

Abstract

Nigeria has successively occupied unenviable position in series of world corruption surveys irrespective of the efforts and fund exerted towards the fight against corruption since year 2000. Following the switch over from military to civilian government in 1999, the Independent Corrupt Practices and Other Related Offences Commission (ICPC) was established in September 2000 to combat public sector graft such as bribery and abuse of office by public officials. The ICPC was intended to build on the Code of Conduct Bureau and its sister institution - the Code of Conduct Tribunal established in 1990 to enforce a code of conduct for public officials. The researcher therefore employed doctrinal research methodology to examine the legal regime for combating corruption in Nigeria. The paper was built, inter alia on the objectives of exploring the dimensions of corruption in Nigeria and the legal and institutional frameworks for curtailing corruption in Nigeria; determine the effects of corruption on sustainable growth in Nigeria; and whether Nigeria has waged sustainable war on corruption as well as measures that could stamped out corruption in Nigeria. It was found that corruption has drenched Nigeria as a nation, though; Nigeria boasts of sound legal and institutional regime for combating the menace and that corruption manifest in various dimensions and needs collective change of attitude to be stamped out. We recommended, inter alia, strengthening of the anti-graft agencies by making them independent of the executive, curtailing level of executive interference, attitudinal change as measure that could stamp out corruption in Nigeria.

Keywords: Legal Regime, Combating, Corruption, Nigeria.

1. Introduction

Corruption has been identified currently as a global problem capable of stultifying the economic stability and security of any society; socio-economic and political development as well as undermining the value and ethics of democracy and morality.¹ This is indubitable in the light of current realities at both domestic and international levels. Growth in the globalisation of economic activities and technology has contracted the world into a small village. This has also enhanced trans-border crimes including corruption at the municipal and global dimension; hence, eliminating corruption has become a priority at the domestic and international levels.² The wellbeing of the citizens of a given state in terms of high living standard is one of the indices of economic growth of such a state. The economic viability of any state is directly proportional to the proper development plans initiated and substantially implemented. However corruption has put a cog in the wheel of economic development of most nations, since, it usually halt or distort the execution of development plans, etc. Regrettably, corruption is a complex social, political and economic phenomenon that has affected all countries of the world in varying magnitude. Corruption weakens social and democratic institutions, impedes economic development and contributes to state instability.

Conceptualising corruption has become baffle strife among jurists, authors, commentators and sociologists. This is because corruption is interdisciplinary relative. Also, corruption may be conceived variously from different cultural and socio-economic spectrum. However, we can see corruption can say that corruption in socio-economic and legal perspectives borders on the misuse of public positions of trust for private gains.³ Oftentimes, corruption is used to describe general form of dishonesty or criminal activity wherein a person or organisation entrusted with public positions of authority wield the authority in such a way to divert some benefits for private personal gains. It involves bribery, embezzlement, misappropriation and other practices of similar nature. Corruption can assume different dimensions and magnitudes. It may range from small favours, that is, petty corruption to corruption that affects the government on a large scale, that is, grand corruption. Also corruption may become so prevalent that it becomes part of everyday structure of the society. This may include corruption as one of the elements of organised crime. Corruption and crimes are endemic sociological occurrences that are mostly frequent in virtually all the states of the world, albeit, in varying degrees. As such, every state usually appropriates resources for the control of corruption and crimes. Strategies to counter corruption are also developed and implemented on domestic scale. These strategies are often referred to as anti-corruption.⁴

The issue of corruption has obsessed public discourse in Nigeria, thus, in both print and electronic media, in our homes, churches, mosques, markets, schools, political fora, financial institutions, peer gatherings, etc, no other topic attracts attentions like the issue of corruption. In fact, one may say that corruption thrives more than any other vice in Nigeria. This is the root cause of Nigeria's socio – political and economic decadence.⁵ Corruption has robbed Nigeria of development and progress irrespective of the fact that Nigeria is abundantly endowed with human and natural resources.⁶ Nigeria and other countries like Brazil, India, Malaysia, Singapore, etc, were projected in the late 1960s and early 1970s to emerge as the leading economies of the world by the 21st century. Nigeria's contemporaries have since achieved this potential and registered their economies in the leading economies of the world but Nigeria has remained backward. The theory of our criminal justice system stresses the importance of integrity in public life and therefore renders any public or judicial officer and, of course, every other citizen liable in law for his own criminal conducts.⁷ The former president of the country, Olusegun Obasanjo, while speaking at the

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¹United Nations, Global programme against Corruption: An Outline for Action, Centre for International Crime Prevention, Office of Drugs Control and Crime Prevention, Vienna 1999, p. 6

²U. U. Chukwumaeze, C. K. Okorie and C. E. Chinweze, 'A Critique of the Fight against Corruption in Nigeria' in I. A. Abdulqadir and others, *Corruption and National Development* (Ilorin: National Association of Law Teachers and Unilorin Press, 2013) p. 205.

³F. M. Cummings and Others, (eds) *The Encyclopedia American*, International edition Vol 8 (Danbury Connecticut: Grolier Inc., 2000) p. 22

⁴ See the wikipedia definition of corruption, on en-wikipedia available

<http://www.en.m.wikipedia.org/wiki/Corruption> last accessed on 27th May, 2019.

⁵ J. I. Omorogbe, *Ethics for Every Nigerian* (Lagos: Joja Educational Research and Publishers Ltd, 1991) p. vii

⁶L. F. Akande and others, 'The Fight against Corruption in Nigeria: The Imperative of Criminal Justice System Reform' in I. A. Abdulqadir and others, *Corruption and National Development* (Ilorin: National Association of Law Teachers and Unilorin Press, 2013) p. 31.

⁷C. O. Okonkwo, *Okonkwo and Naish on Criminal Law in Nigeria*, 2nd edn, (Ibadan: Spectrum Books Ltd, 2010) p. 355

first Akintola Williams Annual Lecture in Lagos on November 24, 2016, reacted negatively to the level of corruption going on among the members of the House of Assembly and House of Representatives. Quoting from the writings of Jola Sotubo "Former President, Olusegun Obasanjo described the National Assembly as a den of corruption.⁸ Part of the speech delivered by the ex-president, which hammered on the level of corruption among the members of the house, states:

Members of the National Assembly pay themselves allowances for staff and offices they do not have or maintain. Once you are a member, you are co-opted and your mouth is stuffed with rot and corruption that you cannot opt out as you go home with not less than N15 million a month for a senator and N10 million a month for a member of the House of Representatives.⁹

Many Nigerian leaders have helped boost the economies of other nations by depositing embezzled money into foreign banks. Political corruption is persistent in the Nigerian state. Since the creation of modern public administration in the country, there have been cases of official misuse of resources for personal enrichment.¹⁰ For instance, after the death of the former president, Sani Abacha, an investigation was carried out to determine the amount of money he embezzled in gas plant construction in the country. The investigations led to the freezing of accounts containing about \$100 million United States dollars that he stole.¹¹ There is presently controversy surrounding the \$16 billion power fund during the Obasanjo regime and the \$2 billion voted for *arms procurement deal* in Nigeria that resulted in the embezzlement of \$2 billion through the office of the National Security Adviser under the leadership of Colonel Sambo Dasuki, the former National Security Adviser during Jonathan regime. The Abacha administration notoriously looted upwards of \$3 billion in the 1990s.¹² The federal government's agreement with the Swiss government on the return of looted funds traced to former Head of State General Sani Abacha led to the remittance of US\$322 million in December 2017.¹³ The plan is to distribute the returned money among Nigerians, which was confirmed through the publication of Transparency International in August 2018. It stated: In Nigeria, plans are in motion to distribute US\$322 million recovered in Switzerland from the late General Sani Abacha, the country's former military ruler. Before now, some funds were returned to Nigeria by the Swiss bank in 2006 from the money stolen by the same former president. In 2006, US\$723 million illicitly acquired by Abacha's family was returned to Nigeria from Switzerland.¹⁴ The war against corruption requires concerted efforts by both the government and the citizens especially given the effects of this cankerworm to Nigerian national development.¹⁵

