage inconsistent with official duty and the rights of others; a fiduciary's or official's use of a station or office to procure some benefit either personally or for someone else, contrary to the rights of others.<sup>23</sup> According to Transparency International to properly define corruption there shall be at least five basic conducts that must be captured by the definition, namely: bribery of public servants (including judges; Members of the Legislature and Ministers etc), soliciting or accepting of gifts by public servants in return of favour, abuse of a public position for personal gain, possession by a public servant of unexplained wealth (or of living beyond one's official salary) and secret commissions made to or by an employee or agent (covering private sector corruption).<sup>24</sup>

### 3. Prosecution of Corruption Cases

In a recent case of *Giadon v. State*,<sup>25</sup> the word 'prosecution' is defined as criminal proceeding in which an accused person is tried or a process of being officially charged with crime in a court of law. Prosecution generally commences after investigation has been completed. Upon completion of investigation, investigators are expected to hand over the case file to the prosecutors who are legal practitioners for vetting and filing charges if prima facie case has been disclosed against the person concerned from the evidence gathered in course of investigation.<sup>26</sup> Prosecution and securing conviction in corruption cases are very difficult.<sup>27</sup> But it is more difficult when an investigation and prosecution involve prominent politicians and wealthy businessmen, or when the investigation and prosecution involve international bribery cases that require mutual legal assistance from foreign jurisdictions in collecting and gathering evidence.<sup>28</sup> Successful prosecution lies on the effective and discreet investigation, shabby investigation always leads to bad prosecution and bad prosecution leads to discharge and acquittal.

### 4. Challenges of Investigating and Prosecuting of Corruption Cases

Institutions that fight corruption in Nigeria experience a number of challenges at both investigation and prosecution levels.<sup>29</sup> The challenges are numerous and they have been negatively affecting investigation and prosecution of corruption cases in Nigeria. In the subsequent pages of this research, the salient and striking challenges of investigation and prosecution of corruption cases would be highlighted.

#### Lack Technologically Driven Investigation Facilities

Nigeria lacks technologically driven facilities and platforms which would fast-track and simplify investigation of corruption cases and make findings of the investigation more clandestine, cogent and reliable. For example, the current practice by ACAs in Nigeria is, if suspect is being investigated, issue of company comes up, in order to determine who are the directors of the company and the shareholders, ACA must manually write to the Corporate Affairs Commission (CAC) requesting for such information which always takes days or even weeks before reply is received by the requesting ACA. Also, where ACAs demand information of a particular bank account, everything is done manually, a dispatch would take the demand/request letter to the relevant bank and it is after some days, the bank would send back the relevant documents requested by ACAs, sometimes part of the documents requested by the ACA are withheld which frustrates investigations. The means for committing financial crimes and concealing the proceeds of crime are becoming more and more complex and sophisticated on daily-basis, as a result of technological advancement. Hence, in order to succeed, in fighting corruption, there is need for the ACAs to shift from manual investigation to technologically driven investigation.<sup>30</sup> Therefore, electronic-surveillance methods such as undercover operations for wire-tapping and wire-tracking have become extremely important, though subject to legal restraints.<sup>31</sup> The benefits of use of technologically investigative technique include providing the ACAs with strong and cogent evidence to convict corrupt persons and it serves

*In Nigeria*, (Unpublished dissertation Being Dissertation Submitted To The School Of Postgraduate Studies, Ahmadu Bello University, Zaria, In Partial Fulfilment For The Award Of The Degree Of Master Of Laws – LL.M), p.16

<sup>22</sup> ICPC Act, s 2.

<sup>23</sup> Garner, B. A and Others, *Black's Law Dictionary*, (St. Minnesota West Group 1999), 7<sup>th</sup> Ed, p.348.

<sup>24</sup> Transparency International, 'International Good Practice in Anti-Corruption Legislation,' <<http://www.transparency.org/publications/sourcebook.pdf>>, accessed 2nd January, 2020

<sup>25</sup> (2021) 9 NWLR (1782) 478

<sup>26</sup> M. M. Aliyu 'The Sokoto Zonal Office of Economic and Financial Crimes Commission (EFCC): Successes and Challenges (2018-2020), [2020], 1, 1, *UDUS Law Journal*, 407.

<sup>27</sup> Asian Development Bank, 'Effective Prosecution of Corruption', Report on the Master Training Seminar, Ghaziabad, India 11–13 February 2003, p.9.

