

Legal Framework for Fight Against Corrupt Practices in Nigeria: An Analysis

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Abstract:

This paper analyses the legal framework for fighting corrupt practices in Nigeria. The facts which prompted this paper is that apart from the constitutional provisions, which provide for a solid foundation for fighting corruption in Nigeria, there are many legislations, regulations, rules, and policies put in place to fight corrupt practices in Nigeria, however, corruption has continued to be the major bottleneck for the development and progress of the country. The paper aims to examine the adequacy and effectiveness of the legal framework. The legal framework analysed in the paper includes the Economic and Financial Crimes Commission (Establishment) Act, Corrupt Practices and Other Related Offences Commission Act, Code of Conduct Bureau and Tribunal Act, 2004, Recovery of Public Property (Special Provisions) Act, 2004, Public Complaint Commission Act, 2004, Fiscal Responsibility Act, 2007, Public Procurement Act, 2007, Money Laundering Act, 2022, Proceeds of Crime (Recovery and Management) Act, Advance Fee Fraud and Other Fraud Related Offences Act 2006, etc. The paper adopts doctrinal research methodology; this is because primary and secondary sources of law i.e., statutes, case law, and textbooks coupled with online materials respectively were consulted. The major observation of the research is that the legal framework put in place to fight corrupt practices is adequate and capable of eradicating corruption or at least reducing it to the barest minimum. However, the lack of political will to enforce the provisions of the legal framework was observed as a major bottleneck in fighting corrupt practices in the country. It is, therefore, recommended that policymakers should show commitment and seriousness when it comes to the enforcement of the provision of the framework.

Keywords: Corruption, Corrupt practice, Crime, Framework, and Fraud.

1.1. Introduction

The prevalence of unethical behaviours and practices in public service is no longer debatable, considering the insidious plague and a wide range of corrosive effects on the Nigerian state.¹ The quintessence of holding public office and making political decisions is to make life better for the citizenry in terms of shelter, education, food, good health and security of lives and property.² Public service is the machinery through which such goals of every government are met; hence, a legal framework is put in place to checkmate the conduct of public officers.

This paper appraises the legal framework put in place to fight against corruption in Nigeria. In doing so, it appraises the constitution of the Federal Republic of Nigeria³ and other relevant legislations, with a view to ascertaining their coverage, efficacies, effectiveness, enforceability or otherwise. It is not in dispute that the major aim of the legal framework for the fight against corruption is to eliminate all types of corrupt practices in the country or to reduce it to a barest minimum. The paper appraises several legislations to achieve the objectives of the research. Moreover, apart from the legislations, the paper appraises also executive orders, policies and other subsidiary rules and regulations.

Numerous literatures had been developed on the fight to combat corruption in Nigeria. This is because corruption has been a major problem which bedevilled the country; hence, it attracts a lot of attention of Nigerians and even foreigners, to the extent that writers from different backgrounds such as lawyers, judges, politicians, policy makers, social scientists, religious scholars, and members of academia have written extensively on corruption. However, most of the literatures have focused their attention on history, nature, types, causes and consequences

¹Audu Jacob, 'An Assessment Of The Code Of Conduct Bureau And Code Of Conduct Tribunal (CCB and CCT)'S Public Ethics Practices (1999- 2007),' A Dissertation submitted to the Post Graduate School, Ahmadu Bello University, Zaria, in partial fulfilment of the requirements for the award of Doctor of Philosophy (Ph.D) in Political Science. December, 2012, p. 102.

² Ikoiwak, E.A 'Political Office Holders, Bureaucrats Corruption,' in Odekunle eds, *Nigeria: Corruption in Development*. (badan University press, 1986).

³ CFRN 1999 as Amended.

of corruption in the country. Yet, others wrote extensively analysing the legal framework put in place to combat corruption.

Thus, for instance, Oyelami⁴ in his work critically appraises the Economic and Financial Crimes Commission (Establishment) Act. He criticises the definition of economic and financial crimes proffered by the Act as well as the composition of the Commission particularly in respect of the appointment and removal of its chairman. He cited an example of how two EFCC leaders were disgraced out of office without being accused of any malpractice or misconduct rather than on political controversies.⁵ The author quoted Farida Waziri, former EFCC Head, in her interview with Daily Trust Newspaper saying:

I have done a span of 35 years fighting for my fatherland, I deserve some little dignity and respect. When you wake up and see you on AIT, Waziri sacked, NTA, Waziri sacked... My predecessor's case (Nuhu Ribado) was even worse, but I hope the authority will take note... except you are removed for gross misconduct, any other way you should be treated with dignity and respect for human person.⁶

The author limited the scope of his work to EFCC only; hence, he made no reference at all to other legal and institutional regimes put in place to fight corruption such as ICPC, Code of Conduct Bureau (CCB), Public Complaint Commission (PCC), etc, which this paper addresses.

In his work, Uzochukwu,⁷ examines corruption in Nigeria by reviewing the history, nature, scope and magnitude of corruption as well as its forms, causes and effects. The author finally provides solutions for its elimination in the country. He further opined that there is nothing to show in the fight against corruption between the year 2000-2018 in Nigeria, this is because in the year 2000, Transparency International conducted a survey on the corruption levels of 90 countries; Nigeria was ranked the most corrupt because the country occupied the 90th position in terms of transparency. But still in the year 2018, Transparency International Corruption Perception Index ranked Nigeria 144th most corrupt country out of 180 countries surveyed.⁸ While concluding his work, the author argued that to succeed in any fight against corruption, there must be strong anti-corruption institutions. He stresses that:

Creating strong anti-corruption institutions is another arsenal to win the fight against corruption. This group is to work independently with the government to ensure transparency. Anyone who is caught engaging in corrupt practices by the group should experience the consequences decided by the anti-corruption agency. That he is a minister or governor of a state should not be an excuse from facing the punishment he is to receive according to the Constitution of Nigeria.⁹

Uzochukwu's work is limited to the history, nature, scope and magnitude of corruption as well as its forms, causes and its effects in Nigeria, and so made no discussion as to the legal framework of fight against corruption which this paper focuses on.

Another literature which has relevance to this paper is Onyema's work,¹⁰ which centres on the performance of EFCC in fight against corruption in Nigeria generally. The work evaluates the independence of EFCC, how well EFCC has fared in the enforcement and prosecution of the economic and financial crimes in Nigeria. The work analyzes petitions received by the Commission, from 2010 to 2015, with sole aim of determining the success or otherwise recorded by the Commission within the said five years. The Commission had investigated the total number of 15,124 petitions (41.5 percent of all petitions received) within the said five years. The Commission had filed the total number of 2,460 cases within that period but secured 568 convictions only, representing 3.73 percent of the investigated petitions. The author states that most of the convictions were not secured within 2 years of

⁴ T. O. Oyelami, 'An Appraisal of the Legal and Institutional Framework for Combating Economic and Financial Crimes in Nigeria', *Current Jos Law Journal CJLJ*, [2013], 6, 1, pp. 214-234.

⁵ *Ibid* p. 223.

⁶ *Ibid*.

⁷ Mike Uzochukwu, 'Corruption in Nigeria: Review, Causes, Effects, and Solutions,' <<http://networkforjustice.org.ng/wp/corruption-in-nigeria-review-causes-effects-and-solutions>>, accessed 23rd August, 2019.

⁸ *Ibid*.

⁹ *Ibid*.