From 2000 to present, Nigeria has consistently scored low in the Transparency International corruption index¹⁶ In 2012, Transparency International again deemed Nigeria one of the most corrupt nations in the world. That year, the country ranked 139th out of the 176 surveyed countries, making Nigeria the 37th most corrupt nation. In 2013, Nigeria ranked 144 out of 177 surveyed countries in terms of transparency. The score made Nigeria 33rd most corrupt country in the world that year. The result published by the organization also showed that Nigeria scored 25% out of 100 in terms of transparency. In the 2014 ranking, Nigeria was ranked 136 out of 174 surveyed countries. The result shows that there is an improvement, though things are still bad. Nigeria was the 38th most corrupt country in the world in 2014.¹⁷ Irrespective of the campaign promises, Nigeria ranked low in transparency and high in corruption in that 2015. In 2015, out of the 168 countries surveyed, Nigeria was the 32nd most corrupt. Over two-thirds of the 176 countries and territories surveyed in 2016 fell below the midpoint of Transparency International scale of 0 (highly corrupt) to 100 (very clean). In that year's survey, Nigeria sat at number 136 on the table with Guatemala, Kyrgyzstan, Lebanon, Myanmar, and Papua New Guinea. From calculation, it shows that Nigeria and the mentioned countries were ranked 40th most corrupt in 2016.¹⁸ In 2017, there was no remarkable improvement in transparency in the country. Irrespective of the promise made by the current president to fight corruption, it appears that the former President Goodluck Jonathan did quite better than him when compared with his 2014 results before he left the presidential seat. It was very disappointing that in the 2017 Corruption Perception Index released by Transparency International in 2018, Nigeria has relapsed deeper into corruption—moving 12 steps backward from 136 to 148 with respect to the 2014 results.¹⁹ In the year 2018, Corruption Perception Index ranked 180 countries and territories. Nigeria occupied number 144 on the table with Comoros, Guatemala, Kenya and Mauritania. Also the score of the country in that year was 27 which was same with that of 2017. Based on the position of 144 on the table, it indicated that Nigerian was the 36th most corrupt country in the world in 2018.²⁰ Nigeria failed when it came to transparency in the country's government. By contrast, in 2013, Denmark and New Zealand scored highest at 91% each, meaning the countries are clean and have higher Confidence Intervals than Nigeria. In other words, Nigeria is highly corrupt. Corruption in Nigeria hurts a lot of people, as the money that would have been used to reduce poverty in the country is being channelled into the pockets of a select few. The foregoing demonstrates the extent to which corruption has destroyed the fabrics of the Nigerian states in current times. The nerve-racking aspect of it

⁸Jola Sotubo, 'Senators Make N15m Monthly, Reps 10m, Ex-President Says' (2016) Pulse Nigeria News Publication, Nigeria.

⁹*Ibid.*

¹⁰The Storey Report of the Commission of Inquiry into the Administration of Lagos Town Council (2016).

¹¹I. Hector, 'SKJ SAGA: SWISS GOVT FREEZES \$100M ACCOUNTS' Vanguard, Nigeria (2004).

¹²M. O. Uzochukwu, Challenges in Nigeria and Solutions on How to Resolve Them (California: Hubpages Inc., 2013), 12

¹³Webby 'Abacha Loot: Osinbajo Speaks on Return of \$322m by Swiss Govt' Online News Report (2018)

¹⁴Transparency International 'Returning Nigerians' Stolen Millions' Transparency International publication (2018).

¹⁵P. O. Itua and Others, 'The Nigerian Police and the Fight against Corruption: An Assessment of Government Policies in Corruption and National Development' in I. A. Abdulqadir and others, *Corruption and National Development* (Ilorin: National Association of Law Teachers and Unilorin Press, 2013)

¹⁶See Corruption Perceptions Index 2003 available at https://www.transparency.org/research/cpi/cpi_2003/0; last accessed on 12th June, 2023; TI publication - global corruption report 2004: political corruption available at

https://www.transparency.org/.../global_corruption_report_2004_political_corruption; last accessed on 12th June 2023.

¹⁷See Transparency International Report on Corruption 2014 available at <https://www.transparency.org/whatwedo/publication/cpi2014>; last accessed on 12th June 20123.

¹⁸See TI Corruption Perception Index 2016 available at

https://www.transparency.org/news/feature/corruption_perceptions_index_2016; last accessed on 12th June 2019.

¹⁹TI 2017 Corruption Perception Index available at

https://www.transparency.org/news/feature/corruption_perceptions_index_2017; accessed last on 13th June 2023.

²⁰TI Publication - Corruption Perceptions Index 2018 available at

https://www.transparency.org/whatwedo/publication/corruption_perceptions_index_2018; last accessed on 13th June, 20123

all is that all governments have claimed to have come to fight corruption but none has heroically tackled corruption headlong. The most worrisome problem is that every government that comes beats its chest and put the media agog with fighting corruption issues, but none has gallantly approached corruption headlong. It is on the face of these worrisome problems that the researcher sets to survey public awareness on the legal regime for combating corruption in Nigeria.

It is against this background that this study seeks to survey public awareness on the legal regime for combating corruption in Nigeria, with a view to ascertaining how appraised the general Nigerian citizens are on the laws regulating corruption, in order that ethics and discipline may be instilled on the masses for effective and sustainable fight against corruption that will engender national economic growth and development.

2. Corruption

Corruption is a multidisciplinary concept. As such, meaning assignable to the concept varies depending on the commentator's perspective or disciplinary leaning. Corruption could mean contamination, corrosion, erosion of values, depreciation in worth, etc. Corruption takes a variety of forms in different places; this is why the concept has eluded a precise and universally accepted meaning. Its fluid nature has led to it being described as amorphous.²¹ In the Corrupt Practices and other Related Offences Act,²² corruption is simply defined to include bribery, fraud and other related offences.²³ According to the *Black's Law Dictionary*, corruption means '[d]epravity, perversion, or taint; an impairment of integrity, virtue, or moral principle; especially the impairment of a public official's duties by bribery.'²⁴ The *Oxford Law Dictionary* conjunctively defines bribery and corruption as 'offences relating to the improper influencing of people in certain positions of trust.'²⁵ For Perkins and Boyce, the word 'corruption' indicates impurity or debasement and, when found in the criminal law; it means depravity or gross impropriety.²⁶ Similarly, Adegbite views crime as 'the perversion of anything from an original state of purity, a kind of infection or infected condition.'²⁷ Corruption has also been described as a 'behaviour' which deviates from the formal duty of a public role because of private-regarding (family or close clique), pecuniary or status gain, or violates rules against the exercise of certain types of private-regarding influence.²⁸ From this perspective, it seems that for one to be guilty of corruption, a wrongful desire for pecuniary gain or some other advantage(s) has to be established, which is not always the case. In describing corruption, Achebe posits that it goes with power and therefore, it is properly located in the ranks of the powerful.²⁹ This description is fractional because even among the poor and inconsequential in the society, corruption still exists; this underscores the pervasive nature of corruption. Nweke defines corruption as a systematic vice in an individual, society or a nation which reflects favouritism, nepotism, tribalism, sectionalism, undue enrichment, amassing of wealth, abuse of office, power, position and derivation of undue gains and benefits – it also includes bribery, smuggling, fraud, illegal payments, money laundering, drug trafficking, false declaration, evasion, underdevelopment, deceit, forgery, concealment, aiding and abetting of any kind and to the detriment of another person, community, society or nation.³⁰