<sup>28</sup> *Ibid.*

<sup>29</sup> Ibrahim Kawuley Mikail and Others, 'Challenges in Combating Corruption in Nigerian Democratic Dispensation and its Possible Solutions', downloaded from <<https://core.ac.uk/download/pdf/268561657.pdf>> or <<http://www.uk.sagepub.com/aboutus/openaccess.htm>> p.57, 3rd August, 2019.

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

as preventive measures, this is because it enables ACAs to identify conspirators of committing corruption beforehand so that they could be prevented. As stated earlier, there are legal or constitutional issues limit electronic surveillance, as it may be in violation of a person's right to privacy. However, it is important to note that the right to privacy is not absolute and can be limited under certain circumstances, particularly where court's orders are obtained.<sup>32</sup>

Therefore, assuming an investigator from EFCC, sitting at office in Port Harcourt, could within a minute (by clicking his computer) access CAC's portal and download relevant documents he required in respect of a particular company under investigation or an investigator after obtaining and serving a valid court's order via e-mail or any other platform on a relevant bank, such investigator could have access directly to for example, bank's statement of account, he needs in respect of investigation of a particular individual from bank's database, or he could after obtaining court order tap or intrude into phone calls and emails to obtain information, the work of ACAs LEAs must have been efficient and efficient and must have been coming out always with cogent, hard and convincing evidence capable of conviction.

### **Inadequate Intra and Inter- Anti-Corruption Agencies Synergy**

Investigators and prosecutors (lawyers) within a particular ACA do not always work together, especially during the commencement of investigation of a case when close cooperation can help to ensure prosecutions do not fail in court, as it happens in many serious corruption cases.<sup>33</sup> Prosecutors who are trained lawyers know the essential elements of all offences, hence, they could advise the investigators what they need to further investigate and ensure they obtain it, if it exists, so that all the essential elements of the alleged offence would be available at the conclusion of investigation.<sup>34</sup> On the other hand, inter-institutional relationship, synergy and cooperation between ACAs is widely regarded as imperative aspect of successful and effective fight against corruption. However, in Nigeria such relationship and cooperation among Nigerian ACAs is generally regarded as poor and infrequent.<sup>35</sup> Though, the ICPC, police, or State Security Service occasionally pass cases to the EFCC, either because those cases are outside their mandate or because they feel that EFCC is in better position to investigate and prosecute the cases.<sup>36</sup> Furthermore, investigation of corruption cases with foreign flavour where international legal assistance from different country is required, liaison with the OAGF is necessary. In such types of cases, gathering of evidence, repatriation of proceeds and extradition of person involved are they key to the successful prosecution. Nations' borders do not significantly prevent corruption and money laundering. Criminals, actually make use of the borders to escape from detection and prosecution and to conceal the evidence and profits of their crimes.<sup>37</sup> Investigating and prosecuting of these kind of corruption cases having foreign elements is very arduous and time-consuming task. Hence, without cooperation and mutual legal assistance from concerned foreign jurisdictions nothing meaningful could be achieved.<sup>38</sup>

### **Difficulty in Getting Witnesses/Evidence**

It is important to note that unlike offences of murder, rape, armed robbery or theft where the victim of the offence is known and is generally willing to assist the investigators, most major corruption cases have no direct victims, hence, getting important information is very difficult. Unfortunately, masses who are the real victims of corruption many times prevent ACAs from conducting search or even arresting an influential person reasonably suspected to have engaged in corruption, which deprived them social amenities such as potable drinking water, good road, functional healthcare services and qualitative education.<sup>39</sup> On the other hand, when case is at prosecution level disappearance of witnesses who provided material testimonies during investigation against the defendant is rampant. Sometime it is because of fear of victimisation by the defendant or the witness has been compromised etc., such in many times frustrate the trial.<sup>40</sup> Difficulty in getting information is not only from masses but even

---

<sup>32</sup> OECD (n. 9), p.47.

<sup>33</sup> Matthew T. Page, (n. 8).

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

<sup>37</sup> Recently world saw how Pandora Papers exposes the secret financial dealings of global elite, for detail see: <<https://www.npr.org/2021/10/14/1046008243/the-pandora-papers-exposes-the-secret-financial-dealings-of-global-elite>> accessed 16<sup>th</sup> October, 2021.

<sup>38</sup> Eva Joly, 'The Challenge of Prosecuting Corrupt Businessmen and Politicians' Asian Development Bank Proceedings Seminar p.11.