¹⁰ Emilia Onyema and Others, *The Economic and Financial Crimes Commission and the Politics of Effective Implementation of Nigeria's Anti-corruption Policy*, Working Paper 007, Anti-Corruption Evidence 2018, <<https://www.acauthorities.org/counrty/ng>>, p.23, downloaded on the 16th August, 2019.

instituting the actions and the vast majority of the convictions can be categorized as low-or-mid level economic crimes. Other relevant works that are similar to one another are the works of Anele,¹¹ Ali,¹² Parker,¹³ Aluko¹⁴ and Schaap.¹⁵ The authors have thoroughly analysed the crime of money laundering in their respective works. Money laundering is one of the most prevalent branches of corrupt practices that bedevilled the country. The authors discussed the origin, definition, types, nature and scope of money laundering. Money laundering is the final stage of converting corruption proceeds to look like legitimate proceeds. In his work, Schaap, defines Money laundering as an act of directly or indirectly concealing or disguising any fund or property that is derived from the proceeds of unlawful activity. Simply put, it is the process by which 'dirty' money is made to look legitimate or 'clean' so that funds may be used freely without trace of its illicit source.¹⁶ In his work, Anele, traces the historical origin of money laundering from 2000 years B.C. where he stated that:

The earliest documented acts of money laundering were practiced in China about 2000 years B.C. The merchants of that period were known to have successfully hidden their total wealth from despotic rulers... in addition to hiding it; they moved and invested it in businesses in remote provinces or even outside China... by not disclosing their total worth, they engaged in criminal act of tax evasion.¹⁷

In his work, Schaap stated that the phrase money laundering was first used regularly by United States investigators at the time of the Watergate scandal in the 1970s, the term became internationally accepted in the beginning of the 1980s. The above-mentioned five respective works are squarely predicated and limited in scope on appraising and analysing money laundering and its legal regime in Nigeria,¹⁸ which is just a single legislation out many legislations enacted to fight corrupt practices in Nigeria which this work appraises, though, their works are relevant to this research particularly chapter three of this work, but their respective works have not touched on the main theme of this paper, to wit: appraisal of legal framework for combating corruption in Nigeria.

In his unpublished work, Idris,¹⁹ briefly examines the legal and institutional framework for anti-corruption crusade in Nigeria. His work has two main objectives as he stated, to wit: to highlight the merits and demerits of legal and institutional framework that regulate the anti-corruption crusade in Nigeria and to highlight challenges and to proffer some recommendations in respect of the anti-corruption fight in Nigeria.²⁰ Idris, while examining legislations, he discussed Penal and Criminal Codes, constitutional provisions in respect of the office of the Auditor General of the Federation, Public Procurement Act and Nigeria Extractive Industries Transparency Initiative.²¹ On the other hand, with regards to the institutions, saddled with the responsibility to fight corruption, Idris examines Judiciary, Independent Corrupt Practices Commission, Economic and Financial Crimes Commission, the Nigerian Police and Public Complaints Commission only.²²

In another unpublished work of Ribado,²³ the author discussed extensively the adequacy or otherwise of the anti-corruption legislations, he discusses type of corrupt practices and analyses the legal framework put in place for fight against corruption. The author states the aim and objective of his work as follows:

The aim of this research is to expose the anti-corruption laws in Nigeria with a view to determining if it is the dearth of penal legislation or the procedural

¹¹ Kalu Kingsley Anele, 'An Overview of Money Laundering', in Epiphany Azinge, (eds), *Money Laundering Law and Policy*, (Nigerian Institute of Advanced Legal Studies Press 2013), pp. 1-19.

¹² H. L. Ali, 'The Role of Regulatory Institutions and Enforcement Agencies in Combating Money Laundering by Financial Institutions in Nigeria', *ABU Journal of Commercial Law* [2003-2005], 2, 1, pp. 180-197.

¹³ Rebecca. H. 'Parker, Anti-Money Laundering 2013, The FCPA Report', [2013] 2, 3, <<http://www.cgsh.com/files/publication/0d8b36c-5910-4ba8-9f5b>> the 3rd August, 2019.

¹⁴ Aluko A and Bagheri M., 'The Impact of Money Laundering on the Political Development Countries', *Journal of Money Laundering Control* [2012] 15, 4, pp. 442-457.

¹⁵ Cees Schaap, *Fighting Money Laundering*, (Law International Publishers, 1998).

¹⁶ *Ibid*, p. 443.

¹⁷ Kalu Kingsley Anele, (n. 11), p.9.

¹⁸ Money Laundering Act 2007.

¹⁹ Ismail Idris, *A Critical Appraisal of The Legal and Institutional Framework for Anti-Corruption Crusade in Nigeria*, (Being an LL.M dissertation of the Faculty of Law, Ahmadu Bello University, Zaria, 2016).

²⁰ *Ibid*, p. 4.

²¹ *Ibid*, pp. 39-56.

²² *Ibid*, pp. 62-104.

²³ Nuhu Ribado, *Efficacy of the Anti Corruption Law*, (Being an LL.M dissertation of the Faculty of Law, Ahmadu Bello University, Zaria, 2008).

machinery that makes corruption in Nigeria the rule rather than the exception. The aim is also to determine why penal system could not restrain the corrupt social habit of the elite considering the ease with which the public servants lay the treasury bare and stash away their ill-gotten wealth in private accounts...²⁴

The author largely focuses on EFCC Act as regards to its adequacy or not, and limited his work to corruption by public officers but does not cover corrupt practices in private organizations. His work is indeed relevant to this paper; however, the work does not cover some areas which this paper covers.

Another work is the unpublished work of Isah²⁵ which discusses the role of the regulatory and supervisory institutions in combating financial crimes under the Nigerian law. The author focuses on the financial regulatory agencies such as CBN, NDIC, SEC, PENCOS etc and the role they played within in fight against corruption. The author's work does not cover the institutions that were purposely established to fight corruption in Nigeria such as EFCC, ICPC, Special Presidential Investigation Panel for the Recovery of Public Property as well as other legislations and policies put in place to combat corruption generally such as Money Laundering Act, Advance Fee Fraud Act, Miscellaneous (Offences) Provision Act, Nigerian Financial Intelligence Unit Act, Nigeria Extractives Industries Transparency Initiative Act, Whistle Blowing Policy etc

The paper is divided into seven parts, part one which is the introduction, part two deals with the legislations, part three discusses executive orders, part four policies, part five other subsidiary rules and regulations, part six discusses international instruments and finally part seven conclusion where findings and recommendations were provided. The paper aims to examine the adequacy and effectiveness of the legal framework for fight against corrupt practices in Nigeria. The paper adopts doctrinal research methodology; this is because primary and secondary sources of law i.e., statutes, case law and textbooks coupled with online materials respectively were consulted to achieve the objective of the research.

1.2. Constitution of the Federal Republic of Nigeria 1999 (as amended).

The Constitution put in place a solid and firm foundation for the fight against corruption in Nigeria. For example, the provision of separation of powers provided by the Constitution through the establishment of three arms of government i.e. executive, legislature and judiciary, for the purpose inter-alia, of checkmating the excesses of one arm of government by another, corruption is inclusive.²⁶ The Constitution mandates the government to abolish all corrupt practices and abuse of power in Nigeria,²⁷ empowers the National Assembly to engage into oversight function and enact laws to abolish all corrupt practices and abuse of power.²⁸ It is worthy of note that, pursuant to such power conferred on the National Assembly, it has enacted laws for abolishing corrupt practices in Nigeria, which would be discussed hereunder.²⁹

Finally, apart from creating the offices of Auditor General of the Federation and Auditor General for each state of the federation meant to fight corruption in the country,³⁰ the Constitution also, prohibits persons convicted for dishonesty, bribery and corrupt practices from occupying public offices, such as office of a Senator, member House of Representative, member State House of Assembly, President, Governor etc.³¹ provides the Code of Conducts for public officers,³² which inter-alia mandated public officers whether elected or appointed or those in civil service to declare their assets and liabilities by completing and filing their respective Declaration of Assets Forms at the time of assuming and exiting an office or after every four years while in service.³³ However, some

²⁴ *Ibid*, p.5.

²⁵ Mohammed Isah, *The Role of Regulatory and Supervisory Institutions in Combating Financial Crimes under the Nigerian Law*, (Being an Unpublished PhD Thesis of the Faculty of Law, Usmanu Danfodiyo University, Sokoto, 2009).