Igwenyi, in defining corruption, expands the perimeter of what can be regarded as such. According to him, corruption is a negative behaviour in man which is manifested when a person uses his station in life to get undeserved benefits for himself or for other persons.³¹ It is manifested in such acts as bribe taking, stealing, embezzlement, inflation or devaluation of contracts or services, fraud of all dimensions, all forms of manipulations of procedures and processes for the purpose of securing benefits, nepotism, electoral frauds, cheating, shady deals of all dimensions, depravity, all forms of economic sabotage, etc.³² In fact, corruption, to him, is an integral part of crime.³³ On Dambazau's part, corruption by itself is a crime.³⁴ This is true, especially as corruption has been said to also cover such acts as the use of one's office for non-pecuniary and pecuniary advantages, gratification, influence peddling and insincerity with the aim of gaining advantage; it also consists of offers, promises, gifts (in cash or in kind), presents or other forms of advantages as considerations for pervasion of the course of justice.³⁵ Adeyemi sees corruption as 'an offence which aims mainly at the conduct of public officials who take advantage of their position within public administration for the purpose of private gain.'³⁶ This definition is too restrictive because it excludes persons not in public service from being corruptible. A better definition is that which includes all the forms of improper or selfish exercise of power and influence attached to a public as well as a private office.³⁷ Osoba gives a broader definition of corruption as:

a form of anti-social behaviour by an individual or social groups which confers unjust or fraudulent benefits on the penetrators, is inconsistent with established legal norms, and prevailing ethos of the land and is likely to subvert or

²¹ Igwenyi, *op. cit.*, 24.

²² Cap. C31, LFN, 2004.

²³ S. 2 (Interpretation section). See also *FRN v. Inyang* (2005) 3QCCR, 120.

²⁴ B. A. Garner (ed.), *Black's Law Dictionary*, 9th edn. (Thomson Reuters, 2009) 397.

²⁵ E. A. Martin (ed.), *Oxford Law Dictionary*, 5th edn. (Oxford University Press, 2002) 56.

²⁶ R. M. Perkins and R. N. Boyce, *Criminal Law*, 3rd edn. (Foundation Press, 1982) 855.

²⁷ L. Adegbite, 'Towards the Evolution of a Corrupt-Free Society: The Role and Duties of the Citizenry' in B. Ajibola and others (eds.) *Perspectives on Corruption and other Economic Crimes in Nigeria* (Federal Ministry of Justice, 1991) 152.

²⁸ J. Nye, 'Corruption and Political Development: A Cost-Benefit Analysis' [1967] *American Political Science Review*, (61) 421.

²⁹ C. Achebe, *The Trouble with Nigeria* (Fourth Dimension Publishers, 1983) 48-49.

³⁰ J. O. Nweke, 'Bureaucratic Corruption in the Administration of Military Pension in Nigeria' [2010] *International Journal of Development and Management Review* (5)(1) 51.

³¹ Igwenyi, *op. cit.*, 24.

³² *Ibid.*

³³ *Ibid.*, 11.

³⁴ Dambazau, *op. cit.*, 94.

³⁵ I. F. Akande and others, 'The Fight Against Corruption in Nigeria: The Imperative of Criminal Justice System Reforms' in I. A. Abdulqadir and others (eds.), *Corruption and National Development* (Proceedings of the 46th Annual Conference of the Nigerian Association of Law Teachers held on 22nd -26th April, 2013 at the University of Ilorin, Kwara State) 31.

³⁶ A. A. Adeyemi, 'Economic Crime in a Developing Society', Being a Paper Delivered in a Conference of Attorneys-General held on 11th - 13th October, 1988 in Abuja, 19.

³⁷ Y. Akinseye-George, *Legal System, Corruption and Governance in Nigeria* (New Century Law Pub. Ltd., 2000) 9.

diminish the capacity of the legitimate authorities to provide fully for the material and spiritual well-being of all members of the society in a just and equitable manner.³⁸

Irrespective of the diverse meanings and descriptions, the general consensus on the problem of corruption is the fact that it has always been a constant phenomenon in human existence, so constant that, until recently, it has been viewed as an essential part of the human condition - an endemic aspect of life in the modern world and, even worse, a useful tool to 'grease the wheels of progress in overregulated societies.'³⁹

It has a negative effect on any society where it is pervasive. This is the reason why corruption has been labeled 'the notorious virus'⁴⁰ and 'the most serious developmental challenge to Nigeria.'⁴¹

3. Types of Corruption

Just like crime, corruption is multifaceted and amoebic. This is because corrupt activities cut across a wide range of human activities such as politics, religion, commerce, education, technology, law, etc. Little wonder, corruption is said to be incipient in all human societies and in most human activities.⁴² However, the perspective from which it is approached depends on the background and personal knowledge of the writer. As a result, classifying corruption becomes problematic.

Osipitan gives a descriptive classification of corruption based on its manner of occurrence. According to him:

[C]ollusive, extortionary and anticipatory corruption are obvious examples of classes of corruption. Collusive corruption involves planned cooperation of the giver and receiver. Extortionary corruption involves forced extraction of bribes and other favours from vulnerable victims by those in authority. Anticipatory corruption takes place where bribe or gift is taken or presented in anticipation of favour from the recipient of the gift to the giver of such gift.⁴³

This classification seems encompassing as it cuts across many types of corruption which could occur anywhere. For Marenin and Reisig, crime, specifically as is obtainable in Nigeria, is classified into: normal, political-economic, and riotous crime.⁴⁴ Normal crimes include criminal acts such as theft, assault and homicide. Odekunle subdivides political and economic crimes into 'elite' crimes and 'working class' crimes.⁴⁵ Elite crimes consist of white collar (e.g., embezzlement, tax fraud), political and economic corruption (e.g., illegal patronage, vote buying and/or kickbacks), and organized crimes (e.g., hoarding, smuggling, burglary syndicates). Working class crimes are committed by people of lower status (e.g., car mechanics and messengers in government offices). Political and economic crimes exist at all levels of the Nigerian society.⁴⁶ Riotous crimes, on the other hand, consist of acts carried during riots which, if done at other times, would be considered crimes. People are assaulted, injured, and killed; property is destroyed; practically every order-maintaining regulation is broken. Such events are mostly labeled turmoil or civil unrest.⁴⁷

Ikpeze classifies corruption in terms of its common manifestations: bribery, abuse of discretion and abuse of office, stealing fraud and misappropriation, and extortion.⁴⁸ Akani groups corruption into three major classes: petty class corruption which includes cheating, examination malpractice, stealing, lying and bribery in the civil service; middle class corruption which consists of bribing of traditional rulers by oil companies, lack of transparency among NGOs, favouritism, swindling by false revenue agents in collusion with local government chairmen and diversion of community funds by Community Development Committee (CDC) members. Finally, high level corruption comprises misappropriation of funds by public officers, poor execution of contracts by contractors in collusion with government officials, misapplication of funds by public officers, stealing of public property by public officers and bribing of public officials by oil companies to lower standards.⁴⁹ This classification stems chiefly from a Niger-Delta-oil-issue perspective. According to Dambazau, corruption takes the form of bribe, fraud and embezzlement. An employee in a public establishment is said to be corrupt if he accepts money or money's worth for doing something which he is under a duty to do. Corruption is found in business, politics, religion and education; for example, 'sorting' is a variant of academic corruption, an academic version of corruption.⁵⁰