<sup>39</sup> David Igbodo and Shehu B. Dauda, 'Practical Ideological Peculiarities of Anti-Corruption Investigation in Nigeria', in Bolaji Owasanoye, Sola Akinrinade and Elijah O. Okebukola, (eds.) *ICPC and the War against Corruption in Nigeria: Reflection for a New Vision*, (Anti-Corruption Academy of Nigeria, 2020), p.263.

<sup>40</sup> Ayeni Victoria and Agboro Omowera Micheal, 'Financial Intelligence and Investigations' in Bolaji Owasanoye, Sola Akinrinade and Elijah O. Okebukola, (eds.) *ICPC and the War against Corruption in Nigeria: Reflection for a New Vision*, (Anti-Corruption Academy of Nigeria, 2020), p. 288.

financial institutions such as banks, bureau de change etc., where PEPs are involved, some financial institutions withhold vital information or compromise it by altering it or delay in releasing or releasing incomplete information in order to shield their client involved in corrupt practices.<sup>41</sup> It is important to note that vital information could be obtained through whistle-blowers. Hence, there is need for government to encourage sincere whistle-blowers who expose corruption and bribery in their MDAs or anybody with credible intelligence on corruption. And apart from incentive government should also give them full protection against vengeance from persons involved in the corruption and bribery, particularly, when their exposition leads to arrest, investigation, prosecution and possibly the conviction of persons involved.<sup>42</sup> If adequate statutory protection is granted, by enacting into law Whistle-blowers' Act which does not exist currently in Nigeria there can be no doubt that the Nigerian government will be able to get more information regarding corruption and abuse of office.<sup>43</sup>

### Inadequate Funding

Inadequate funds for running affairs of the institutions that saddled with the responsibility of fighting corruption is another major challenge that many times frustrates the productivity of the institutions.<sup>44</sup> For example, the Code of Conduct Bureau is most visibly impacted by a lack of funding. This is an important institution in fighting corruption which is squatting in rickety multiple floors of the Federal Secretariat Complex Abuja.<sup>45</sup> Even other institutions that have permanent secretariats are mostly congested with staff, ill-equipped office spaces and without functioning toilet facilities.<sup>46</sup> The persistent underfunding the institutions has been affecting the institutions negatively. Hence, majority of the institutions do not have adequate staff, offices, logistics and professional training in discharging their basic duties.<sup>47</sup> The federal government adopts what is called envelope budgeting system, where institutions are given resources not based on its established needs, mandates or activities but based on the funds available to the government.<sup>48</sup> In his work Abdullahi compared the fund budgeted for Anti-corruption institutions in Nigeria in the year 2003 with that of Hong Kong. Hong Kong has a population of 6.5 million but budgeted \$79 million for ACAs while Nigeria had less than \$4 million or N500 million Naira for over 150 million people.<sup>49</sup> ACAs require huge material and human resources during investigations and at the prosecution level. Investigators might need to travel within and outside the country to gather evidence, arrest or trace ill-gotten wealth.<sup>50</sup>

### Lack of Autonomy/Interference

Another challenge that bedevilled the fight against corruption in Nigeria is interference by policy makers into the activities of ACAs particularly office of the Minister of Justice and Attorney General of the Federation and sometimes from the presidency directly or other influential people close to the presidency.<sup>51</sup> Put it differently, ACAs in Nigeria lack independence, this is due to interference by the executive arm of government particularly politicians which hinders the effective fight against corruption. The interference is not unconnected with the powers of appointment and removal of leadership of ACAs which are vested in the President by laws establishing the ACAs.<sup>52</sup> Consequently, there is the possibility that the leadership will be reluctant to proceed with anti-corruption investigations or prosecutions against his appointing President or his political affiliates who belong to

<sup>41</sup> *Ibid*, p. 266.

<sup>42</sup> Whistle Blowing Policy (WBP) is a modern Anti- corruption policy that encourages citizens to willingly disclose information about corrupt practices such as fraud, bribery, outright looting of public funds, financial misconduct or any other form of financial malpractice. A whistle blower who discloses such kind of information is entitled to a certain percentage from whatever amount of money is recovered by the government upon relying on the information he provided. Presently, there is a bill on whistle blowing which has been pending before the National Assembly waiting to be passed into law. However, Federal Government on the 21<sup>st</sup> December 2016 put in place a Whistle Blowing Policy to encourage people to expose fraud in the public and private sectors, pending passage of the bill laying before the National Assembly.

