

**INDEPENDENCE OF ANTI-CORRUPTION AGENCIES: A DESIDERATUM FOR WINNING THE WAR ON CORRUPTION AND FINANCIAL CRIMES IN NIGERIA\***

**Abstract**

*In Nigeria, corruption is not part of government; it is the very essence of participation in government. The need to combat and contain corruption has long been identified by successive governments as a panacea to Nigeria's developmental challenges. Previous administrations have used three main strategies to combat the evil phenomenon called corruption and financial crimes, namely; moral sensitization, legal instruments and establishment of anti-corruption bodies or strengthening of existing law enforcement agencies. This paper argues that corruption thrives in Nigeria not for want of any of these three mechanisms and that the main driver of corruption in Nigeria is the improbability of detection and the uncertainty of punishment. This clearly puts the blame for corruption on the doorstep of anti-corruption bodies or law enforcement institutions generally. In the light of the above, this paper examines among other things the independence of anti-corruption bodies in Nigeria and how their lack of independence impedes detection and prosecution of corruption and financial crimes. The paper concludes by recommending that since corruption is a systemic problem, institutions saddled with the onerous task of fighting corruption should be well equipped, adequately financed and given freedom to operate without interference from government officials and politicians.*

**Keywords:** Independence, Anti-Corruption Bodies, Corruption and Financial Crimes

**1. Introduction**

Corruption is an insidious scourge that has a wide range of corrosive effects on the wellbeing of society.<sup>1</sup> It undermines development, democracy and the rule of law. Corruption is the abuse or misuse of public power for private gain.<sup>2</sup> It entails the satisfaction of private interests through the exploitation of status, position or opportunity in a manner incompatible with the goals of the organization served by the corrupt individual.<sup>3</sup> Corruption manifests in various forms such as inflation of government contracts in return for kickbacks; fraud and falsification of accounts in the public service; examination malpractices in all educational institutions; taking of bribe and general pervasion of justice by the police, courts and other institutions responsible for dispensing justice; as well as the various economic crimes against the state in the business and industrial sectors of the economy, in collusion with multinational companies such as over-invoicing of goods, foreign exchange swindling, hoarding and smuggling.<sup>4</sup> The causes of corruption are legion, ranging from widespread poverty, lack of social security system, insecurity of tenure of public office holders, great inequality in the distribution of national wealth, reliance on political office as the primary means of gaining access to wealth, weakness of social and governmental enforcement mechanisms, failure to uphold religious norms and tenets, and fallout of competitive capitalism.<sup>5</sup> Key studies on corruption in industrialized and developing countries point to the damaging effects of corruption.<sup>6</sup> The Corruption is the bedrock of Nigeria's political failure. Corruption increases operational costs and reduces profits and benefits. It accounts for underdevelopment and affects execution of developmental projects, increase a nation's debt profile and undermine democracy and social justice initiatives.<sup>7</sup>

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<sup>1</sup> United Nations Office on Drug and Crime, *United Nations Convention Against Corruption*, New York: United Nations (2004) p. iii.

<sup>2</sup> O. Taiwo, 'Corruption in the Civil Society: The Role of Institutions' in C.C. Nweze (ed), *Justice in the Judicial Process: Essays in honour of Honourable Justice Eugene Ubaezeonun JCA*, (Enugu: Fourth Dimension Publishers, 2002) p 616; see also M. Robinson, 'Corruption and Development: An Introduction' (1998) 10 *European Journal of Development Research* 3.

<sup>3</sup> M. McMullan, 'A Theory of Corruption' (1961) 1 *Social Review* at 184.

<sup>4</sup> Federal Republic of Nigeria, *Report of the Political Bureau*, Federal Government Printers (1987) p 213.

<sup>5</sup> O. Otite, 'On the Sociological Study of Corruption' in Odekunle (ed) *Nigeria: Corruption in Development* (Ibadan: University Press, 1986) pp 14-15; M.H. Khan, 'A Typology of Corrupt Transactions in Developing Countries' (1996) 27 *IDS Bulletin* 15.

<sup>6</sup> See M.Y. Gbafwi, 'Perspectives on Corruption and its Control: The Nigerian Experience' in C.C. Nweze (ed), *Justice in the Judicial Process: Essays in honour of Honourable Justice Eugene Ubaezeonun JCA* (Enugu: Fourth Dimension Publishers, 2002) p. 640.