Forms of corruption can also be gleaned from descriptive definitions of crime or corruption. For instance, section 46 of the Economic and Financial Crimes (Establishment) Act, 2004 gives an exemplified meaning of (economic and financial) crimes which are also corrupt practices. According to the section, it includes any form of fraud, narcotic drug trafficking, money laundering, embezzlement, bribery, looting and any form of corrupt malpractices, illegal arms deal, smuggling, human trafficking and child labour, illegal oil bunkering and illegal mining, tax evasion, foreign exchange malpractices including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic wastes and prohibited

³⁸S. O. Osoba, 'Corruption in Nigeria: Historical Perspectives', cited in C. A. Omaka and others, 'Legal Representation of Corrupt Political Office Holders in Nigeria: Between Professionalism and National Development', in Abdulqadir and ors. (eds.), *op. cit.*, 161.

³⁹J. Brademas and F. Heimann, 'Tackling International Corruption: No Longer Taboo' [1998] *Foreign Affairs* (77)(15), 17.

⁴⁰*Attorney-General of Ondo State v. Attorney-General of the Federation and ors.* (2002) 9NWLR (pt. 772) SC, 222.

⁴¹N. Ikpeze, 'Fusion of Anti-Corruption Agencies in Nigeria: A Critical Appraisal' in Abdulqadir and others (eds.), *op. cit.*, 2.

⁴²M. A. O. Aluko and A. A. Adesopo, 'Bureaucratic Corruption in Nigeria: A General and Sociological Insight into the Problem' [2003] *Journal of Social Sciences* (7)(1) 47.

⁴³T. Osipitan, 'Structuring Measures against Corruption for Sustainable Development', cited in Igwenyi, *op. cit.*, 36.

⁴⁴O. Marenin and M. D. Reisig, 'A General Theory of Crime' and Patterns of Crime in Nigeria: An Exploration of Methodological Assumptions' [1995] *Journal of Criminal Justice* (23)(6), 503.

⁴⁵F. Odekunle, 'The Legal Order, Crime and Crime-Control in Nigeria: Demystification of False Appearances' [1986] *Nigeria Journal of Policy and Strategy* (1) 93-94.

⁴⁶Marenin and Reisig, *op. cit.*

⁴⁷T. Gurr and M. McClelland, *Political Performance: A Twelve Nation Study* (Sage Publications, 1971) 54.

⁴⁸Ikpeze, *op. cit.*, 6-10.

⁴⁹C. Akani, *Corruption in Nigeria: The Niger-Delta Experience* (Fourth Dimension Pub. Co. Ltd., 2001) xx-xxi.

⁵⁰Dambazau, *op. cit.*, 94.

goods, etc. Igwenyi, in an earlier work,⁵¹ classifies corruption into two broad categories: corruption in government and corruption in private places. But in his later work,⁵² corruption is classified into political, bureaucratic, economic, judicial, and moral types of corruption. He, however, points out that the categorization is elastic, inexhaustible and can always accommodate more, as the exigency of the moment demands.⁵³

4. Manifestation of Corruption in Nigeria

Corruption has eaten deep in the fabrics of Nigeria and has manifested itself in various ways. Corruption assumes multi and new dimensions every day in Nigeria. The generally known dimensions include:

Bribery

This involves exchange of something of value in order to influence an action in return, which the recipient would otherwise not ordinarily offer. According to the Black's Law Dictionary, bribery is "the corrupt payment, receipt or solicitation of private favor for official action, considered as felony in most jurisdictions."⁵⁴ In essence, bribery is offering to someone, something of value for the expressed purpose of conferring benefits in exchange.⁵⁵ The giving of a gift to influence the receiver's conduct is considered as a bribe. Such gift may come in form of money, goods, rights in action, property, preferment, privilege, emolument, objects of value, advantage, or mere exchange of a *quid pro quo* promise to induce or influence someone's action, vote, or discretion of a person in an official or public capacity.⁵⁶

Abuse of Office

This may also be referred to abuse of discretion or abuse of official discretion. It is evident where a public officer or any person vested with administrative powers or authority of the government uses or exercises those powers for personal or third party gains. Abuse of office also includes exercise of discretion to award contract to a company belonging to the officer or which the officer has majority shares or awarding to a company with a deal to inflate the contract sum with a view to retaining the balance. This form of abuse is usually common among government officials who often wield broad powers without proper checks or accountability mechanisms to curtail the abuse of such powers.⁵⁷

Fraud

This is a misrepresentation made knowingly to another to make that other person act to his detriment. It is a reckless misrepresentation made without belief in its authenticity aimed at inducing a person to act to his or her detriment.⁵⁸ There is also fraud where a government employee or public officer falsely divests government of fund in form of contract inflation, budget padding, passing off of already existing project as if it were newly executed with intent to divert the contract sum for personal uses, non execution of projects, using sub-standard material for contracts with intent to make excessive gain, etc. Fraud means 'dishonest dealings' and consists of using false or misleading information or advise to deprive government or members of the public of property under the guise of improving efficiency, service delivery or through 'privatisation'. In Nigeria, the end products of every privatization undertaken is that most privatised institutions of government end up being bought by the official charged with the duty of handling the privatization processes. That is why, privatised institutions get worse than they were prior to privatization.⁵⁹ A cursory look into the history of fraud in public procurement in Nigeria unfolds a saddening story. Some former public officials have also been convicted for fraud involving inflation of contracts in Nigeria.⁶⁰ This type of corruption affects the overall development because the public is more often than not, deprived of benefits accruing from judicious use of funds and discretion in the performance of public duties.

Stealing

This ordinarily entails where a person fraudulently takes or converts anything capable of being stolen to his own personal use or for a third party's use.⁶¹ This implies the doer of the aforesaid is not ordinarily entitled to the object(s) stolen. He may, by virtue of official disposition in relation to the property or employment has gained access and/or power to deal inappropriately with them. Stealing is rampant in Nigeria. It is evidenced by the prosecution and conviction of some former top Nigerian government officials for the offence of stealing even in foreign countries.⁶² Funds meant for payment of sanitation, power supplies and healthcare for poor Nigerians have been stolen and converted by top government officials.⁶³ The effect of the

⁵¹ B. O. Igwenyi, *Anti-Corruption Act: The Obasanjo Legacy* (Willy Rose and Appleseed Pub. Co., 2001) 3-10.

⁵² B. O. Igwenyi, *The Crime of Corruption in Nigeria: Laws, Issues and Solutions* (Snaap Press Ltd., 2010) 37-44.

⁵³ *Ibid.*, 37.

⁵⁴ B. A. Gardner (ed), *Black's Law Dictionary* (9th edn, St Paul Min: Thompson Reuters, 2009) 217

⁵⁵ Gifts of money or other items of value which are otherwise available to everyone on an equivalent basis, and not for dishonest purposes, is not bribery. Offering a discount or a refund to all purchasers is a legal rebate and is not bribery. For example, it is legal for an employee of a Public Utilities Commission involved in electric rate regulation to accept a rebate on electric service that reduces their cost for electricity, when the rebate is available to other residential electric customers. Giving the rebate to influence them to look favorably on the electric utility's rate increase applications, however, would be considered bribery.