<sup>43</sup> Eva Joly (n. 38) p.42.

<sup>44</sup> Ogbu, Osita Nnamani (n. 20).

<sup>45</sup> Ismail Mudashir, 'Why CCB Abandoned N9 Billion Headquarters', <<https://www.pressreader.com/nigeria/daily-trust/20170117/281547995590022>>, accessed 3<sup>rd</sup> May, 2021.

<sup>46</sup> Ibrahim Kawuley Mikail and Others, (n. 29).

<sup>47</sup> *Ibid*, p.58.

<sup>48</sup> Ayeni Victoria and Agboro Omowera Micheal, (n. 40), p.287

<sup>49</sup> Abdullahi Y. Shehu, *Nigeria the Way through Corruption to the Well-Being of a People*, (NOUN Publishers 2015), p.27.

<sup>50</sup> Taiwo Osipitan and Abiodun Odusote, 'Nigeria: Challenges of Defence Counsel in Corruption Prosecution', [2014], 10, 3, *Acta Universitatis Danubius. Juridica*, 231, available at <<http://journals.univ-danubius.ro/index.php/juridica/article/view/2626/2741>>, accessed on the 5<sup>th</sup> May, 2021.

<sup>51</sup> Emilia Onyema and Others, *The Economic and Financial Crimes Commission and the Politics of Effective Implementation of Nigeria's Anti-corruption Policy*, Working Paper 007, Anti-Corruption Evidence 2018, <<https://www.acauthorities.org/country/ng>>.

<sup>52</sup> Sections 2 (3) and 3 (2) of EFCC Establishment Act 2004; sections 3 (6) and 4 (6), of ICPC Act 2000.

the ruling political party or relations or allies.<sup>53</sup> Mika'il in his work while explaining political interference into the activities of anti-graft agencies in Nigeria has stated as follows:

Political interference has hampered the strategies to discharge their basic responsibilities as enshrined in their mandate due to the fact that political interference by the ruling elites on the affairs of anti-corruption agencies has eroded the independence and autonomy of the institutions and made them vulnerable to the decisions of the elites.<sup>54</sup>

For example, termination of 25 billion corruption case against former governor of Gombe State Alhaji Danjuma Goje at defence level by Office of Attorney General of the Federation before the Federal High Jos division.<sup>55</sup> Recently, the AGF's office whittled down the powers of ACAs as regards to civil forfeiture proceedings via a Regulations signed by the AGF.<sup>56</sup> During investigating and prosecuting cases where PEPs are involved, ACAs often experienced interference by politicians. Rather than being allowed to conduct their investigations independently as they themselves deem fit; they are obliged to obey instructions from superiors who are close to the political power structure in the country to influence the course of justice. The level of interference by politicians into the activities of the ACAs is very worrisome. Some politicians, particularly who are close to the seat of power are accused of being catalyst of initiating or terminating of investigation or even a trial of corrupt elite.<sup>57</sup> Recently, national dailies reported that a former national chairman of All Progressive Congress (APC) during campaign rally declared that 'once you join APC your sins are forgiven'.<sup>58</sup> The interference into the activities of the ACAs displays lack of political will to fight corruption the government.<sup>59</sup> No fight against corruption could succeed without strong political will from the government. Leaders are expected to lead by example. Political will is therefore a critical and paramount starting point to achieve a sustainable and effective anti-corruption strategy.

### **Preferential Treatment Given to PEPs**

In the case of *In Re: The Vessel M.V. Lupex*<sup>60</sup> (Per NIKI TOBI, J.C.A.) while analysing the essence of justice held that 'As far as we are concerned, the rich and the poor must receive equal justice in this court. There cannot be one category of justice to the rich and another category to the poor. That is not justice. That is injustice.' Moreover, according to a fundamental democratic tenet which in tune with the provision of the Nigerian Constitution, all citizens are equal under the law. This decent and noble tenet, however, does not do much to help in Nigeria when it comes to criminal investigation and prosecution.<sup>61</sup> It seems to be a common knowledge that Nigeria operates a double criminal justice system, while lenient one is for the rich, the harsh and brutal is for the poor.<sup>62</sup> Majority of indigent defendants are tried in the magistrate and area courts and have no access to lawyers. Also, where offences are serious, indigent defendants are represented by young and inexperienced lawyers assigned to them by State which most times end with conviction.<sup>63</sup> Applications for bail by rich defendants are mostly automatically granted while bail conditions including ownership of properties located in urban centres are easily fulfilled. In order to ensure they stand their trial rich defendants are mandated to submit their international passports with the courts' registry, but because Nigeria's hospitals are not well functioned due to the criminal diversion of the funds earmarked to fix them the applications for the release of their passports are granted to enable them to travel abroad for medical check-up or treatment.<sup>64</sup> Moreover, despite the fact that rich defendants have the means to hire the

---

<sup>53</sup> Emilia Onyema and Others, (n. 51).