<sup>7</sup> See Gbafwi, p. 640; A. Fadachunsi, 'Effects of Corruption and Indiscipline on Development Plans and Plan Implementation in Nigeria', Paper presented at the National Conference on Corruption, Zaria, April 11-15, 1983,

## 2. Anti-corruption Legislations and Bodies

The Constitution sets the tone for the fight against corruption in Nigeria.<sup>8</sup> Section 15(5) of the Constitution provides: ‘the State shall abolish all corrupt practices and abuse of power.’ In addition, the Constitution created several institutions such as the Code of Conduct Bureau, Code of Conduct Tribunal, Office of the Auditor-General of the Federation, the Independent Electoral Commission (INEC), National Judicial Council, Federal Judicial Service Commission, Federal Character Commission, Federal Civil Service Commission, and the Revenue Mobilisation, Allocation and Fiscal Commission(RMAFC), whose primary mandate in their respective areas of coverage is to combat corrupt practices and ensure transparency and accountability in the polity.<sup>9</sup> The most important anti-corruption provisions of the Constitution are contained in Part 1 of the Fifth Schedule of the Constitution which prescribes a Code of Conduct for public officers. The Codes of Conduct prohibit bribery and abuse of powers by public officers.<sup>10</sup> It also prohibits public officers from: putting themselves in a position where their personal interest conflicts with their duties;<sup>11</sup> receiving emoluments from two or more public offices at the same time;<sup>12</sup> asking or receiving gifts or benefits on account of anything done in line of duty;<sup>13</sup> and maintaining or operating a foreign account among others.<sup>14</sup> All public officers are required under the Codes of Conduct to declare their assets within three months of the coming into force of the Codes of Conduct, or immediately after taking office, and thereafter at the end of every four years or at the end of every public officer’s term of office.<sup>15</sup> In addition to prescribing a Codes of Conduct, the Constitution established two bodies – the Code of Conduct Bureau and the Code of Conduct Tribunal – to enforce the provisions of the Codes of Conduct.<sup>16</sup> The Criminal Code and Penal Code are the oldest anti-corruption legislations in Nigeria.<sup>17</sup> Chapters 12 and 13 of the Criminal Code Act make provisions on various aspects of corruption including abuse of office by public officers generally and public officers employed in the administration of justice. Numerous anti-corruption bodies have been created by the various laws including Corrupt Practices and other Related Offences Act, Economic and Financial Crimes Commission (Establishment) Act,<sup>18</sup> Code of Conduct Bureau and Tribunal Act,<sup>19</sup> and the Public Complaints Commission Act,<sup>20</sup> among others. Some of these bodies are dedicated to the fight against corruption while others perform a wide range of functions that include combating corruption and ensuring transparency and accountability. The dedicated anti-corruption agencies include the Code of Conduct Bureau (CCB), Code of Conduct Tribunal (CCT), Independent Corrupt Practices and Other Related Offences Commission (ICPC), and the Economic and Financial Crimes Commission (EFCC). The generalized anti-corruption bodies whose mandate areas include prevention or prosecution of corruption one way or the other include the Nigeria Police and other security agencies, the Public Complaint Commission, the Nigerian Cyber-Crime Working Group (NCWG), and the Budget Monitoring and Price Intelligence Unit (BMPIU), among others.

## 3. Independence of Anti-corruption Bodies in Nigeria

Independence of an anti-corruption body implies their freedom to prevent, detect and prosecute allegations of corruption without any restrictions, partiality, improper influence, inducements, pressures, threats, or interference, direct or indirect, from any quarters or for any reason. In other words, it implies that anti-corruption bodies should not be subject to improper influence from government, partisan or private interests. This independence may take various forms. Thus, it is possible to talk about operational independence, structural independence or fiscal independence. While the operational independence is the capacity of the agency to act as a complete legal entity with all the powers to discharge its functions and regulate its internal affairs, structural independence relates to the internal composition of the anti-corruption body, its accountability and command structure, and the procedures for the appointment and removal of its members; especially where these structures and procedures are determined by a credible and transparent system, and are not subject to improper influence from government, partisan or private interests. The most important indicator or guarantee of structural independence is a provision in the enabling law granting legal independence to the anti-corruption body. Financial independence on the other hand

<sup>8</sup> L. Ekeanyanwu, ‘Review of legal and political challenges to the domestication of the anti-corruption conventions in Nigeria’ Berlin: Transparency International (2006) p 28.

<sup>9</sup> Constitution of the Federal Republic of Nigeria 1999, section 153(1).

<sup>10</sup> Code of Conduct, Fifth Schedule to the Constitution, paragraphs 8&9.

<sup>11</sup> Code of Conduct, Fifth Schedule to the Constitution, paragraph 1.