⁵⁶ See generally T. Markus Funk, 'Don't Pay for the Misdeeds of Others: Intro to Avoiding Third-Party FCPA Liability,' 6 BNA White Collar Crime Report 33 (January 13, 2011); cited in N. Ikepeze, 'Fusion of Anti-Corruption Agencies in Nigeria: A Critical Appraisal' *Afe Babalola University Journal of Sustainable Development Law and Policy* Vol. 1 Issue. 1 (2013) 148-167

⁵⁷ See *George v. FRN* [2011] 10 NWLR (Pt. 1254) 1

⁵⁸ B. A. Gardner, op cit, 731

⁵⁹ For instance, electricity supply and billings in Nigeria is worse than status prior to the privatization of the Power Holding Company of Nigeria.

⁶⁰ see *George v. FRN supra*

⁶¹ See S. 383(1) of the Criminal Code Cap C38, LFN 2004 and the case of *Adewusi v. R* [1963] 1 All N.L.R. 316; where the chairman of a District Council received money on behalf of the Council and used it for his personal needs. He was held guilty of stealing.

⁶² For instance, former governor of Delta State – James Ibori was convicted by a foreign court for money laundering. Former governor of Edo State – Lucky Igbinedion was convicted and some of his assets forfeited to the government.

⁶³ Gen. Sanni Abacha looted the nation to stupor and the proceeds of the loot lodged in Swiss bank has been repatriated in tranches since the inception of democracy in 1999. Also some public officers has been or is being prosecuted for stealing public funds including the former Secretary to the Government of the Federation

stealing public funds and other property in Nigeria is debilitating and has occasioned dearth of critical infrastructure needed for civilisation.

Misappropriation

This is the premeditated or illegal diversion of property or funds of another to satisfy one's own interest or for other unauthorized purpose usually by a public officer, a trustee of a trust, an executor or administrator of a deceased's estate, or by any person in fiduciary position in relation to another's assets⁴¹ Incidences of misappropriation is very rife in Nigeria. Every public officer diligently investigated, especially state governors, will not be free from misappropriation of public funds in Nigeria. The power fund, the Arms deal, the 1 billion dollars arms procurement to fight book haram, pension funds, etc. are manifest instances of misappropriation.

Extortion

This form of corruption dominates the police and other aspect of public service. Police in Nigeria is known for pervasive corruption, such as diverting police resources for personal protection or enrichment in a variety of police-for-hire arrangements; intimidation and harassment of poor victims; destruction of evidence, including the bodies of victims of extrajudicial execution, extortion of innocent citizens arrested for no cause in form of bail, road blocks and check points where motorists buy their way out or risk being shot to death on public highways, etc. Majority of police officers see the police uniform as a tool for generating income. They make money by extorting law-abiding citizens, claiming that it is the price people must pay to keep the police from gratuitously interfering with their livelihoods. In fact, the 2008 Report of the Second Presidential Committee on Police Reform summed up on the image of the Nigerian police as follows:

Indeed the Police today is publicly perceived as one of the most corrupt government institutions, with its personnel constantly accused of bribery and extortion in the course of performing their functions. These accusations are rampant amongst the populace, especially that relating to the extortion from members of the public. In addition, the Police have also been accused of erecting illegal road blocks in order to extort money from the citizenry. ... This has resulted in the loss of public confidence in the integrity of police personnel... Most police officers readily cite their poor pay as the principal reason for extortion. Some even claim that in the absence of basic provisions for policing, the police use proceeds from extortion to fulfill operational needs, such as stationery for recording statements from suspects, gasoline for patrol vehicles, batteries for mobile phone units, and similar day-to-day needs.⁶⁴

Ikpeze similarly agreed that:

There is no gainsaying that because of extortion, the Nigerian police Force has lost all its integrity and is, therefore, facing great obstacles in the confrontation of security challenges. Criminality has been on a steady increase as 'pay as you go' syndrome pervades the entire police force.⁶⁵

Other sectors of the Nigerian civil and public service are not free from extortion. Greasing of palms are regular ways of getting files acted on, employment are sold, sex for marks ravages our school system, etc.

5. Legal Regime against Corruption in Nigeria

Constitution of the Federal Republic of Nigeria, 1999 (as amended)

The 1999 Constitution (as amended) is the *grundnorm* and the supreme law of the land.⁶⁶ Section 6 thereof vests in the courts the general powers of adjudication. In particular, in Part 1 of the Fifth Schedule to the Constitution, paragraph 1 prohibits a public officer from putting himself in a position where his personal interest shall conflict with his duties and responsibilities. Paragraph 3 proscribes certain public office holders⁶⁷ from maintaining and operating a bank account in any country outside Nigeria. Paragraph 8 provides that no person shall offer any property, gift or benefit of any kind as an inducement or bribe for the granting of any favour or the discharge in his favour of the public officer's duties. By virtue of paragraph 9, a public officer shall not do or direct to be done in abuse of his office any unlawful or contrary to any government policy; declaration of assets and liabilities are covered in paragraph 11. Paragraph 15 establishes the Code of Conduct Tribunal with a judicially styled composition; the power of the tribunal includes, *inter alia*, adjudication over breaches of the Code of Conduct and the consequent imposition of punishment.⁶⁸ It is noteworthy that the provisions of the Code of Conduct for Public Officers are in many ways the same with the provisions of the Code of Conduct Bureau and Tribunal Act.⁶⁹

Criminal Code⁷⁰

Under the Criminal Code, section 98 creates the offence of 'official corruption' which entails a person giving or inviting bribes on account of actions of a public official. The section, among other things, provides that any person who, being employed in the public service and being charged with the performance of any duty not bordering on administrative justice, corruptly asks, receives, or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him in the discharge of his duties, is guilty of the felony of official corruption and is liable to imprisonment for seven years. A similar

Babachir Lawal.

⁶⁴ 'Everyone's in on the Game: Corruption and Human Rights Abuses by the Nigeria Police Force' 2008 Report

of the Second Presidential Committee on Police Reform available at

<https://www.hrw.org/report/2010/08/17/everyones-game/corruption-and-human-rights-abuses-nigeria-police-force>; accessed on 20th July 2019.

⁶⁵ N. Ikpeze, *op cit*, 154

⁶⁶ S. 1, 1999 Constitution (as amended).

⁶⁷ They include the President, Vice-President, Governor, Deputy Governor, Ministers and Commissioners.

⁶⁸ Para. 18.

⁶⁹ Cap. C15, LFN, 2004.