<sup>54</sup> I. K. Mikail, *Corruption and Nigerian Political Economy*, (UUM Press Penerbit UUM 2016), p. 32.

<sup>55</sup> O. Yusuf, *Why we withdrew from Alleged N25bn Fraud Case Against Goje, Handed Over to AGF- EFCC*, <<https://www.msn.com/en-xl/news/others/why-we-withdrew-from-alleged-n25bn-fraud-case-against-goje-handed-over-to-agf-efcc/ar-AAACiuL>>; H. Yahya, *Updated: Nigerian Govt Withdraws Corruption Charges Against Danjuma Goje*, <<https://www.premiumtimesng.com/news/top-news/33983-nigerian-govt-withdraws-corruption-charges-against-danjuma-goje.html>> accessed 23rd August, 2019.

<sup>56</sup> Asset Tracing, Recovery and Management Regulation, 2019, FRN Official Gazette Vol. 106, No. 163, dated 20<sup>th</sup> October, 2019.

<sup>57</sup> *Ibid.*

<sup>58</sup> David Igbodo and Shehu B. Dauda, (n. 39), p.265.

<sup>59</sup> Ogbu, Osita Nnamani, (n. 20), p. 135.

<sup>60</sup> (1993) 2 NWLR (Pt. 278) 670

<sup>61</sup> Eva Joly, (n. 38), p.2.

<sup>62</sup> Femi Falana, 'Unequal Criminal Justice System', <<https://thenigerialawyer.com/unequal-criminal-justice-system-by-femi-falana-san/>>, accessed on 21st July, 2019.

<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*; the recent one happened on the 8<sup>th</sup> October, 2021 when Court granted Ex- AGF application for permission to travel abroad for medication see: <<https://punchng.com/court-grants-ex-agf-adoke-request-to-travel-abroad-for-medical-treatment/%3famp>>, accessed on 16th October, 2021.

services of the best lawyers to defend him, some courts are manned by judges who are not neutral in the class struggle.<sup>65</sup>

Apart from division between rich and poor, many Nigerians consider fight against corruption as highly selective, which focuses on the ruling party's enemies or recalcitrant members of the ruling party.<sup>66</sup> Only those who have issue with the current government in power are prosecuted save few exceptions.<sup>67</sup> Some writers argued that the most worrisome side of the selective justice in fighting corruption is the inability of the Anti-corruption agencies to indict any former presidents. For example, there is evidence of Chief Obasanjo's monumental corruption as reported by different media houses and CSOs which pointed out that no fewer than a hundred petitions against the former president Chief Obasanjo reached the EFCC headquarters, demanding for his probe, yet nothing happened.<sup>68</sup> Before he became President of Nigeria in 1999, reports indicated that Obasanjo was not rich but on leaving office in 2007, he had acquired the following: 10,000 hectares of land in Cross River State, 5,000 hectares of land at the Kwa plantation in the same state, 20 million shares in Transcorp company, Bells University of Technology, Presidential Library project that made 36 state governors to contribute N100 million each, large parcel of land in River State etc.<sup>69</sup> Treating offenders in the country equally would help to reduce corruption. Nobody is above the law and any who acts contrary to it should be given the punishment that he or she deserves.<sup>70</sup> The success rate of convicting corrupt PEPs and corporate executive officers in major multinational enterprises is still low throughout the world and even in countries that have enacted comprehensive anticorruption legislation and have otherwise well-functioning institutions at their disposal.<sup>71</sup> Lack of conviction is largely due to an institutional framework that is often unsuitable for coping with the specific complexity of the crimes where PEPs are involved, the institutional framework are usually tailored to the efficient prosecution of average and petty corruption not where PEPs are involved. The framework does not take into account the particularities of high-level corruption and the sophistication employed by the PEPs to evade justice.<sup>72</sup>