<sup>12</sup> Code of Conduct, Fifth Schedule to the Constitution, paragraph 2.

<sup>13</sup> Code of Conduct, Fifth Schedule to the Constitution, paragraph 6.

<sup>14</sup> Code of Conduct, Fifth Schedule to the Constitution, paragraph 3.

<sup>15</sup> Code of Conduct, Fifth Schedule to the Constitution, paragraph 11.

<sup>16</sup> See Constitution, section 153(1); Part I of the Third Schedule & paragraph 15 of the Fifth Schedule.

<sup>17</sup> Cap C38, LFN, 2004; Cap P3, LFN, 2004.

<sup>18</sup> Cap E1, LFN, 2004.

<sup>19</sup> Cap C15, LFN, 2004.

<sup>20</sup> Cap P37, LFN, 2004.

relates to the ability of the anti-corruption agency to muster sufficient funds to carry out its duties, especially where the budget of the agency and its spending are not controlled or subject to manipulation by any external authority other than the Parliament.

The Constitution of the Federal Republic of Nigeria provides that ‘in the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.’<sup>21</sup> This provision implies that judicial anti-corruption bodies such as the Code of Conduct Tribunal and non-judicial anti-corruption bodies including those bodies whose mandates have judicial character must be constituted in manner to secure their independence and impartiality. More specifically, the African Union Convention on Preventing and Combating Corruption (AUCPCC) which was adopted by the 2nd Ordinary Session of the Assembly of the Africa Union in Maputo Mozambique on 11 July 2003 obliges all state parties to ensure that anti-corruption institutions in their respective countries are granted necessary independence. Under this Convention, state parties including Nigeria undertook to ‘establish, maintain and strengthen national anti-corruption authorities or agencies.’<sup>22</sup> By the same tenor, the United Nations Convention Against Corruption (UNCAC) obliges all state parties to the Convention to ‘develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.’<sup>23</sup> The UNCAC goes further by stating: ‘Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the state party, to be able to carry out their functions effectively and without any undue influence.’<sup>24</sup> The above provisions underscore the various legal obligations on Nigeria to ensure that judicial and prosecutorial anti-corruption bodies are autonomous and independent. In this paper, we shall attempt to review the independence of the following anti-corruption bodies – the police, PCC, CCB, CCT, ICPC and the EFCC – by looking closely at their operational independence, compositions, procedure for appointment and removal of members, and their financial independence.

### **The Nigeria Police and other security agencies**

The primary responsibility of the Nigeria Police is the maintenance of law and order. It is the branch or department of government saddled with the responsibility of preserving public order and tranquility, enforcing laws, promoting public health, safety, and morals; preventing, detecting and prosecuting crimes.<sup>25</sup> Section 214(1) of the Constitution of the Federal Republic of Nigeria 1999 established the Nigerian Police Force. The Police force is headed by the Inspector General of Police who is appointed by the President on the advice of the Nigeria Police Council from among serving members of the NPF.<sup>26</sup> The Nigeria Police Council itself which is chaired by the President comprises the thirty-six State Governors, the Chairman of the Police Service Commission; and the Inspector-General of Police.<sup>27</sup> The Nigeria Police Force is under the command of the Inspector General.<sup>28</sup> Subject to the authority of the Inspector-General of Police, contingents of the Nigeria Police Force stationed in any of the 36 States of the Federal are under the command of the Commissioner of Police of that State.<sup>29</sup> The President or such other Minister of the Government of the Federation as he may authorise in that behalf may give to the Inspector-General of Police such lawful directions with respect to the maintenance and securing of public safety and public order as he may consider necessary, and the Inspector-General of Police shall comply with those directions or cause them to be complied with. The foregoing provisions put the entire police formation under the control of the President or any minister he authorizes in that behalf. This chain of commands makes it difficult for any police officer, police commissioner or the Inspector General of Police for that matter to investigate or prosecute any allegation of corruption without some form of political interference from the President, a government minister responsible for Police affairs or a State Governor.

The Nigeria Police Force lacks operational and structural independence under the Constitution. It does not have the competence to regulate crucial aspects of its internal affairs. The Inspector General of Police is appointed and

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<sup>21</sup> Constitution, section 36(1).

<sup>22</sup> Article 5, African Union Convention on Preventing and Combating Corruption, 2003.

<sup>23</sup> Article 5, UN Convention Against Corruption.

<sup>24</sup> Article 36, UN Convention Against Corruption.