⁷⁰ Cap. C38, Laws of the Federation of Nigeria, 2004. This law is applicable to the Southern part of Nigeria.

provision can be seen in section 116 of the Code but the difference between the sections 98 and 116 is that while the former applies to the person employed in the public service whose duties do not cover the administration of justice, the latter covers duties relating to administration of justice. In the case of *Onyekwere v. State*,⁷¹ the appellant, a Police Constable, stationed at Abakaliki was charged with, among others, the offence of official corruption contrary to sections 98(1) and 116 of the Criminal Code. The trial court found the appellant guilty and convicted him accordingly. On appeal, the Supreme Court held that the conviction under section 98(1) could not stand because the prosecution did not adduce any evidence to show that the appellant was in charge of the Abakaliki Police Station at the material time or that it was part of his duties to grant bail to persons arrested by the police. Also, in *Azie v. State*,⁷² the appellant was charged with and convicted of, among others, official corruption contrary to section 98 of the Criminal Code. Upon appeal, the Supreme Court held that section 98 makes both the acceptor and the giver of the bribe offenders; and that the section clearly envisages a situation where the giver of the bribe knows that he was acting corruptly and doing what is evil or wrong in giving a bribe to the public officer concerned. Also provided in the Criminal Code are corrupt offences such as extortion by public officers in section 99. According to the section, any person who, being employed in the public service, takes, or accepts from any person, for the performance of his duty as such officer any reward beyond his proper pay and emoluments, or any promise of such reward, is guilty of a felony, and is liable to imprisonment for three years. In the case of *Esan v. State*,⁷³ the Supreme Court, due to sufficient legally admissible evidence before it, sustained the conviction of the appellant who was tried for and convicted of extortion by the trial court contrary to section 99 of the Criminal Code. Other sections aimed at fighting corruption provided in the Criminal Code include public officers receiving property to show favour,⁷⁴ public officers' interest in contract,⁷⁵ officers charged with administration of property of a special character or with duties,⁷⁶ false claims by officials,⁷⁷ abuse of office,⁷⁸ false certificate by public officer,⁷⁹ and bargaining for offices in public service.⁸⁰

Penal Code⁸¹

The Penal Code also makes similar provisions to the Criminal Code against corruption, specifically in public offices. Section 115 thereof is on all fours with section 98 of the Penal Code with the exception that section 115(c)(ii) further provides that if such errant public servant is acting in a judicial capacity or carrying out the duties of a police officer, then such person shall be punished with imprisonment for a term of fourteen years or with fine or both. Other offences which the Penal Code provides against include taking gratification to influence a public servant and such public servant abetting the offence,⁸² offering or giving gratification to public servant,⁸³ public servant framing incorrect document intent to cause injury,⁸⁴ wrongful committal of confinement by public servant,⁸⁵ abandonment of duty by public servant,⁸⁶ etc.

Corrupt Practices and Other Related Offences Act⁸⁷

The resolve to fight and win the war against corruption in Nigeria led to the enactment of the Corrupt Practices and Other Related Offences Act, 2000. The central mandate of this Act is to prohibit and prescribe punishment for corrupt practices and other related offences. Consequently, the Act establishes the Independent Corrupt Practices and Other Related Offences Commission (ICPC) and also prescribes their appointment, powers, immunities and general duties.⁸⁸ The Commission is a body corporate with perpetual succession and can sue and be sued in its corporate name. Section 3(14) categorically affirms the independence of the Commission as it is not subject to the direction or control of any person or authority. Corrupt practices such as accepting gratification through an agent, concealing offences relating to corruption, fraudulent acquisition of property, and bribery of public officer are all covered within sections 8-26, while sections 27 to 42 deal with investigation, search, seizure and arrest. Furthermore, sections 43 to 52 contain provisions relating to corruption, fraudulent acquisition of property, and bribery of public officer are covered in sections 8 to 26, while sections 27 to 42 deals with investigation, search, seizure and arrest. Furthermore, sections 43 to 52 contain provisions relating to the chairman of the Commission. The rule of evidence is provided for in sections 53 to 60, while the prosecution and trial of offences are provided for in sections 61 to 64. More so, sections 65 to 70 cover the general section. Finally, section 71 provides for the right to appeal as conferred in the 1999 Constitution (as amended).

Economic and Financial Crimes Commission Act

The Economic and Financial Crimes Commission Act was enacted in 2002 and began operation in 2003. According to Igwenyi, the perception of limitations in the ICPC Act and the need to enjoy the greater confidence of the international community on the war against trans-border crimes necessitated the enactment of the EFCC Act. Thus, the core goal of the Act is to fight economic and financial crimes both at the local and international levels.⁸⁹ To that effect, section 1 of the Act provides for the establishment of the Economic and Financial Crimes Commission (EFCC) while section 2 lists the staff composition of the Commission. The Commission is charged with the duty of enforcing and administering the provisions of its Establishment Act

⁷¹ (1973) NSCC, 250.

⁷² (1973) NSCC, 162.

⁷³ (1976) NSCC, 673, SC.

⁷⁴ S. 100.

⁷⁵ S. 101.

⁷⁶ S. 102.

⁷⁷ S. 103.

⁷⁸ S. 104.

⁷⁹ S. 105.

⁸⁰ S. 112.

⁸¹ Cap. 105, Laws of Northern Nigeria, 1963 applicable to the Northern parts of Nigeria.

⁸² Ss. 116 and 117.

⁸³ S. 118.

⁸⁴ S. 124.

⁸⁵ S. 126.

⁸⁶ S. 130.

⁸⁷ Now incorporated as 'Cap. C31' in the Laws of the Federation of Nigeria, 2004.

⁸⁸ Ss. 3-7.

⁸⁹ Igwenyi, *op. cit.*, 134.

in the overall context of preventing, detecting, investigating and prosecuting all cases of economic and financial crimes in Nigeria.⁹⁰ Additionally, section 7(2) empowers the EFCC to be the coordinating agency for the enforcement of the provisions of all anti-corruption laws, including the Money Laundering Act, Cap. M18, LFN, 2004, the Advance Fee Fraud and Other Related Offences Act, Cap. A6, LFN, 2004, the Failed Banks (Recovery of Debt and Financial Malpractices in Banks) Act, Cap. F2, LFN, 2004, the Banks and Other Financial Institutions Act, Cap B3, LFN, 2004, the Miscellaneous Offences Act; and any other law or regulation relating to economic and financial crimes, including the Criminal Code and Penal Codes.

6. Challenges in the Fight against Corruption in Nigeria

Immunity Clause

S. 308 of the constitution of Nigeria grants immunity from civil and criminal prosecution to executive office holders for the period their tenures subsist. Top government officials enjoy blanket immunity from prosecution while in office. Civil or criminal action *in personam* against officers covered by this section while in office is unconstitutional in Nigeria.⁹¹ Commentators contend that creating constitutional ‘sacred cows’ of public office holders who have direct responsibility for handling oil wealth is a veritable impediment to the fight against corruption in Nigeria.⁹² The EFCC for the first time attacked this immunity by preferring corruption charges against former Governor of Plateau State, Joshua Dariye.⁹³ Where immunity is constitutionally entrenched, it demobilises the anti-corruption agencies from acting timely in dealing with corruption. This is similarly pathetic given the trends of installing a stooge successors and deploying their connection and ill-acquired resources to frustrate prosecution even after leaving office. Apart from DSP Alamesiegha and James Ibori, examples abound of former state governors who plundered public treasury while in office and thereafter employed their stolen wealth to frustrate investigation and prosecution by the anti-graft agencies.⁹⁴

Inaccessibility of Public Information

The Nigerian system does not allow citizens access to government information. Certain information are classified and even in the era of freedom of information, are not placed within the public domain. Journalists have been murdered in cold blood for stumbling on such information deemed secret enough not to be aired. There is also another serious problem with regards to enforcing conflicts of interest among public officers. Even after the promulgation of the Freedom of Information Act in Nigeria, citizens and journalists seeking information to government activities are branded enemies of the government and are not only frustrated by the officer in charge of such information but are also trailed and dealt with by the government. This has built a haven for corruption among public officials to thrive in Nigeria.