### Godfatherism/Immunity from Prosecution

God Godfatherism is another stumbling block in investigating and prosecution of corruption cases.<sup>73</sup> Political godsons enjoy protection from their godfathers, by putting immense pressure to stop investigation or even drop charge against the godson or vice-versa.<sup>74</sup> Judicial interference with investigation by granting unmerited injections whether interim or perpetual restraining ACAs from corruption investigations is another impediment to investigation in Nigeria.<sup>75</sup> On the other hand, immunity from arrest and prosecution conferred on the president, vice president, and governors and their deputies equally impede investigation of the ACA. Many state governors and their deputies have genuine cases to answer, but they could not be invited by the ACAs. Many times, before the end of their tenure mostly after eight years, the available evidence and witnesses ready against them wither or even the leading investigator retired or died or sometimes the case file could not be traced after their terms.<sup>76</sup>

### Delay and Setbacks in Corruption Trial

The inordinate delay, frustrations, frequent and very long adjournment and waste of resources in the current prosecution regime constitute another challenge facing the ACAs. From the time charge is filed at the registry of a court and its file is taken to Chief Judge for assignment, after assigning the case to a judge who would hear the

<sup>65</sup> *Ibid*; Oladimeji Ramon, 'Unending trial of suspected looters in the corridors of power', <<https://punchng.com/unending-trial-of-suspected-looters-in-the-corridors-of-power/>> accessed 5<sup>th</sup> March, 2021.

<sup>66</sup> Ogbu, Osita Nnamani, (n. 20), p.141

<sup>67</sup> *Ibid*.

<sup>68</sup> Victor Chijioko Nwosumba, 'An Appraisal of the Economic And Financial Crimes Commission in the Light of the Disaster of the Nigerian Anti-Corruption Politics 2002-2015', [2016], 21, 2, 5, *Journal Of Humanities And Social Science*, 53.

<sup>69</sup> *Ibid*.

<sup>70</sup> Mike Uzochukwu, 'Corruption in Nigeria: Review, Causes, Effects, and Solutions', <<http://networkforjustice.org.ng/wp/corruption-in-nigeria-review-causes-effects-and-solutions>>, accessed 23rd August, 2019.

<sup>71</sup> Eva Joly, (n. 38), p.2

<sup>72</sup> *Ibid*.

<sup>73</sup> David Igbodo and Shehu B. Dauda, (n. 39), p.265

<sup>74</sup> *Ibid*. in one of such cases investigated by the ICPC and the Commission had to stop investigation halfway, a godson who is a governor violated Constitution and NFIU Regulations which stipulates that local government should operate separate bank account different from that of States government. The governor who was regarded as godson to one of the political bigwigs in Nigeria directed the local government chairmen not honour the Commission's invitations to substantiate the said allegations and that how the investigation stopped.

<sup>75</sup> David Igbodo and Shehu B. Dauda, (n. 39), p.269.

<sup>76</sup> Emmanuel Obuah, 'Combatting Corruption in Nigeria: The Nigerian Economic and Financial Crimes (EFCC)' [2010], 12, 1 *African Studies Quarterly* (2010), 25, downloadable at: <<http://www.africa.ufl.edu/asq/v12/v12i1a2.pdf>>.

case, fixing date for mention/plea taking consume much very unnecessary time, not talk of time consumption during trial, particularly where defence attorneys are not willing to continue with the case on merit. Defence attorneys sometime to frustrate trial through filing interlocutory applications to quash charge, challenging the jurisdiction of the trial court, long cross-examination of witnesses by defence lawyers; intimidation of Judges through petitions and complaints of alleged bias; filing of no-case submission and constant resort to appeal, unexplained absence of defendants or their lawyers etc., all meant to scuttle or delay the trial specifically where PEPs are involved.<sup>77</sup> Corruption cases could remain in a trial court for a very long time without meaningful progress, particularly where PEPs are involved.<sup>78</sup> Defence attorneys mainly take advantage of the loopholes in the laws and weakness of the judicial system in delaying cases.<sup>79</sup> Delay in high profile corruption cases was judicially noticed by Onnoghen, JSC (as he then was) where held:

I have to put it on record that the desire of the judiciary to curb the now notorious attitude of some legal practitioners and politicians faced with very bad cases to employ delay tactics to either defeat the ends of justice or postpone the evil days, needs the encouragement of all well-meaning legal practitioners, particularly the very senior members of the profession.<sup>80</sup>