²⁶ CFRN, ss. 4, 5 and 6.

²⁷ *Ibid*, s. 15 (5).

²⁸ *Ibid*, Item 60 (a) of the Exclusive Legislative List Part One of the 2nd Schedule.

²⁹ The major laws enacted by National Assembly to fight corrupt practices include: Economic and Financial Crimes Commission (Establishment) Act, Corrupt Practices and Other Related Offences Commission Act, Code of Conduct Bureau and Tribunal Act, 2004, Recovery of Public Property (Special Provisions) Act, 2004, etc.

³⁰ CFRN, ss. 85 and 125.

³¹ CFRN, ss. 66 (1)(d), 107 (1)(b), 137 (1)(d) and 182 (1)(d).

³² Public Officers for the purpose of the Code of Conduct see Part II of the Fifth Schedule of the Constitution.

³³ CFRN, s. 11 of Part I of the Fifth Schedule of the Constitution; CFRN, ss. 140 (1), 149 185 (1) and 194.

of the provisions in the Constitution particularly those related to immunity have been contributing to flourishing corruption in public sector.³⁴

2.0. Legislations

Under the powers conferred by the Constitution on the National Assembly to enact into law legislations to abolish all corrupt practices and abuse of power, the National Assembly has enacted into law a reasonable number of legislations which include:

2.1. Economic and Financial Crimes Commission (Establishment) Act, 2004

The Economic and Financial Crimes Commission (Establishment) Act, was initially enacted in the year 2002 as EFCC Act No. 5 of 2002, and it was subsequently amended in the year 2004 which gives us the current Act of Economic and Financial Crimes Commission (Establishment) Act No. 1, 2004.³⁵ The Act is a comprehensive legislation that is meant to eradicate corrupt practices in the country. Apart from establishing the Economic and Financial Crimes Commission, the Act also confers on the Commission exhaustive and sweeping anti-corruption powers and functions. The Act creates several offences in respect of financial and economic crimes and prescribes series of punishments upon conviction. It is important to note that the Act also provides for forfeiture of property involved in financial and economic crimes where a person is convicted of an offence under the Act. The convict shall forfeit the property involved to the Federal Government.³⁶ The Federal High Court and High Court of a State or the Federal Capital Territory have concurrent jurisdiction to try offences provided by the Act.³⁷

Finally, the Act defines economic and financial crimes to mean non-violent criminal and illicit activity committed with the objectives of earning wealth illegally either individually or in a group or organized manner thereby violating existing legislation governing the economic activities of government and its administration and including any form of fraud, narcotic drug trafficking, money laundering, embezzlement, bribery, looting and any form of corrupt malpractices, illegal arms deal, smuggling, human trafficking and child labour, illegal oil bunkering and illegal mining, tax evasion, foreign exchange malpractices including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic wastes and prohibited goods, etc.³⁸ However, the above definition provided by the Act was recently interpreted by the Supreme Court in the case of *Nwobike v. F.R.N.*³⁹ where *ejusdem generis* rule of interpretation was used and restricted EFCC's powers.

2.2. Corrupt Practices and Other Related Offences Commission Act, 2000

The Corrupt Practices and Other Related Offences Act, 2000 (ICPC Act), was enacted three years before the enactment of the EFCC Act. The ICPC Act is the first major legislation made which mainly focuses on combating corruption in Nigeria, especially which relates to offering and soliciting bribery or gratification in public service.⁴⁰ The Act came into force on 13th June, 2000 after former President Olusegun Obasanjo assented to its bill passed by the National Assembly.⁴¹ About a year after the Act came into force, its constitutionality was challenged in the case of *Attorney-General of Ondo State v Attorney-General of the Federation and 35 Others*.⁴² However, in September 2002, the Supreme Court upheld the constitutionality of the Act, though, the Court in the said case knocked down two sections of the Act and declared them unconstitutional.⁴³

³⁴ *Ibid*, s. 308.

³⁵ CAP E1 LFN 2004; J. E. Idugboe and T. C. Nwano, 'A Critical Analysis of the Practice Procedure and Mechanisms of the Economic and Financial Crimes Commission (EFCC)' in Abdulqadir I. A. and Others, (eds), *Corruption and National Development*, Being conference proceedings of the 46th Annual Conference of the Nigerian Association of Law Teachers, held at the Auditorium of the Faculty of Law University of Ilorin from 22nd to 26th April, 2013, p.110.

³⁶ EFCC Act ss. 20 and 30.

³⁷ *Ibid*, s. 19.

³⁸ Section 46 of the EFCC Act.

³⁹ [2022] 6 NWLR (Part 1826) 293

⁴⁰ Lukman Adebisi Abdulrauf, "Using Specialised Anti-Corruption Agencies to Combat Pervasive Corruption in Nigeria: a Critical Review of the ICPC and EFCC" *African Journal of Legal Studies* [2020], 12, 222.

⁴¹ ICPC, 'History of ICPC,' <<http://icpc.gov.ng/icpc-history/>>, accessed 25 August, 2020.

⁴² [2002] 9 NWLR (Part 772) 222-474. See also ICPC, 'Legislative background' <<http://icpc.gov.ng/legislative-background/>> accessed 25 August, 2019.

⁴³ Sections 26 (3) and 35 of the ICPC Act were declared unconstitutional, section 26 (3) provides that prosecution for an offence under the ICPC Act shall be concluded and judgment delivered within ninety (90) working days. The court held that the provision has encroached into the principle of separation of power hence, void. Also, the court voided section 35 which empowered the Commission to indefinitely detain suspect who fails to honour its invitation being unconstitutional as it offends section 35 of the Constitution.

The Act consists of 71 sections. The major components of the Act include the establishment of the Independent Corrupt Practices and Other Related Offences Commission, appointments of its principal officers and its powers and functions,⁴⁴ offences and their penalties,⁴⁵ investigation, searches, seizures and arrests,⁴⁶ provisions relating to Commission's chairman,⁴⁷ evidence, prosecution and trial offences, etc.⁴⁸ It is worthy of note that apart from the establishment of the Independent Corrupt Practices and Other Related Offences Commission (ICPC), conferring it with powers to investigate and prosecute criminal cases, criminalising several actions and inactions and prescribing punishments against defaulters.

It is important to note that the Act prohibits a very wide number of conducts that are generally considered as either corrupt practices,⁴⁹ unlawful enrichment or gratification.⁵⁰ The prohibited conducts include, offering, demanding, soliciting, giving and/or accepting property or benefit of any kind directly or indirectly in the discharge of one's official duties.⁵¹ The Act which inter-alia aims to punish both the giver and the receiver of bribes and gratification mandates the public officers to report anybody who offers them a bribe and equally the Act mandates the public to report any public officer who demands for bribe or gratification.⁵² The major limitation of the Act is that it focuses largely on corruption in the public sector and could not adequately make provisions with respect to corruption in the private sector.

2.3. Code of Conduct Bureau and Tribunal Act, 2004

The Act which consists of 27 sections and three schedules can be broadly divided into three parts, namely: part that establishes the Code of Conduct Bureau and its Tribunal,⁵³ part that lists the code of conducts for public officers⁵⁴ and the part that consists of prescribed punishments to be meted out upon any public officer found guilty of violating the said Code of Conduct.⁵⁵

The Code of Conduct for public officers⁵⁶ as provided by the Act includes that a public officer shall not put himself in a position where his interest conflicts with his official duties and responsibilities.⁵⁷ The Code mandates public officers to submit to the Bureau a written declaration in a prescribed form of all their properties, assets and liabilities and those of their spouse and his unmarried children under the age of twenty-one years, immediately after he assumes duty as public officer, renew the declaration at the end of every four years or at the end of his term of office.⁵⁸ Failure to submit to the Bureau written declaration or give false information in the submitted form constitutes a violation of the Code.⁵⁹ A defaulting public officer could be tried before the Code of Conduct Tribunal established by the Act.⁶⁰ It is within the exclusive jurisdiction of the Bureau to receive complaint, investigate and lay a complaint against a public officer before the Tribunal for violation of the Code provided by the Act. In the case of *Ahmed & Ors V. Ahmed & Ors*,⁶¹ the Supreme Court, confirmed the exclusive jurisdiction of the Code of Conduct Bureau and its Tribunal on matters relating to violation of the Act.⁶² The Tribunal has only one panel which consists of a chairman and two members and the panel sits at Abuja and it does not have the power to impose a fine or a term of imprisonment. However, the punishments provided by the Act are without prejudice to the penalties that may be imposed by any law where the breach of conduct is also a criminal offence

⁴⁴ ICPC Act, ss. 2-7.