<sup>25</sup> *Black's Law Dictionary*, 5<sup>th</sup> Edition, Minnesota: West Publishing Co., (1979) p 1041.

<sup>26</sup> Constitution, section 215(1).

<sup>27</sup> Paragraph 27, Third Schedule to the Constitution.

<sup>28</sup> Section 215(2), Constitution.

<sup>29</sup> Section 215(2), Constitution.

may be removed at will by the President on the advice of the Nigeria Police Council.<sup>30</sup> Under section 7 of the Police Act 2020, there is no requirement for Senate confirmation either during appointment or removal of the IGP. The Nigeria Police Council comprises the President as Chairman, the thirty-six State Governors, Chairman of the Police Service Commission and the IGP as members.<sup>31</sup> Given this arrangement, it is difficult if not impossible to expect the police to take any serious or independent action against corrupt politicians, unless such action is favoured by members of the political class. The Police Service Commission Act contains several provisions guaranteeing the independence of the Police Service Commission.<sup>32</sup> For example, the Chairman and other members of the Police Service Commission are appointed and removable by the President subject to Senate confirmation.<sup>33</sup> This independence of tenure however remains largely symbolic so long as the IGP who commands the entire Police Force holds office at the mercy of the President. The Police Service Commission is not a law enforcement agency. An independent Police Service Commission without an equally independent Nigeria Police Force means nothing for the anti-corruption war. This explains the recurrent police inactions in the face of executive lawlessness and massive corruption allegation amongst politicians. According to Okereke, many Nigerians perceive a Nigerian policeman or woman as a 'lazy, corrupt, inefficient, bribe-taking, money-extorting officer.'<sup>34</sup>

### Public Complaints Commission

The Public Complaint Commission acts as the statutory ombudsman in Nigeria.<sup>35</sup> The Commission is an organization established by the Federal Government in 1975 through Decree No 31 of 1975, amended by Decree No 21 of 1979.<sup>36</sup> The Decree was entrenched in the 1979 Constitution of Nigeria, now Public Complaints Commission Act.<sup>37</sup> The establishment of the Commission is also incorporated in section 315(5) of the 1999 Constitution. The PCC is headed by a Chief Commissioner and such number of commissioners as the National Assembly may from time to time determine.<sup>38</sup> The Commission may establish such number of branches in the states of the federation as the National Assembly may determine.<sup>39</sup> In the exercise of the powers conferred on the Commission, a commissioner shall not be subject to the direction, or control of any other person or authority.<sup>40</sup> This is a form of structural independence. However, the powers of the Commission does not extend to matters: pending before the National Assembly, National Council of State or the National Council of Ministers; pending before any court of law in Nigeria; that is regulated to the armed forces or the Nigeria Police Force; in which the complainant has not exhausted all available legal or administrative remedies; relating to things done before July 29, 1975 or relating to things done more than 12 months before the complaint is lodged; or in which the complainant has no personal interest.<sup>41</sup> For the purpose of the foregoing limitations, a notice signed by the Secretary to the Government of the Federation and addressed to the Commission certifying that any matter is pending before any of the bodies shall be conclusive as to the pendency of the matter.<sup>42</sup> Section 2 of the Public Complaints Commission Act makes provision for the appointment and removal of the Chief Commissioner and other Commissioners of the Commission by the National Assembly instead of the President.<sup>43</sup> The PCC Act also provides for the payment of the emoluments of the Chief Commissioner and other Commissioners of the Public Complaints Commission out of the Consolidated Revenue Fund of the Federation.<sup>44</sup> This is to ensure that members of the Commission are not easily influenced by the executive through manipulation of their salaries. Despite this progressive provision, the PCC is largely under-funded, weak and lacks operational facilities.<sup>45</sup>

<sup>30</sup> Paragraph 27, Third Schedule to the Constitution.

<sup>31</sup> See section 6 (2) of the Police Act 2020.

<sup>32</sup> See, for example, section 14(2) of the Police Service Commission (Establishment) Act No 1, 2001.

<sup>33</sup> See sections 2 & 5 of the Police Service Commission (Establishment) Act No 1, 2001.

<sup>34</sup> O.G. Okereke, 'Public attitude towards the Police Force in Nigeria' *Police Studies* (1993) Vol. 16 No 3 pp 113-121.

<sup>35</sup> Public Complaints Commission, available at <https://pcc.gov.ng/> (accessed 25 January, 2022).

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

<sup>37</sup> Cap P 37, LFN, 2004.

<sup>38</sup> Section 1(1), Public Complaints Commission (PCC) Act.