Moreover, disturbed by such blatant manipulation of the criminal justice system by senior lawyers in favour of PEPs, the Supreme Court in the case of *Dariye v. FRN*<sup>81</sup> has cautioned Nigerian lawyers to desist from resorting to time-wasting tactics to frustrate the trial of indicted members of the ruling class. The leading judgment of the apex court, Per Ngwuta J.S.C., held inter alia:

It is not the duty of learned counsel to resort to motions aimed principally at delaying or even scuttling ‘the process of determining whether or not there is substance in the charges as laid. In my view, this motion is a disservice to the criminal process and a contemptuous lip service to the fight against corruption. The tactics employed here is only one of the means by which the rich and powerful cripple the criminal process. There are cases where the accused developed some rare illness which acts up just before the date set for their trial. They jet out of the country to attend to their health and the case is adjourned. If the medical facilities are not available locally to meet their medical needs it is only because due to corruption in high places the country cannot build proper medical facilities equipped with the state of the arts gadgets. There should be no clog in the process of determining whether or not a person accused of crime is guilty irrespective of his status in the society.’<sup>82</sup>

Also, on his part while discussing the origin of the gross abuse of the process of the court to frustrate the trial of criminal cases involving rich defendants, Rhodes-Vivour J.S.C. held that:

It has been the practice since the third (sic) Republic commenced in 1999 for well to do individuals who face criminal cases, to ensure such trials never proceed. This is done by filing in court relevant and irrelevant applications, appeals all designed to stop the trial from proceeding to conclusion. This is a disturbing trend that has been allowed to fester for too long. The courts should rise and stop this disturbing trend in our criminal justice system. Happily, both courts below and this court have done so in this case.<sup>83</sup>

In the case of *Rickey Tafer Mustapha v. FRN*<sup>84</sup> an SAN arraigned before the High Court Lagos by the EFCC for allegedly obstructing officers of the Commission to arrest some people reasonably suspected to have committed economic crime and attempt to pervert the course of justice by communicating with a while he has pending case before that judge against the Commission. He was arraigned in 2016, but the case is still pending at trial court. His arraignment attracted a lot of criticism on social media to the defence counsel are seen as clog to the wheel of justice.<sup>85</sup> The Administration of Criminal Justice Act was passed in 2015 which among other things makes provision for day-to-day trial of criminal cases and where this is impracticable after arraignment, parties shall

---

<sup>77</sup>Fatima Waziri Azi, ‘A Case for the Establishment of Specialized Corruption Courts in Nigeria: A Panacea for the Prosecution of High Profile Corruption Cases’ [2018], 80, *Journal of Law Policy and Globalisation*, p. 67.

<sup>78</sup>Fatima Waziri Azi, ‘Compliance to the Administration of Criminal Justice Act, 2015 in Prosecuting High Profile Corruption Cases in Nigeria’ (2015 – 2017), [2017], 5, 2, *Journal of Law and Criminal Justice December*, p. 113.

<sup>79</sup>*Ibid.*

<sup>80</sup>*Dapianlong V. Dariye* (2007) 8 NWLR (Part 1036) 332 at 415 - 416, Paras G-D

<sup>81</sup> (2015) 10 NWLR (1467) 325

<sup>82</sup> *Ibid.*

<sup>83</sup> *Ibid.*

<sup>84</sup> (2017) All FWLR (Pt. 902) 842

<sup>85</sup> 90 Senior Advocates of Nigeria (SANs) appeared for him to the extent the trial judge had to complain for intimidation, see: <<https://www.thecable.ng/judge-rickey-tarfa-harassing-my-court-with-90-sans/>>, accessed 15<sup>th</sup> October, 2021.



only be entitled to five adjournments and the interval between each adjournment shall not exceed 14 days, where parties have exhausted their five adjournments, the interval between one adjournment to another shall not exceed seven days and the court is also allowed to award costs in order to discourage frivolous adjournments.<sup>86</sup> Moreover, stay of proceedings pending appeal used as a delay tactic by defence attorneys was expressly prohibited by the ACJA.<sup>87</sup> But regrettably, cases are still lingering in various Nigerian courts without implementing these noble provisions. The blame should be jointly bore by the court, prosecuting counsel and defence lawyers for their inability to ensure the enforcement of the provisions of the ACJA.<sup>88</sup> Though, some writers argued that the requirement for hearing case day-to-day and adjournment not exceeding 14 days are too difficult for many judges to meet due to their caseloads and crowded dockets. But apart from three former governors, namely Messrs Joshua Dariye,<sup>89</sup> Jolly Nyame<sup>90</sup> and lately Orji Uzor Kalu<sup>91</sup> after standing trial for over a decade, the list of convicted persons is made of lowly placed individuals in the society.<sup>92</sup> In fact, many PEPs charged with corruption were either questionably or unquestionably discharged by courts across the federation.<sup>93</sup>