⁴⁵ *Ibid*, ss. 8-26.

⁴⁶ *Ibid*, ss. 27-42.

⁴⁷ *Ibid*, ss. 43-52.

⁴⁸ *Ibid*, ss. 53-64.

⁴⁹ *Ibid*, s. 2 defines "Corruption" to include bribery, fraud and other related offences.

⁵⁰ See s. 2 of the Act for the definition of "Gratification".

⁵¹ ICPC Act, s. 8.

⁵² *Ibid*, s. 32.

⁵³ CCBT Act, ss. 1-4 and 20-25.

⁵⁴ *Ibid*, ss. 5-15.

⁵⁵ *Ibid*, ss. 23.

⁵⁶ The Code of Conduct of public officers provided by the Code of Conduct Bureau and Tribunal Act is exactly similar with the Code provided by the Constitution in part I and part II of 5th Schedule of the CFRN 1999 (as amended).

⁵⁷ CCBT Act, s. 5.

⁵⁸ *Ibid*, s. 15.

⁵⁹ *Ibid*.

⁶⁰ *Ibid*, s. 20.

⁶¹ (2013) LPELR 21143 SC.

⁶² *Ibid*.

under the Criminal Code or any other enactment or law. Moreover, the Bureau and the Tribunal equally suffer inadequate publicity by the media in respect of their existence until recently.⁶³

2.4. Recovery of Public Property (Special Provisions) Act, 2004

The Act came into force on 31st December, 1983 and it has only eleven sections, which are spread within four parts. Part one of the Act deals with the constitution of the Assets Investigating Panel and its powers as well as persons subject to its investigation.⁶⁴ Going through the Act, one could discover that, the Act is more of a complementary to the Code of Conduct Bureau and Tribunal Act for checkmating corrupt practices by public officers. However, the Act, brought additional provisions not covered by the Code of Conduct Bureau and Tribunal Act particularly punishments provided by the Act upon conviction.⁶⁵

It is the Federal High Court that has the exclusive jurisdiction to try offences under the Act.⁶⁶ The Act provides that public officer shall be referred to as a person who holds any office as provided by Part II of the 5th Schedule of the Constitution.⁶⁷ The major offence under the Act is when a person whether public officer or otherwise is found guilty of acquiring assets beyond what he declared after he submitted to the Assets Investigating Panel assets declaration form given to him by the panel. The Act prescribes the punishment which may extend to life imprisonment upon conviction of any person whose undeclared assets are not less than N1,000,000 or its equivalent in any other currency or combination of currencies.⁶⁸ However, presently there is no Assets Investigating Panel set up by the president to enforce the provisions of the Act.

2.5. Proceeds of Crime (Recovery and Management) Act, 2022

The Act came into force on 12th day of May, 2022, after President Muhammadu Buhari assented to its bill, sequel to its passage by the National Assembly, this is to boost Nigeria's fight against corruption.⁶⁹ The Act has 83 sections which are spread within 12 chapters. The Act provides unprecedented comprehensive provisions for seizure, confiscation, forfeiture, and management of properties derived from unlawful activities and other related matters. The Act provides for recovery and management of the proceeds of crime and property used to facilitate unlawful activities; seizure and detention of cash derived from unlawful activities or cash held by a person which is above statutorily prescribed amount; confiscation of the proceeds of crime for a convicted person; management of the recovered assets and property; collaboration among the relevant organizations in tracing and seizing properties derived from unlawful activities; investigations, searches, and seizures in connection with the recovery of proceeds of unlawful activities; hand over, management and disposal of properties forfeited to the Federal Republic of Nigeria (FGN).⁷⁰

The Act mandated ACAs and LEAs⁷¹ to enforce and administer its provisions and shall establish Proceeds of Crime (Management) Directorate which shall take over and assume responsibility for the proper and effective management of properties forfeited to the Federal Government of Nigeria.⁷² The Act makes comprehensive provisions for civil forfeiture proceedings, i.e., non-conviction-based forfeiture, also called action in *rem*, applicable to proceeds of crime, instrumentality of unlawful activity, abandoned properties or unclaimed properties.⁷³ The application of the Act was kick started by the EFCC when on the 4th November, 2022 it acquired order to seize property, in an action in *rem* filed against former Deputy Senate President, Ike Ikweremadu targeting 40-property spread across the world linked to him and according to the Commission, the property is reasonably suspected to be proceeds of crime, however, the order attracted public attention.⁷⁴

⁶³ Ibrahim, A., 'The State of the Code of Conduct Bureau and the Way Forward' Report from the Secretary, Code of Conduct Bureau at the 2018 Retreat of the newly inaugurated Board, the new management and the State Directors (2018), p.6.

⁶⁴ RPP Act, ss. 1-5.

⁶⁵ *Ibid*, s. 1 (2).

⁶⁶ *Ibid*, s. 2.

⁶⁷ *Ibid*, s. 1 (4).

⁶⁸ *Ibid*, s. 10 (1).

⁶⁹ The Threshold Attorneys, 'Highlights of the Proceeds of Crime (Recovery and Management) Act, 2022', <<https://threshold-attorneys.com/wp-content/uploads/2022/07/Highlights-Of-The-Proceeds-Of-Crime-Act-2022.pdf>>, accessed 5th November, 2022.

⁷⁰ *Ibid*.

⁷¹ See section 82 of the Act for the lists the ACAs and LEAs mandated to enforce the provisions of the Act.

⁷² PCRM Act, 2022, s. 3.

⁷³ *Ibid*, s. 7.

⁷⁴ Ikechukwu Nnochiri, 'EFCC Gets Order to Seize 40 Properties Linked to Ekweremadu', <<https://www.vanguardngr.com/2022/11/just-in-efcc-gets-order-to-seize-40-properties-linked-to-ekweremadu/>>, accessed on the 5th November, 2022.

2.6. Public Complaint Commission Act, 2004

The Act was enacted as Decree No. 31 of 1975 and later amended by Decree No. 21 of 1979.⁷⁵ The Act was incorporated into the Constitution of the Federal Republic of Nigeria 1999 (as amended), hence, the Act enjoys special protection by the Constitution.⁷⁶ The Act consists of 12 sections. Section one deals with the establishment of Public Complaints Commission, section 2 is concerned with the appointment and tenure of office of the Chief and other commissioners. Section 3 is on appointment and tenure of other staff; section 4 is the application of Pension Act while section 5 spells out powers and duties of the Commission. Furthermore, restriction from investigation, recommendation after investigation, offences and penalties, power to summon persons, immunity from legal process, interpretations and short titles are treated in sections 6, 7, 8, 9, 10, 11 and 12 respectively.