<sup>39</sup> Section 1(2), PCC Act.

<sup>40</sup> Section 5((6), PCC Act.

<sup>41</sup> Section 6, PCC Act.

<sup>42</sup> Section 6(2), PCC Act.

<sup>43</sup> K. Aina, 'The Relevance of Public Complaints Commission to Nigeria's Democratic Development' (2012) vol 3 No 3 *International Journal of advanced Legal Studies and Governance* p. 3.

<sup>44</sup> *Ibid.*

<sup>45</sup> E.C. Ngwakwe, 'An Analysis of Jurisdictional Conflicts among anti-corruption Laws and Institutions in Nigeria' in D.U. Enweremadu & E.E. Okafor (Eds.) *Anti-Corruption Reforms in Nigeria since 1999: Issues, Challenges and the Way Forward* Ibadan: IFRA, IFRA Special Research Issue vol. 3 (2009) p. 49.

### **Code of Conduct Bureau and Tribunal**

The Code of Conduct Bureau is the pioneer anti-corruption agency dedicated wholly to the prevention, investigation and possible prosecution of public officers who engage in corrupt practices.<sup>46</sup> The Bureau was first established in 1979, during the Second Republic to check corrupt practices in the Nigerian public service.<sup>47</sup> The Fifth Schedule of the 1979 Constitution provided a list of Codes of Conduct for public officers. Since then, the Code of Conduct provision has maintained a permanence of some sort in the Fifth Schedule of all Constitutions: 1989, 1993, 1995 and the current 1999 Constitution. The Code of Conduct Bureau and Tribunal (CCBT) Act<sup>48</sup> complements the provisions of the Third and Fifth Schedules to the Constitution. It established the Code of Conduct Bureau (CCB) and its twin sister – the Code of Conduct Tribunal (CCT) as Extra-Ministerial Departments. The CCB comprises a Chairman and nine other members appointed by the President, each of whom at the time of appointment, shall not be less than fifty years of age and subject to the provisions of section 157 of this Constitution shall vacate his office on attaining the age of seventy years.<sup>49</sup> The Constitution vests in the CCB various mandates with regard to asset declaration. The Constitution also established the Code of Conduct Tribunal (CCT).<sup>50</sup> The Tribunal comprises a chairman and two other members appointed by the President on the recommendation of the National Judicial Council.<sup>51</sup> The chairman or a member of the CCT vacates office on attaining the mandatory retirement age of 70 years.<sup>52</sup> Neither the chairman nor the member can be removed from office by the President except upon an address supported by two-thirds majority of each House of the National Assembly praying that he be so removed for inability to discharge the functions of the office in question (whether arising from infirmity of mind or body) or for misconduct or for contravention of this Code.<sup>53</sup> The Constitution has very strong provisions for the appointment of members of the CCT. Members of the CCT are appointed by the President on the recommendation of the National Judicial Council.<sup>54</sup> They may be removed by the President only when the removal is supported by two-thirds majority of each House of the National Assembly.<sup>55</sup> To ensure its independence, the Constitution vests the Code of Conduct Tribunal (CCT) with power to appoint its staff and also to exercise disciplinary control over them.<sup>56</sup> However, the tenure of office of the staff of the CCT is the same as that of officers in the civil service of the Federation.<sup>57</sup> With regard to the Code of Conduct Bureau, the Constitution provides that the terms and conditions of service of the staff of the Bureau shall be the same as those provided for public officers in the civil service of the Federation.<sup>58</sup> The implication of the above is that neither the CCB nor the CCT has power to determine the terms and conditions of service of its staff. This may undermine the independence of both bodies. The CCB and CCT access their funding from the National Assembly through the budget and appropriation process.<sup>59</sup> In theory, the freedom of the CCB and CCT to access funds through the budgetary process offers some form of financial autonomy, except that in practice the budget proposal of these bodies are subject to scrutiny by the executive before submission to the parliament. This clearly undermines CCB's financial autonomy and exposes the Bureau as well as the Tribunal to undue influence.

### **Independent Corrupt Practices and other Related Offences Commission**

The Independent Corrupt Practices and other related offences Commission (ICPC) was established under the Corrupt Practices and Other Related Offences Act 2000.<sup>60</sup> The Act confers on the ICPC the general powers to receive, investigate and prosecute corrupt practices and other related offences as well as carry out public education.<sup>61</sup> The ICPC is a body corporate with perpetual succession, which may sue or be sued in its corporate name.<sup>62</sup> The Commission comprises a chairman and 12 other members, two of whom are appointed to represent

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<sup>46</sup> Code of Conduct Bureau: Our history, <https://ccb.gov.ng/> (accessed 17 May 2022).