Weak Enforcement Mechanism

Legal provisions exist to guarantee a corrupt-free Nigerian society but the laws have not been enforced with vigour. Professional civil servants are in practice, not guaranteed security of tenure even in the event of staunch stand against corruption. The political leaders tend to wield too much powers and influences in Nigeria. Executive interference is also prevalent in every sector of the country’s socio-political and economic system. This has largely contributed to the country’s implementation gap of anti-corruption laws. The Economic and Financial Crimes Commission has come under serious political pressure since its inception. It has also been heavily influenced by the chief executive, for the time being in power. Appointment of the anti-corruption agencies heads has remained a tool in the hands of the presidents to manipulate and witch-hunt perceived political opponents. This has not augured well with the desire of most Nigerians to unleash sustainable war on corruption in a country that has tilted towards the worst corruption-ridden in the entire globe.⁹⁵

Abuse of Office

Abuse of office by heads of the major organs of government impedes sustainable war against corruption in Nigeria. Powers, privileges and discretions are exercised in an abusive manner by the executive, legislature and judiciary in Nigeria. This erodes the gains made by anti-corruption agencies and signals to all citizens and the international community that the anti-corruption agencies cannot bite hard enough. The nation’s public servants and politicians are not worried about the ethical implications of their conducts; for instance, only recently, the President exercised his powers under the Constitution⁹⁶ to grant state pardon to an ex-governor who had been convicted for corruption. This implies that the political institution continues to offer incentive for corruption.

Lack of Political Will to Fight Corruption

There is no doubt that Nigeria has enough laws to wrestle corruption effectively. However, there is no political will to tackle corruption in Nigeria. Political will is eroded by partisan party politics. Each political party tends to shield her party members and allies from prosecution. The more one is in good terms with the cabals in power, the more the chances of pinning him

⁹⁰ Ss. 6 and 7.

⁹¹ See *Tinubu v. IMB* [2001] 16 N.W.L.R. (pt. 740) 670.

⁹² F.A.R. Adeleke, ‘Doctrine of Sovereign Immunity in Nigerian Law from Inception to Section 308 of 1999 Constitution’ *Journal of International and Comparative Law*, Faculty of Law, University of Ilorin, Vol. 7, No. 2 (2003)193

⁹³ Given the numerous allegations of corrupt practices against some of these office holders there have been calls for the removal of the immunity conferred on them by the Constitution, so as to make way for their possible prosecution in court while in office.

⁹⁴ In fact, a former Nigerian State Governor who was unsuccessfully prosecuted for offences⁸³ bordering on corrupt enrichment and related offences in Nigeria subsequently pleaded guilty to the same offences in the United Kingdom (UK); see the Guardian Newspaper Online of 27th February 2012 available at: <http://m.guardian.co.uk/global-development/2012/feb/27/james-ibori-pleads-guilty-fraud>; accessed 7th September, 2019.

⁹⁵ Nigeria is the 144 least corrupt nation out of 175 countries, according to the 2018 Corruption Perceptions Index reported by Transparency International. Corruption Rank in Nigeria averaged 121.48 from 1996 until 2018, reaching an all time high of 152 in 2005 and a record low of 52 in 1997; See <https://tradingeconomics.com> › Nigeria; and <https://www.transparency.org> › country › NGA; accessed November 2, 2019.

⁹⁶ Under S.175 (1) (a) of the 1999 Constitution Cap C23, LFN 2004 (as amended)

down to corruption charges. It is obvious that fight against corruption is directed by the party in power against perceived opposition party. This poses a serious impediment to sustainable war on corruption in Nigeria.⁹⁷

Conflicts of Powers among Anti-Corruption Agencies in Nigeria

Frequent cases of conflicts of mandates among the various agencies involved in anti-graft crusade are obvious. For instance, uncertainties surround the delineation of functions and powers of EFCC, ICPC, CCT, Federal Ministry of Justice, etc, especially as to the investigation, handling and documentation of fraud or corruption. At a time in the nation's history, the then Attorney-General of the Federation and Minister of Justice, Chief M. K. Aondoakaa, stirred much storm in this regard by engaging in a battle for superiority with the Chairman of the EFCC, over the limit of the independence of the later, as provided in its establishment Act. The Attorney-General had tried to take over the prosecution of certain cases from the EFCC. The Commission had hitherto had negligible supervision from the Attorney-General and Minister of Justice. The issue as to who should be in charge of the ex-governors' trial therefore stirred controversy.⁹⁸ More recently, the office of the Attorney-General meddled with the functions of the ICPC by entering a *nolle prosequi* in charges of graft preferred against a minister. By the by, the Chairman of ICPC was summarily removed as a result of this conflict. The Attorney-General has also published regulations pursuant to EFCC Act prescribing that the EFCC may only prosecute graft cases without recourse to the Attorney-General of the Federation where the amount of money involved is less than N50 million. Also, the office of the AGF has made clear indication to merge the anti-corruption agencies but the agencies maintain that they have different mandates under the laws establishing them.⁹⁹ As if this is not enough, there is also power clash between the Executive and the National Assembly; notably over issues involving the exercise of oversight functions and anti-corruption efforts of the latter. This is evident in some conflicts between the duo in recent times which has decreased efficiency in the investigation and prosecution of graft cases in Nigeria.¹⁰⁰

Overburdened Judiciary/Jurisdictional Conflicts

Nigerian judiciary is weak owing to lack of independence. It is also overstrained, thus has constituted an obstacle to effective prosecutions of graft cases as most graft cases against high-level political officials have dragged in the courts for years.¹⁰¹ Nigeria is a federation of 36 states with FCT Abuja. By virtue of the concurrent legislative list, both federal and states laws co-exist. There are situations however where the crimes violate simultaneously both laws. By the doctrine of covering the field, state laws shall be put into abeyance for as long as the federal law applies.¹⁰² Federal offences are presumably prosecuted in Federal High Courts only while states law offences are taken in state high court. Jurisdictional conflicts surrounds Federal and State High Courts over such issues as presence or lack of criminal jurisdiction of Federal High Courts, implication of the unlimited jurisdiction vis-à-vis the interpretation of section 251 (1) of the 1999 Constitution on the jurisdiction of the State High Courts on matters involving Federal agencies.¹⁰³ There is yet the issue of conflicts for interpretation arising from the numerous anti-corruption statutes. According to a learned author:

The complex wording of the provisions often makes it difficult to decide the appropriate section under which some cases of corruption can be brought. For example, in cases of official corruption, different sections govern the situation depending on whether money was given (or received) to deflect a public officer, from his duty or as an inducement to perform his duty. Different sections also apply depending on whether or not the official concerned is a public officer *simpliciter*, or a public officer whose duties touch upon the administration of justice or a judicial officer.¹⁰⁴

While offences under the Criminal Code and Penal Code could be tried by the Magistrate's Courts even if by election of the accused in case of indictable offences,¹⁰⁵ offences under the Corrupt Practices and other related Offences (ICPC) Act and EFCC Acts could only be tried at High Courts.¹⁰⁶ The more recent and specialized anti-corruption laws like the EFCC and ICPC Acts have however, put in place measures to tackle these lapses in the provisions of the Criminal Code in respect of anti-corruption. For instance, presumption of corrupt enrichment is provided for in the EFCC Act.¹⁰⁷ All these issues affect the efficacy of the enforcement of anti-corruption laws. Where these conflicts affect the competence of a court to try a corruption case, invariably the crime control efforts may not produce the desired results.¹⁰⁸

Other challenges in the fight against corruption in Nigeria include Poverty, Legislative Inconsistencies and Ambiguities, Unemployment, Civic Apathy, Value system and attitudinal issues, etc.