It is worthy of mention that the Act criminalises certain conducts and provides punishment against the defaulters. For example, the Act makes it mandatory for any person or corporate body required by the Commission to furnish information pursuant to its investigatory powers to comply with such request within thirty days of the request⁷⁷ Failure to comply is an offence punishable upon conviction to a fine of Five Hundred Naira or imprisonment for a term of six months or to both fine and imprisonment.⁷⁸ Furthermore, any person who discloses any complaint pending before the Commission, other than Commissioner of the Commission⁷⁹ or who wilfully obstructs, interferes with or assaults or resists any officer or servant of the Commission in the execution of his duty under the Act or who aids any other person to do shall be guilty of an offence and liable on conviction to a fine or imprisonment or both.⁸⁰

2.7. Fiscal Responsibility Act, 2007

The Act has 57 sections which are spread across 15 parts. The aim at regulating fiscal affairs of the country, for example, because of abuse and embezzlement of loans collected by government, the Act makes provisions regulating collecting both internal and external loans by the three tiers of government in the country. The Act mandates governments at all tiers that they shall only borrow for capital expenditure and human development, where such borrowing is on concessional terms with low interest rate and with a reasonable long amortization period subject to the approval of the appropriate legislative body where the necessary.⁸¹ The Act also provides that non-compliance with the above requirements in borrowing shall be regarded as an offence.⁸² The Act further provides that government or its agencies and corporations desirous of borrowing shall, specify the purpose for which the borrowing is intended and present a cost-benefit analysis, detailing the economic and social benefits of the purpose to which the intended borrowing is to be applied.⁸³ Moreover, in order to ensure compliance with the provisions of the Act, the Act provides novel means for enforcement of its provisions, through a private action by concerned citizens, when they observed violation of any provision of the Act.⁸⁴

2.8. Public Procurement Act, 2007

Procurement means process of obtaining or acquisition of goods, construction, services or supplies of something, especially for a government or an organization.⁸⁵ Procurement is one of the central-sensitive activities in the public sector engagements which are bedevilled by corrupt practices.⁸⁶ It is a common knowledge that it is duty of government around the world to provide essential services to its societies, such essential services include road, hospital and school construction, defence, aviation, agriculture, water installation, energy generation, transmission, and distribution, technological equipment, information technology hardware and software and

⁷⁵ Ishaq Mohammed Sani, *The Role of the Public Complaints Commission in Protecting Worker's Rights Against Administrative Injustice and Maladministration in Nigeria*, Being A Thesis Submitted To The Postgraduate School Ahmadu Bello University, Zaria, In Partial Fulfillment Of The Requirements for the Award of the Degree of Master of Laws - LLM, 2011, p.23.

⁷⁶ CFRN, 1999, s. 315 (5).

⁷⁷ PCC Act, s. 5(7).

⁷⁸ *Ibid*, s. (8).

⁷⁹ *Ibid*, s. 8 (1).

⁸⁰ *Ibid*, s. 8 (3).

⁸¹ *Ibid*, s. 41 (1).

⁸² *Ibid*, s. 41 (3).

⁸³ *Ibid*, s. 44 (1).

⁸⁴ *Ibid*, s. 51.

⁸⁵ World Bank, 'Nigeria, Poverty in the Midst of Plenty: The Challenge of Growth with Inclusion,' Population and human Resources Division, Western Africa Department, Africa Region, downloadable at: <<http://www1.worldbank.org/publicsector/poverty/westafrica/doc.pdf>>, p.10.

⁸⁶ David Audu Musa and Peter Adewuyi Aderonmu 'Maximizing the Gains of Public Procurement Act for Improved Sustainable Practices in Nigeria,' available at: <<http://eprints.covenantuniversity.edu.ng/8731/#YAMRDkJTVPw>> accessed on the 5th November, 2020.

recurrent expenditure items such as office stationery and other office consumables. All the above goods and services are obtainable through procurement processes. The Public Procurement Act was assented by the late Alhaji Umaru Yaradua, GCFR, on the 4th June, 2007.⁸⁷

The scope of the application of the Act is limited to the Federal Government of Nigeria MDAs which derive at least 35 percent of funds appropriated or proposed to be appropriated for any type of procurement described in the Act from the federation share of Consolidated Revenue Fund Account.⁸⁸ In order to ensure transparency and openness in procurement processes the Act provides that any procuring entity shall before giving out a contract subject to some exceptions advertise on the notice board of the procuring entity, official web sites of the procuring entity, at least two national newspapers, and in the procurement journal not less than six weeks before the deadline for submission of the bids for the goods and works⁸⁹ and in the process of procurement, the procuring entity shall invite two credible persons as observers in every procurement process, one person each representing a recognized private sector professional organisation whose expertise is relevant to the particular goods or service being procured, and a non-governmental organisation working in transparency, accountability and anti-corruption areas.⁹⁰

The Act prohibited selective tendering, excessive advance payments, bid splitting, inflation of prices and costs, use of inferior materials, abuse of virement, wrongful exclusion of qualified bidders, kick-backs and bribery, multiplicity of prices in different departments for similar or same items, collusion between bidders and procuring agency staff and prescribed punishment.

2.9. Money Laundering (Prevention and Prohibition) Act, 2022

Money laundering which consists of processing of the proceeds of crime so as to disguise their origin and convert the money laundered to look as legitimate money by employing various procedures and methods to conceal their true origin and ownership.⁹¹ The Money Laundering Act 2022 has 31 sections and is divided into five parts. The Act provides a procedure for making and accepting cash payments with a view to ensuring that certain levels of payments go through the financial institutions. This is to enable relevant agencies to monitor financial transactions for the purpose of detecting, tracing and investigation of illegally acquired funds.⁹² The Act also makes it mandatory to report any transfer to or from a foreign country of funds or securities carried out by a person or body corporate including Money Services Business of a sum exceeding \$10, 000 or its equivalent within 7 days from the date of the transaction to the Central Bank of Nigeria (CBN) and the Securities and Exchange Commission (SEC).⁹³

The Act also provides that anybody transporting in or out of the country cash or negotiable instruments in excess of \$10, 000 or its equivalent shall declare same to the Nigerian Customs Service and the Nigerian Customs Services shall turn report the report it received to the CBN and the Nigerian Financial Intelligence Unit (NFIU).⁹⁴ Any person who falsely or fails to make such declaration shall upon conviction be to forfeit the undeclared funds or negotiable instrument or to imprisonment of not less than 2 years or both.⁹⁵ In the case of *Lamido v. FRN*⁹⁶ Court of Appeal Kaduna Division affirmed the conviction of Appellant who is a son to former governor of Jigawa State Alhaji Sule Lamido for falsely declaring \$10,000 instead of \$50,000 which was in his possession while he was on his way to Cairo and charged under current section 5 (5) of the MLA and held that offence of money laundering is not strict liability offence, it requires *mens rea*. The Act also prohibits financial institution from opening anonymous account.⁹⁷

The Act partially removes lawyer-client confidentiality as well as banking secrecy and confidentiality by making it mandatory on legal practitioners and bankers to report in writing within seven days, any single transaction, lodgement or transfer of funds in excess of (a) N5,000,000 or its equivalent, in the case of an individual; or (b)

⁸⁷ *Ibid.*

⁸⁸ PP Act, s. 15.

⁸⁹ *Ibid.*, s. 25.

⁹⁰ *Ibid.*, s. 19.

⁹¹ *Ibid.*

⁹² *Ibid.*, s. 2 (1)(2).

⁹³ *Ibid.*, s. 3 (1)(2).

⁹⁴ *Ibid.*, s. 2 (3) (4).

⁹⁵ *Ibid.*, s. 3 (5).

⁹⁶ (2015) LPELR 40763 (CA)

⁹⁷ MLA 2022, s. 12.