<sup>47</sup> *Ibid.*

<sup>48</sup> Cap C15, LFN, 2004.

<sup>49</sup> Paragraph I, Third Schedule to the 1999 Constitution. The CCBT Act provides for a chairman and ten members. See section 1(2) &(3) of the CCBT Act.

<sup>50</sup> Paragraph 15, Fifth Schedule to the 1999 Constitution.

<sup>51</sup> Paragraph 15(3), Fifth Schedule to the 1999 Constitution.

<sup>52</sup> Paragraph 17, Fifth Schedule to the 1999 Constitution.

<sup>53</sup> *Ibid.*

<sup>54</sup> Paragraph 15(3), Fifth Schedule to the 1999 Constitution.

<sup>55</sup> Paragraph 17, Fifth Schedule to the 1999 Constitution.

<sup>56</sup> See paragraph 16(2), Fifth Schedule to the Constitution.

<sup>57</sup> See paragraph 16(1), Fifth Schedule to the Constitution.

<sup>58</sup> See paragraph 4, Third Schedule to the Constitution.

<sup>59</sup> Ekeanyanwu, *Op Cit.* p 37.

<sup>60</sup> Corrupt Practices and other Related Offences Act, section 3(1).

<sup>61</sup> Corrupt Practices and other Related Offences Act, section 6.

<sup>62</sup> Corrupt Practices and other Related Offences Act, section 3(2).

each of the six geopolitical zones in the country.<sup>63</sup> The membership of the Commission is drawn from the following categories of Nigerians: a retired police officer not below the rank of Commissioner of Police, a legal practitioner with at least 10 years post-call experience, a retired judge of a superior court of record, a retired public servant not below the rank of a Director, a woman, a youth of not less than 21 or more than 30 years of age at the time of his or her appointment, and a chartered accountant.<sup>64</sup> These members shall be persons of proven integrity appointed by the President upon confirmation by the Senate.<sup>65</sup>

To secure its independence, the ICPC is established with the capacity to act as a complete legal entity, and is vested with all the powers to discharge its functions and regulate its internal affairs. By section 3(2) of the Corrupt Practices and other related offences Act, the ICPC is established as a body corporate with perpetual succession, with powers to sue and be sued in its corporate names, and may for the purpose of its functions acquire, hold or dispose of movable or immovable property. It has powers to appoint its employees or staff who would assist in discharging its functions, and also to determine the conditions of service, including salaries, pensions and gratuities as are appropriate for such staff or employees.<sup>66</sup> Section 3(10) of the Corrupt Practices and other related offences Act provides that: ‘the Chairman and members of the Commission shall hold office on such term and conditions as may be specified in their instrument of appointment, and in the exercise of their functions, they shall not be subject to any other authority except as provided by the Act.’ The Corrupt Practices and other related offences Act is very clear about its intention to create a truly independent anti-corruption body. Section 3(14) clearly provides: ‘the Commission shall in the discharge of its functions under this Act, not be subject to the direction or control of any other person or authority.’ The Act also contains very strong provisions on appointment and removal of members of the ICPC. The Corrupt Practice and other related Offences Act provides that the Chairman and members of the ICPC other than ex-officio members shall be appointed by the President subject to Senate confirmation, and they shall not assume office until they have declared their assets and liabilities as prescribed in the Constitution.<sup>67</sup> The Chairman or member of the Commission may be removed only by an address supported by two-thirds majority of the Senate.<sup>68</sup>

In order to secure the Commission’s financial independence, Section 3(5) of the Corrupt Practice and other related offences Act provides that the remuneration for members of the ICPC must be determined by the Revenue Mobilisation, Allocation and Fiscal Commission (RMAFC). However, the Commission is funded from the Presidency and has no right of direct budgetary appropriation from the Legislature.<sup>69</sup> Studies have revealed that ICPC usually has less than fifty percent of its annual budgetary proposal approved and allocated.<sup>70</sup> It is even more saddening that when the funds have been appropriated to ICPC by the National Assembly, these funds are seldom released in full.<sup>71</sup> A financially handicap institution like the ICPC cannot lay claim to independence. The lack of financial independence makes a mockery of the operational and structural independence which the Corrupt Practice and other related Offences Act so lavishly vested on the ICPC.