### Elevation of Trial Judges to Court of Appeal

The last impediment in prosecution corruption cases which is not the least is the elevation of trial judges to Court of Appeal or their transfer to other divisions while they have partly heard a case. By the recent decision of Supreme Court *Ude Jones Udeogu v. FRN*,<sup>94</sup> which voided the section 396 (7) of ACJA which made it possible for justice to continue handling their cases after their elevation to Court of Appeal. Freshly, report indicates that by the Supreme Court's decision in *Udeogu's* case, more than 1000 criminal and civil cases at different high courts across the federation are expected to be start de-novo following the elevation of 18 elevated judges to Court of Appeal and among those whose cases are to start de-novo are high profile corruption cases.<sup>95</sup> Rotimi Jacobs SAN, who prosecutes EFCC's high profile cases was reported to have said that many of his cases would be affected by the elevation of 18 judges in February, 2021.<sup>96</sup>

### 5. Conclusion

From the forgoing, it is evidently clear that fighting corruption in Nigeria is characterised with a lot of challenges which may be difficult to overcome at once. It is the finding of this research that the major challenges that hinder effective investigation and prosecution of corruption cases include lack of technologically driven investigation facilities, inadequate intra and inter agencies synergy among the ACAs, difficulty in getting witnesses and evidence, inadequate funding, lack of autonomy and interference, godfatherism, preferential treatment given to PEPs, inordinate delay and setbacks, and elevation of trial judges to court of appeal. The research recommends that a platform be created which would enable ACAs to access CAC portal, upon obtaining court order tap phone calls and emails and access bank statement of account of person concerned via electronic messages. There shall be full synergy between investigators and prosecutors from the stage commencement of investigation. There is also a need to have a platform where information is shared between the ACAs and LEAs in order to effectively fight the monster i.e., corruption. It is also important to note that, above all, before any meaningful success could be recorded in fighting corruption in Nigeria executive arm of government, legislature and the judiciary must show practical will to fight corruption not lips service.

<sup>86</sup> Fatima Waziri Azi, (n. 78), p. 113.

<sup>87</sup> *Ibid*, p.118; ACJA 2015, s 306.

<sup>88</sup> *Ibid*, p.114.

<sup>89</sup>ThisDay Newspaper, 'Appeal Court Uphold Convictions of Dariye, Nyame and Reduce Jail Terms' <<https://www.thisdaylive.com/index.php/2018/11/17/appeal-court-uphold-convictions-of-dariye-nyame-reduce-jail-terms/>>, accessed on the 3<sup>rd</sup> August, 2019; He was convicted by FCT High Court in case of *FRN v. Joshua Dariye*, (Unreported Case No. FCT/HC/CR/82/2007).

<sup>90</sup> He was also convicted by FCT High Court in case of *FRN v. Jolly Tevor Nyame*, (Unreported Case No. FCT/HC/CR/81/2007).

<sup>91</sup>His trial was vitiated and ordered for fresh trial; He was a former governor of Abia State; for detail see <<https://www.bbc.com/pidgin/amp/tori-50637556>>, accessed on 1<sup>st</sup> December, 2019.

<sup>92</sup> Femi Falana, (n. 62).

<sup>93</sup>Fatima Waziri Azi, (n. 77), 68-69.

<sup>94</sup> Case No. SC622<sup>C</sup>/2019.

<sup>95</sup> Punch Newspaper, '18 Judges' Appeal Court Elevation: EFCC Fraud Cases, 1000 Others to Start Afresh', <[https://punchng.com/18-Judges-appeal-court-elevation-efcc-fraud-cases-1000-others-to-start-afresh](https://punchng.com/18-Judges-appeal-court-elevation-efcc-fraud-cases-1000-others-to-start-afresh/)>, accessed 13<sup>th</sup> July, 2021.

<sup>96</sup> *Ibid*.