N10,000,000 or its equivalent, in the case of a body corporate.⁹⁸ However, recently, such provision as it relates to legal practitioner, was nullified by the Federal High Court.⁹⁹

2.10. Advance Fee Fraud and Other Fraud Related Offences Act 2006

Advance Fee Fraud is used to describe several offences which consist of fraudulent activities of luring and inducing victims to finance project, investment or currency transaction, well disguised as it is genuine.¹⁰⁰ Victims of such type fraud are most of the times suffer from ignorance, greed or gullibility.¹⁰¹ In Nigeria this type of crime is commonly called 419 and is very rampant, hence, there is need to tackle it with strong legislation.¹⁰²

The Act creates several types of offences which consist of common and uncommon tricks used by fraudulent elements to defraud people.¹⁰³ The Act empowers the trial court to order for compensation upon conviction.¹⁰⁴ In the case of *Ntiem v. FRN*¹⁰⁵ one of the issues for determination in the case is the position of the law as regards to an order of restitution under section 11 of AFF Act 2006 and the court affirmed legality of order of restitution made by the trial court. The Federal High Court, the High Court of State and FCT have jurisdiction to try offences and impose penalties provided by the Act.¹⁰⁶ It is worthy of mention that advance fee fraud appears to be the most prevalent offence, accounting for 54 percent of all EFCC investigations in 2015, and 59 percent of investigations in both 2013 and 2014.¹⁰⁷

2.11. Miscellaneous Offences Act, 2004

The Act consists of reasonable number of objectionable and corruptible societal behaviour especially in the areas of national economic crimes, examination malpractices, drug trafficking, wilful damage to public property etc. It is important to note that many offences contained in the Act do also exist in other enactments. However, the penalties prescribed by the Act upon conviction are stiffer than those prescribed by the other enactments.¹⁰⁸ The long title of the Act states that “An Act to create a number of miscellaneous offences with stiff penalties and for the trial of such offenders.” The Act came into force on 31st December, 1983. The Act has five sections only, which consists of offences under the Act and jurisdiction of the Federal High Court,¹⁰⁹ power of arrest and issuance of search warrant,¹¹⁰ offences by body corporate, evidence of accomplices etc,¹¹¹ interpretation provision¹¹² and the short title of the Act.¹¹³

The first offence provided by the Act is forgery, documents are involved in most corruption cases and many times the documents are forged, and upon conviction a person should be sentenced to imprisonment for a term not exceeding 21 years without the option of a fine.¹¹⁴ The Act further provides life imprisonment against any person who sets public building or property on fire.¹¹⁵ A person is also liable on conviction to imprisonment for a term not exceeding ten years for cheating at examinations¹¹⁶

2.12. Administration of Criminal Justice Act 2015 (ACJA)

The Act regulates administration of criminal justice in Nigeria’s federal court and FCT, though many states of the federation have subject to some modifications and alterations, adopted and domesticated the ACJA and formed

⁹⁸ *Ibid*, s. 11 (1).

⁹⁹ The Cable, ‘Court expunges sections of law compelling lawyers to reveal clients’ financial transactions ‘, <https://www.thecable.ng/court-expunges-sections-of-law-compelling-lawyers-to-reveal-clients-financial-transactions/#google_vignette>, accessed 8th August, 2024; MLA 2022, s 11 (4) and 15 (3).

¹⁰⁰ Abdullahi Y. Shehu, *Strategies and Techniques of Prosecuting Economic and Financial Crimes* (Express Image Limited 2012), p.13.

¹⁰¹ *Ibid*.

¹⁰² *Ibid*.

¹⁰³ *Ibid*, s. 6.

¹⁰⁴ *Ibid*, s. 11.

¹⁰⁵ (2018) LPELR-44142(CA)

¹⁰⁶ *Ibid*, s. 14.

¹⁰⁷ Emilia Onyema and Others, (n. 50), p. 26.

¹⁰⁸ Taiwo Adebola Ogunleye, ‘Establishing Oil Theft and Other Related Crimes Tribunal for Speedy Trial: Legal Issues and Challenges’ *Journal of Humanities and Social Science*, [2016], 21, 4, II, p.20.

¹⁰⁹ MO Act, s. 1 (1)-(19).

¹¹⁰ *Ibid*, s. 2.

¹¹¹ *Ibid*, s. 3.

¹¹² *Ibid*, s. 4.

¹¹³ *Ibid*, s. 5.

¹¹⁴ *Ibid*, s. 1 (2).

¹¹⁵ *Ibid*, s. 1 (4).

¹¹⁶ *Ibid*, s. 1 (16).

part of their respective States' laws.¹¹⁷ The ACJA contains some novel provisions which meant to ensure effective and speedy administration of criminal justice generally and fight against corruption in particular.¹¹⁸ The Act aims to bring a criminal justice system devoid of incessant adjournments, interlocutory applications frustrating trials and where parties are not showing up for trials, poor case management, delays in the adjudicatory process, corruption, flagrant disrespect for human rights, "holding charge" syndrome, little or no engagement with victims of crime, weak coordination and lack of inter-agency cooperation amongst criminal justice institutions etc.¹¹⁹

ACJA has 495 sections which are spread across 49 parts. This paper limits its focus on the provisions of the Act that are relevant to its objectives. The Act provides for day-to-day trial of criminal cases. This is to ensure that criminal cases are expeditiously dealt with in line with the provision of the Constitution. Where day-to-day trial is impracticable after arraignment, parties shall only be entitled to five adjournments each. The interval between each adjournment shall not exceed 14 days.¹²⁰ The court may award costs in order to discourage frivolous adjournments.¹²¹ Moreover, the provision of the Act which provides that an application for stay of proceedings in respect of a criminal matter before court shall not be entertained.¹²² The Act permits taking some witnesses in some offences to give evidence in camera. These include: sexual related offences, terrorism offences, offences relating to Economic and Financial Crimes, trafficking in Persons and related offences.¹²³ The Act has equally given a legal support and legal procedure to plea-bargaining for dispensation of criminal cases as quickly as possible and avoid its abuse. It is worthy of mention that the application of novel provisions of ACJA still suffers setback which negatively affects the administration of criminal justice.

2.13. Penal Code Law of Northern Nigeria 1960

The Penal Code of Northern Nigeria was enacted by the government of Northern of Nigeria in 1960. The Code is applicable only in the Northern Region and later when region was divided into 19 states; the Code continued to be applied within Northern States of Nigeria.¹²⁴ The Code, which is a comprehensive, sets out penal laws that apply in States of Northern Nigeria, which contain provisions that aimed at tackling corruption in the public and private sector. The Code prohibits both the demand for and the receipt of bribes by public officers, as well as giving and offering bribes to public officers, the punishment is stiffer where a judicial officer is involved.¹²⁵ The Code prescribes punishment which three years imprisonment or with fine or with both on any person who accepts or obtains or agrees to accept or attempts to obtain from a person for himself or for any other person any gratification.¹²⁶ The Code also prescribes imprisonment for a term which may extend to three years or with fine or with both upon conviction of any public officer who abets the offence to be committed under section 116 of the Code.¹²⁷

It worthy of mention that many cases filed by EFCC contained violation of the violation of section 315 of the Code i.e., criminal breach of trust by public officers. For example, former governors Katsina State, Ibrahim Shehu Shema.¹²⁸ Rev. Jolly Tevoru Nyame of Taraba State¹²⁹ and former governor of Plateau State, Chief Joshua Chibi Dariye from 1999 to 2007 were charged inter-alia under the said section.

2.14. Criminal Code Act, 2004

Criminal Code is applicable in the southern part of Nigeria; it has 521 sections which are spread within 55 chapters. Between section 98 and 116 the Code prescribes offences relating to corruption and abuse of office by public servants. Section 98 of the Code has two subsections, while subsection (1) punishes abuse of official duty generally, subsection (2) penalizes corruption by any person employed in the public service. In either case, the

¹¹⁷ For example, Sokoto State government has repealed Criminal Procedure Code by enacting into law the Administration of Criminal Justice Law No. 8 of 2019.

¹¹⁸ ACJA, s. 1 (1); Adedeji Adekunle, *An Overview of the Administration of Criminal Justice Act 2014*, A Paper Presentation at the 2016 Induction Course for Newly Appointed Judges and Kadis Organised by the National Judicial Institute 23rd May – 3rd June 2016, Abuja. p.12.

¹¹⁹ *Ibid.* p. 115.

¹²⁰ ACJA, s. 396 (3)(4)(5).

¹²¹ *Ibid.*

¹²² ACJA, s. 306.