### **Economic and Financial Crimes Commission (EFCC)**

The Economic and Financial Crimes Commission (EFCC) was established in 2004 by the Economic and Financial Crimes Commission (Establishment) Act. The Act established EFCC as a body corporate with perpetual succession, which has powers to sue and be sued in its corporate name, and may for the purpose of its functions acquire, hold or dispose of movable or immovable property.<sup>72</sup> It is charged with the task of coordinating the various anti-corruption institutions.<sup>73</sup> The Commission is the designated Financial Intelligence Unit (FIU) of the Country.<sup>74</sup> It is also the agency responsible for coordinating the enforcement of the following anti-corruption laws: the Money Laundering (Prevention and Prohibition) Act 2022, Proceeds of Crime (Recovery and Management) Act 2022, the Advance Fee Fraud and Other Related Offences Act 1995, the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act, the Banks and Other Financial Institutions Act 2020, Miscellaneous

<sup>63</sup> Corrupt Practices and other Related Offences Act, section 3(3).

<sup>64</sup> Corrupt Practices and other Related Offences Act, section 3(3) (a)-(g).

<sup>65</sup> Corrupt Practices and other Related Offences Act, section 3(6).

<sup>66</sup> See the Corrupt Practices and other related offences Act.

<sup>67</sup> Corrupt Practices and other Related Offences Act, section 3(6).

<sup>68</sup> Corrupt Practices and other Related Offences Act, section 3(8).

<sup>69</sup> Ekeanyanwu, *Op Cit.* p. 36.

<sup>70</sup> *Ibid.*

<sup>71</sup> T. Iredia, ‘Who is Crippling EFCC?’ available at [www.vanguardngr.com/2012/12/who-is-crippling-the-efcc/](http://www.vanguardngr.com/2012/12/who-is-crippling-the-efcc/) (accessed 17 May 2022).

<sup>72</sup> EFCC (Establishment) Act, section 1(2)(a)-(b).

<sup>73</sup> EFCC (Establishment) Act, section 1(2)(c).

<sup>74</sup> EFCC (Establishment) Act, section 1(2)(c).

Offences Act, and any other law or regulation relating to economic and financial crimes, including the Criminal Code and Penal Code.<sup>75</sup> The Commission comprises a chairman, four eminent Nigerians,<sup>76</sup> heads of various government institutions or their representatives, and lastly the Secretary to the Commission.<sup>77</sup> The chairman who is the chief executive officer and chief accounting officer of the Commission must prior to appointment be a serving or retired member of any government security or law enforcement agency not below the rank of Assistant Commissioner of Police or equivalent; and must possess not less than 15 years cognate experience.<sup>78</sup> The Chairman and four eminent Nigerians who are members of the Commission are appointed by the President subject to Senate ratification.<sup>79</sup> They hold office for a period of four years in the first instance, and may be reappointed for an additional term of four years but no more.<sup>80</sup> However, only the Chairman and the Secretary are full time members of the Commission. The four eminent Nigerians and all heads of government institutions or their representatives are part-time and ex-officio members only.<sup>81</sup> A member of the Commission may be removed at any time by the President for inability to discharge to the function of the office whether arising from infirmity of the mind or body or any other cause, or for misconduct of if the President is satisfied that it is not in the interest of the Commission or the interest of the public that the member should continue in office.<sup>82</sup>

To secure its operational independence, the EFCC is established under the EFCC Act with the capacity to act as a complete legal entity, and is vested with all the powers to discharge its functions and regulate its internal affairs. However, the EFCC Act has no provision for legal independence similar to what is contained in Section 3(14) of the Corrupt Practices and other related offences Act. Instead, the EFCC Act created a structurally dependent Commission by providing that ‘the Attorney General of the Federation may make rules or regulations with respect to the exercise of any of the duties, functions or power of the Commission.’<sup>83</sup> One major shortcoming of the EFCC Act that affects the structural independence of the EFCC is the requirement that a serving law enforcement officer of the rank Assistant Commissioner of Police and above may be appointed to head the Commission. This arrangement places the Commission’s Chairman within the Command structure of law enforcement institutions. As he will one day return to his former duty post on completion of his term as EFCC chairman, he might be constrained to deal softly with his superiors who are corrupt to avoid a reprisal when he leaves office as chairman of the EFCC. Another area where the EFCC lacks structural independence is the failure of the EFCC (Establishment) Act to secure the tenure of members of the Commission. Although the Chairman and members are appointed by the President subject to Senate confirmation, they may be removed by the President at will and without recourse to the Senate.<sup>84</sup> The Chairman and members of the EFCC hold office at the President’s pleasure. A member that falls into the President’s displeasure for anything done or omitted to be done runs the risk of being removed from the Commission. This is unhealthy for the EFCC if the Commission must discharge its duties without fear or favour. Regarding financial independence, the EFCC is funded from the Presidency and has no right of direct budgetary appropriation from the National Assembly.<sup>85</sup> Studies have revealed that EFCC usually has less than fifty percent of its annual budgetary proposal approved and allocated.<sup>86</sup> It is even more saddening that when the funds have been appropriated for the EFCC by the National Assembly, these funds are seldom released in full.<sup>87</sup> Its budgets are subject to cuts and non-release. The Commission has cried out severally that it could not prosecute cases or pay its lawyers due to paucity of funds. As a result of lack of operational, structural and financial independence, the EFCC is not free from interference from the Executive.<sup>88</sup>