⁹⁷ Presently most ex-governors who have corruption cases to answer have simply defected to the ruling party and got shielded.

⁹⁸ The Attorney-General in question had once served as a defence lawyer to George Akume of Benue State, one of the former governors being prosecuted by the EFCC. His former client was also said to have facilitated his appointment to his job as AGF. The Attorney-General and Minister of Justice's role in the matter was, therefore, understandably tilted in favour of the former governors. Indeed, in the course of his duties as Minister, he left no one in doubt about his determination to protect not only his benefactor, but also all the other accused former governors. One way he tried to do that was to take over the trial of the ex-governors, under the pretext that this was premised on the 'administration's respect for rule of law' and 'the need for government to obey all judicial orders.' See *The Punch*, September 18, 2007, 14.

⁹⁹ See Dayo Benson 'EFCC-What-is-Attorney-General-Up-To' in *The Vanguard* of July 21, 2011 available at <https://www.vanguardngr.com/2011/07/efcc-what-is-attorney-general-up-to/>; accessed November 2, 2019

¹⁰⁰ See Impetus, 'Jonathan May Back Oteh against National Assembly' in *Nairaland Forum* Oct. 26th 2012 available at: <https://www.nairaland.com/1085204/jonathan-may-back-oteh-against>; accessed Nov. 2, 2019.

¹⁰¹ Editorial: 'Nigeria: War on Corruption Hangs in the Balance: Urgent Need to Fix Key Anti-Corruption Agency' Human Rights Watch of August 25, 2011 available at: <https://www.hrw.org/news/2011/08/25/nigeria-war-corruption-hangs-balance>; accessed Nov. 2, 2019.

¹⁰² See S. 4 (5) CFRN 1999 as amended to this effect.

¹⁰³ See *Bronik Motors Ltd v. Wema Bank* (1983) 1 SCNLR 296; *Mandara V. A-G (Federation)* (1984) 1 SCNLR 8; *Savannah Bank of Nigeria Ltd v. Pan Atlantic Shipping and Transport Agencies Ltd.* (1987) 1 NWLR (Pt. 49) 212; *Tukur v. Govt. of Gongola State* (1989) 4 NWLR (pt. 117) 517; *Grace Jack v. University of Agriculture, Makurdi* (2005) 5 NWLR (pt.865) 208.

¹⁰⁴ Y. Akinseye-George, *Legal System, Corruption and Governance in Nigeria* (Lagos: New Century Law Publishers Ltd, 2000) 47-48

¹⁰⁵ S. 2 Criminal Procedure Act

¹⁰⁶ S.18 (1) EFCC Act Cap E1, LFN 2004

¹⁰⁷ S. 18 (3) of the EFCC Act; see also E C Ngakwe, op cit, 54

¹⁰⁸ E C Ngakwe, op cit, 50

7. Conclusion and Recommendations

We have observed earlier that combating corruption is a task that goes beyond ethnic, religious, political and ideological affiliations. It is one issue that is supposed to dominate our national discourse and obsess the minds of an average Nigerians in terms of finding solutions to the problems of corruption. This is the pivot upon which this study swivels. To this effect, it is our candid belief that the following recommendations of ours would turn around the system if implemented:

- a. Legislative Actions including limiting the powers of the Attorney General to interfere in corruption cases, suspending immunity clause in cases of corruption and corrupt practices by officials concerned, reducing executive interference and overbearing in the anti-graft agencies;
- b. Reduce the pay packages of the political officers and increase professionalism in the Nigerian economic system and amend the Code of Conduct Bureau and Tribunal Act to make for public access to the asset declarations of public officials, as provided by the Nigerian Constitution.
- c. Judicial autonomy and independence including setting up special court for corruption, economic crimes and related cases;
- d. The Anti-graft Agencies should set examples of institutional transparency by requiring all senior EFCC officials to publicly declare the total value of all person assets.
- e. The Anti-graft Agencies should also investigate, arrest, and prosecute according to international fair trial standards, or publicly explain the reasons for not prosecuting, politicians and government officials credibly implicated in embezzlement of state funds.
- f. The Anti-graft Agencies should make much more proactive use of the ICPC's power to compel public officials to explain the origins of suspiciously extensive property holdings and other assets and prioritize increasing the number of high-level prosecutions under the ICPC Act;
- g. Nigeria should enter into treaties with International community to monitor financial activities of political office holders and high level public officers to forestall money laundering. Ensure also that all foreign investments, property acquisitions and cash deposits in foreign banks are published annually in a government gazette and copies sent to anti-graft agencies in Nigeria;
- h. The international partners should maintain strong political pressure on the Nigerian government to allow anti-corruption institutions, including the EFCC, to pursue robust and independent investigations of high-level corruption;
- i. Corruption has had all-pervasive impact on the Nigerian society. It has had tremendous multiplier effect because one act of corruption begins a chain reaction of corrupt acts on the other sectors. As

Igwenyi brilliantly summarizes:

On the whole, corruption is an ill wind that blows no good air. It is destructive to individual ambitions as jobs are made scarce by nepotism, just as other opportunities are sacrificed on the altar of favouritism thereby foisting mediocrity on the nation. The result is absolute hopelessness as the individuals and invariably the country suffer unfulfilled expectation even after 50 years of existence.¹⁰⁹

While our argument puts inequality at the beginning of the causal chain, we also believe that honest government is essential for the enactment of universalistic social welfare programs. There may not be a direct tie between *effective* government and trust, but *dishonest* government undermines trust at least indirectly¹¹⁰ and it makes universalistic welfare policies difficult to enact. Honest government is important for the enactment of universal social welfare programs, for three reasons. First, corruption is based upon loyalty to the in-group and *not* to the larger society,¹¹¹ so universal social welfare policies are anathema to dishonest government. Corrupt societies reflect patron-client relationships and corrupt leaders reward *only those who show their loyalty rather than the entire society*. We must have to make up our minds to rise to the challenges of corruption. We must realise that we have no other country to go if Nigeria collapses under the weight of corruption. We must realise that our destinies are in our hands. Change of attitudes is very paramount to the fight against corruption. We must eschew greed and avarice especially during the electioneering period; because corruption starts when we collect paltry sum of money or items of goods and services and allow same to influence our choice of candidates. We must note that:

The future of our children, of our own mortality and ancestry awaits our constant vigilance and careful nurturing. No seed grows into harvest joys without the planter's diligent labour of love. Until we come to this understanding as parents, as family as community, we will forever stand condemned by the anguish in the eyes and voices of our children, forever guilty of 'the nurturing of ... prospective souls into the devouring jaws of the streets'.¹¹²

¹⁰⁹ Igwenyi, *The Crime of Corruption in Nigeria: Laws, Issues and Solutions* (Snaap Press Ltd., 2010), 215.

¹¹⁰ E. M. Uslander, 'The Bulging Pocket and the Rule of Law: Corruption, Inequality, and Trust', Paper presented at the conference 'The Quality of Government: What It Is, How to Get It, Why It Matters' at The Quality of Government Institute, Department of Political Science, Göteborg University, Göteborg, Sweden, November 17–19, 2005. available at <<http://www.qog.pol.gu.se/conferences/november2005/papers/Uslander.pdf>> accessed on July 18, 2019 at 10:27pm.

¹¹¹ D. Gambetta, *The Sicilian Mafia: The Business of Private Protection* (Cambridge: Harvard University Press, 1993) 78.

¹¹² A. Darko, *Faceless* (Sub-Saharan Publishers, 2003) xxi.