¹²³ ACJA, s. 232.

¹²⁴ The former region is divided into 19 states, namely: Adamawa, Bauchi, Benue, Borno, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Kogi, Kwara, Nasarawa, Niger, Plateau, Sokoto, Taraba, Yobe and Zamfara.

¹²⁵ PC Act, s. 115.

¹²⁶ PC Act, s. 116.

¹²⁷ *Ibid.*, s. 117.

¹²⁸ *Shema v F.R.N* (2018) 9 NWLR (Pt 1624) 337.

¹²⁹ He Was Charged before the High Court of the Federal Capital Territory Abuja before His Lordship Hon. Justice A.A.I. Banjoko In Charge No: FCT/HC/CR/82/07.

accused person is liable, if found guilty, to be sentenced to maximum term of seven years imprisonment.¹³⁰ The provisions of the Penal Code on corruption are more lucid, wider and less technical than the Criminal Code provisions.¹³¹

2.15. Nigerian Financial Intelligence Unit Act 2018

The major objectives of the Act are to establish the Nigerian Financial Intelligence Unit, create the legal, institutional and regulatory framework to ensure transparency, effective and efficient financial intelligence and management and to equally ensure the operation and administration of the autonomous Nigerian Financial Intelligence Unit.¹³² The Act has 33 sections which are spread within eight parts. The Act establishes the Nigerian Financial Intelligence Unit and spells out the Unit's powers and functions.¹³³ The Act prescribes a stiff punishment upon any officer of the Unit who discloses or causes to be disclosed any information which may have come to his possession during the course of his duties in the Unit or is detrimental to an inquiry or a financial intelligence inquiry under the Act, commits an offence and is liable on conviction to imprisonment for a term of not less than five years without option of fine and dismissal from office.¹³⁴ But if a person who is not a staff of the Unit makes a disclosure which is likely to be detrimental to an investigation or a financial intelligence inquiry under the Act or falsifies, conceals, destroys or disposes of, or causes or permits the falsification, concealment, destruction or disposal of documents which are relevant to an inquiry by the Unit such person shall upon conviction if he is a natural person be liable to a fine of not less than ₦ 500,000 or imprisonment for a term of not less than two years or both; and in the case of a financial institution or other body corporate, to a fine of not less than ₦ 50,000,000.¹³⁵

In order to have unhindered access to financial intelligence in the country, the Act provides that any person who wilfully obstructs the Unit or any authorised officer in the performance of the Unit's functions or powers conferred on the Unit by the Act or any other law, commits an offence and is liable, on conviction in the case of an individual, to imprisonment for a term of not less than three years or a fine of ₦ 200,000. for every day the obstruction persists; and in the case of corporate body, a fine of ₦ 1,000,000. for every day that the obstruction persists.¹³⁶

2.16. Nigeria Extractives Industries Transparency Initiative Act¹³⁷

The Nigeria Extractives Industries Transparency Initiative Act (NEITI Act) came into force on the 28th day of May, 2007. The Act has 22 sections only. The major objectives of the Act are to ensure due process and transparency in the payments made by all extractive industry companies¹³⁸ to the Federal Government and statutory recipients, to monitor and ensure accountability in the revenue receipts of the Federal Government from extractive industry companies, to eliminate all forms of corrupt practices in the determination, payments, receipts and posting of revenue accruing to the Federal Government from extractive industry companies, to ensure transparency and accountability by government in the application of resources from payment received from extractive industry companies and to ensure conformity with the principles of Extractive Industries Transparency Initiative.¹³⁹

The Act establishes a corporate body called the Nigeria Extractive Industries Transparency Initiative which shall be an autonomous self-accounting body, reporting directly to the President and the National Assembly.¹⁴⁰ The Act prescribes punishment of fine not less than ₦30,000,000 against any extractive industry company which gives false information or report to the Federal Government or its agency regarding its volume of production, sales and income required under the Act to the Federal Government or its agencies, resulting in the underpayment or non-payment of revenue accruable to the Federal Government or statutory recipients.¹⁴¹ Also, any extractive industry company which delays or refuses to give information or report under the Act, or wilfully or negligently fails to perform its obligations under the Act, commits an offence and is liable on conviction to a fine not less than ₦30,000,000 and the President may on the recommendation of the National Stakeholder Working Group

¹³⁰ CC Act s. 98 (1)(a).

¹³¹ Ismail Idris, (n. 16), p. 23.

¹³² NFIU Act, s. 1 (a)(b).

¹³³ NFIU Act, ss. 2, 3 and 4.

¹³⁴ *Ibid*, s. 18 (2)(3).

¹³⁵ *Ibid*, s. 18 (1) (a)(b).

¹³⁶ *Ibid*, s. 27.

¹³⁷ NEITI Act 2007.

¹³⁸ See section 21 of the NEITI Act for definition of "Extractive Industry Company".

¹³⁹ NEITI Act, s. 2 (a)-(e).

¹⁴⁰ NEITI Act, s. 1.

¹⁴¹ *Ibid*, s. 16 (1).

(NSWG)¹⁴² suspend or revoke the operational license of any extractive industry company which fails to perform its obligations under the Act. On the other hand, where a government official renders false statement of account or fails to render a statement of account required under the Act to the Federal Government or its agencies, resulting in the underpayment or non-payment of revenue accruable to the Federal Government or statutory recipients, commits an offense and is liable on conviction to not less than 2 years imprisonment or a fine not less than ₦5,000,000.¹⁴³

3.1. Executive Orders

Two Executive Orders were issued by President Muhammadu Buhari that in one way or another are related to the objectives of this paper, namely: Presidential Executive Order on the Preservation of Suspicious Assets Connected with Corruption and Other Relevant Offences¹⁴⁴ and the Presidential Executive Order on the Voluntary Offshore Assets Regularization (VORAS).¹⁴⁵ Both Orders aimed to combat corruption in the country. For example, the Presidential Executive Order No. 6 of 2018 on the Preservation of Suspicious Assets Connected with Corruption and Other Relevant Offences which came in force on the 4th July, 2018, when it was signed by President Muhammad Buhari¹⁴⁶ has six sections as well as two schedules which contain list of 155 cases to be immediately affected by the Executive Order and agencies of the federal government directly affected by this Order respectively. The major objective of the Order is to preserve assets reasonably suspected to be connected with corruption or proceeds of crime and other related offences, by restricting dealings in them in any way until the final determination by a court of competent jurisdiction of any corruption related matter against the owners of such assets.¹⁴⁷ The Order targets past or current government officials and/or Politically Exposed Persons (PEPs).¹⁴⁸

4.0. Policies

4.1.1. National Policy on Prosecution 2016

The Policy was made by the Body of Attorneys General (BAG)¹⁴⁹ on the 6th day of October, 2016, signed by the Honourable Attorney of the Federation, Abubakar Malami, SAN. The Policy has 17 sections, which consist of the following: preamble and rationale behind the issuance of the Policy,¹⁵⁰ scope of the application of the Policy,¹⁵¹ vision and mission of the Policy,¹⁵² responsibility of a prosecutor and a guiding principle which a prosecutor shall be used to decide as to prosecute a particular case or not prosecute it,¹⁵³ prosecution of transnational and specialised crimes¹⁵⁴ bail and recognizance, plea bargain and restorative justice as well as Code of Conduct for prosecutors.¹⁵⁵

The Policy provides guidelines for the prosecutors, which they shall consider in responding to bail application by defendants.¹⁵⁶ Moreover, where plea bargain is an issue, the Policy categorically provides the guiding principles for the prosecutors.¹⁵⁷ The Policy concludes by providing rights of the prosecutors which include that a prosecutor shall be protected from arbitrary interference, intimidation or harassment and security together with his family

¹⁴² Section 5 of the NEITI Act provides that “The governing body of the NEITI shall be the National Stakeholders Working Group (NSWG)”.

¹⁴³ NEITI Act, s. 16 (6).