#### **4. Conclusion**

This paper examined the independence of anti-corruption bodies in Nigeria as a condition precedent to winning the war on corruption and financial crimes. It was observed in the paper that many of the anti-corruption agencies

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<sup>75</sup> EFCC (Establishment) Act, section 7(2).

<sup>76</sup> See EFCC (Establishment) Act, 2(1)(o).

<sup>77</sup> EFCC (Establishment) Act, section 2.

<sup>78</sup> EFCC (Establishment) Act, section 2(1)(i)-(ii).

<sup>79</sup> EFCC (Establishment) Act, section 2(3).

<sup>80</sup> EFCC (Establishment) Act, section 3(1).

<sup>81</sup> EFCC (Establishment) Act, section 2(2).

<sup>82</sup> EFCC (Establishment) Act, section 3(2). See also EFCC (Establishment) Act, section 3(3).

<sup>83</sup> EFCC (Establishment) Act, section 43.

<sup>84</sup> EFCC (Establishment) Act, section 3(2).

<sup>85</sup> Ekeanyanwu, *Op Cit* p., 36

<sup>86</sup> *Ibid.*

<sup>87</sup> T. Iredia, ‘Who is crippling EFCC?’ available at [www.vanguardngr.com/2012/12/who-is-crippling-the-efcc/](http://www.vanguardngr.com/2012/12/who-is-crippling-the-efcc/) (accessed 28 January 2022).

<sup>88</sup> Nigerian NIS Study 2004, available at [www.transparency.org](http://www.transparency.org) (accessed 28 January 2022).

are not empowered to be fully independent by the legal instruments that set them up. Most of the institutions are funded directly from the Executive, thus, raising concerns about their independence and neutrality. Members and key staff of some of the anti-corruption bodies do not enjoy security of tenure; and none of the institutions is adequately funded. One important lesson to draw from the paper and the experience of anti-corruption institutions in Nigeria is that one form of independence is never enough. To be truly independent, an anti-corruption body must possess operational, structural and financial independence. In order to strengthen the independence of anti-corruption bodies in Nigeria in line with Nigeria's obligations under the Constitution, the UNCAC and the AUCPCC, this paper recommends an amendment to the laws setting up anti-corruption bodies in Nigeria. In specifics, this paper advocates for a more democratic procedure for the appointment and removal of members of anti-corruption bodies by ensuring that their appointment and removal are subjected to some form of control by Parliament or the Judiciary as the case may be. The term of office of members of anti-corruption bodies, their remuneration and conditions of service should be adequately secured by law. Members should have a long tenure. In any case, they should have their tenure guaranteed until expiry of their term of office. They may however be removed only for reasons of incapacity or misconducts that render them unfit to discharge their duties, and the removal should be subject to control by the parliament or court. Appointments into anti-corruption bodies should be based mainly on merits; ability, integrity and experience. The inclusion of heads of government institutions or their representatives in the composition of anti-corruption bodies is an anomaly. If anti-corruption bodies need any information from a government department, they have been adequately empowered by law to ensure that the information is released to them without delay. Heads of government institutions will only constitute clogs on the wheel of anti-corruption initiatives if retained on the membership of anti-corruption bodies. In order to improve the financial independence of anti-corruption bodies, the funds of all or the main anti-corruption bodies should be charged on the Consolidated Revenue Funds of the Federation. The current arrangement whereby anti-corruption bodies are funded from the Presidency and have no right of direct budgetary appropriation from the National Assembly can only make these bodies appendages of the Presidency because he who pays the piper is entitled to determine the tune. The practical implication of charging the funds of anti-corruption bodies directly on the Consolidated Revenue Funds is that whatever budgetary provisions that have been approved by the National assembly will be released to the anti-corruption bodies without cuts, delay or incidences of non-release.