¹⁴⁴ Presidential Executive Order No. 6 of 2018

¹⁴⁵ Presidential Executive Order No. 8 of 2018

¹⁴⁶ Vanguard Newspaper, ‘President Buhari Executive Order No 6 OF 2018,’ <<https://www.vanguardngr.com/2018/10/president-buhari-executive-order-no-6-of-2018/>>, accessed 20th November, 2020.

¹⁴⁷ Toyin Bashir and Oluwatoba Oguntuase, ‘Nigeria: Re-Examining the Purport of the Executive Order No. 6 Of 2018 20 November 2018’ <<https://www.mondaq.com/nigeria/white-collar-crime-anti-corruption-fraud/756320/re-examining-the-purport-of-the-executive-order-no-6-of-2018>>, accessed 20th November, 2020.

¹⁴⁸ *Ibid.*

¹⁴⁹ The Body of Attorneys General consists of all Attorneys General of 36 States of the federation and the body is headed by the Attorney General of the Federation.

¹⁵⁰ National Policy on Prosecution, ss. 1 and 2.

¹⁵¹ *Ibid.*, s 3.

¹⁵² *Ibid.*, ss. 4 and 5.

¹⁵³ *Ibid.*, ss. 8 and 9.

¹⁵⁴ *Ibid.*, ss. 12 and 13.

¹⁵⁵ *Ibid.*, s. 6.

¹⁵⁶ *Ibid.*, s. 14.

¹⁵⁷ *Ibid.*, s. 15.

etc.¹⁵⁸ There is no doubt that if the provisions of the policy are to be implemented by both federal and state governments, the administration or criminal justice would greatly be improved. However, many prosecutors interviewed are not even aware of its existence, let alone applying its provisions.

4.1.2. Whistle Blowing Policy 2016

Whistle Blowing Policy (WBP) is a modern Anti- corruption policy that encourages citizens to willingly disclose information about corrupt practices such as fraud, bribery, outright looting of public funds, financial misconduct or any other form of financial malpractice.¹⁵⁹ A whistle blower who discloses such kind of information is entitled to a certain percentage from whatever amount of money is recovered by the government upon relying on the information he provided.¹⁶⁰ Presently, there is a bill on whistle blowing which has been pending before the National Assembly waiting to be passed into law.¹⁶¹ However, Federal Government, on 21st December, 2016, put in place a Whistle Blowing Policy to encourage people to expose fraud in the public and private sectors, pending passage of the bill laying before the National Assembly.

It is important to note that Whistle Blowing Policy was created by Federal Ministry of Finance and approved by the Federal Executive Council.¹⁶² The policy which was drafted in form of questions and answers provides that if government is able to recover looted or hidden funds through the information supplied by a whistle blower, then the blower is entitled to incentive of between 2.5 percent and 5 percent of the amount recovered.¹⁶³ Before a whistle blower is entitled to such percentage he must provide information which is not at the disposal of the federal government and could not otherwise be obtained from any other publicly available source, and the actual recovery must be because of the information provided by the whistle blower.^{164, 165}

5.1. Other Subsidiary Rules

There are several subsidiary legislations which consist of rules, regulations, guidelines, strategy and practice directions issued by different relevant authorities that aim to assist in one way or another in fighting corruption in the country. For example, Supreme Court (Criminal Appeal) Practice Direction 2013 lists corruption and money laundering appeals among the appeals that shall be heard expeditiously.¹⁶⁶ Equally, the Court of Appeal (Fast Track) Practice Direction 2014 enumerates corruption and money laundering appeals shall among the appeals that be heard expeditiously.¹⁶⁷ Moreover, Federal High Court of Nigeria also issued a Federal High Practice Direction, 2013, which also makes provisions for expediting trial in corruption cases, thereby taking care of the obstacle of delay exploited by person(s) standing trial for corruption offences.¹⁶⁸ Also, some provisions of Public Service Rules 2008 are clearly meant to tackle corruption in public service. For example, the Rules describes the following acts as serious gross misconduct, namely: bribery, corruption, embezzlement and misappropriation.¹⁶⁹ The Rules also provides for the suspension of an indicted public officer pending the determination of criminal proceedings pending against such a person.¹⁷⁰

6.0. International Instruments Relating to Corrupt Practices

There are many international and regional treaties entered across the world to fight corruption and other corruption related crimes. The major and most comprehensive treaty is the United Nations Convention Against Corruption (UNCAC), which is the most comprehensive convention against corruption in the world and Nigeria is a signatory to such Convention. Nigeria signed the Convention on 9th December, 2003, ratified it on 14th December, 2004, and deposited its instrument of ratification with the UN Secretary-General on the same 14th December, 2004.

¹⁵⁸ *Ibid.*, s. 17.

¹⁵⁹ M. Chigozie Onuegbulam, Whistle Blowing Policy and the Fight Against Corruption In Nigeria: Implications for Criminal Justice and the Due Process, *NAUJILJ*, [2017], 8, 2, 175.

¹⁶⁰ Premium Times, 'Whistle-Blower Policy, One of Buhari's Main Achievement, Adeosun,' <<https://www.premiumtimesng.com/news/top-news/240339-whistle-blower-policy-one-of-buharis-main-achievements-adeosun.html>>, accessed on the 2nd November, 2020

¹⁶¹ M. Chigozie Onuegbulam, (n. 160), p. 178.

¹⁶² Law Padi, *7 Things to Know About Nigeria's Whistle Blower Policy*, <<https://lawpadi.com/7-things-know-nigerias-whistle-blower-policy/>> accessed on the 2nd November, 2020.

¹⁶³ WBP, s. 12.

¹⁶⁴ *Ibid.*

¹⁶⁵ *Ibid.*, s. 4.

¹⁶⁶ Supreme Court (Criminal Appeal) Practice Direction 2013, s. 1 (1) (b) (3).

¹⁶⁷ Court of Appeal (Fast Track) Practice Direction 2014, s. 1 (b).

¹⁶⁸ Federal High Practice Direction, 201, s. 1.

¹⁶⁹ Public Service Rules 2008, Regulation 030402.

¹⁷⁰ *Ibid.*, Regulation 010103.

However, the UNCAC is yet to be domesticated in Nigeria in compliance with the provisions of the Nigerian Constitution.¹⁷¹ However, several legislations discussed above were enacted in compliance with different provisions of the UNCAC. Other treaties include, United Nations Convention Against Transnational Organised Crime and Protocol,¹⁷² United Nations Declaration Against Corruption and Bribery in International Commercial Transaction,¹⁷³ Criminal Law Convention on Corruption,¹⁷⁴ Civil Law Convention on Corruption.¹⁷⁵

7.0. Conclusion

The paper analyses the legal framework put in place to fight corrupt practices in Nigeria. The legal framework consists of Constitution and legislations, executive orders, policies, other subsidiary rules and regulations and some relevant International Instruments Relating to Corrupt Practices were analysed in the paper. Looking at the above legal framework of fight against corruption in Nigeria as appraised in this paper, the writer submits without fear of contradiction that Nigeria has a strong and robust legal framework that if properly utilised and enforced could nib corruption to its bud. The most important factor which is required in fighting corrupt practices is political will to enforce the provisions of the framework by the policy makers who are largely accused of compromising the enforcement of the said laws, rules, policies and regulations.

¹⁷¹ CFRN, s. 12 provides that: “No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly. The National Assembly may make laws for the federation or any part hereof with respect to matters not included in the exclusive Legislative List for the purpose of implementing a treaty.

¹⁷² The Convention came into force on the 29th September, 2003 by UN resolution 55/25.

¹⁷³ This Declaration does not have the force of law, rather political commitment. It was adopted by UN in December 1996.

¹⁷⁴ This Convention was adopted at Strasbourg, France, on the 27th January, 1999 and entered into force on the 1st July 2002.

¹⁷⁵ The Convention was adopted 4th November 1999 and entered into force November, 2003.