

Institutional Framework of Fight Against Corruption Nigeria

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Abstract

This paper discusses This paper appraises the institutional framework for fight against corruption in Nigeria. There are many institutions whose aim is to tackle corrupt practices in Nigeria, ensure due process and transparency are entrenched in both public and private sectors and equally safeguard and checkmate the excesses of officials in private and public sectors. The aim of the paper is to examine the efficacy of the institution. The institutions appraised in the paper include the Economic and Financial Crimes Commission (EFCC), Independent Corrupt Practices and Other Related Offences Commission (ICPC), Code of Conduct Bureau (CCB), Special Presidential Investigation Panel for the Recovery of Public Property, Public Complaint Commission, Nigerian Police Force, Bureau of Public Procurement, Fiscal Responsibility Commission, Nigerian Financial Intelligence Unit, etc. The paper adopts both 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 institutions office needed more fund from the government and technologically driven investigation facilities. It is therefore, recommended that government should inject more money into the intuitions for smooth running of their affairs and should also reorient public on corruption for effective and efficient service delivery by the institutions.

KEY WORDS: Corruption, Institutions, Economic and Financial crimes, Fraud.

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1. Introduction

Nigeria is described as the giant of Africa and most populous black nation in the world; to the extent that every one person among six Africans is a Nigerian. Nigeria has an estimated population of about 200 million people, which makes it the seventh most populous country in the world.¹ Nigeria's economy is mainly dependent on oil which makes up about 90 percent exports and 70 percent government revenue.² Nigeria is the fifteenth largest oil producer in the world;³ it has world's eleventh largest oil reserves and ninth largest natural gas reserves.⁴ But despite the country's vast wealth, about 60 percent of its population are living in abject poverty.⁵

Corruption is the clog in the wheel of progress of the country and has incessantly frustrated the realization of noble national goals, fundamental objectives and directive principles of country's policy, despite the enormous aforementioned natural and human resources in the country.⁶ Corruption is responsible for all kinds of woes that shackle the progress of the country, such as abject poverty, illiteracy, abandoned projects, poor quality of education and projects implementation, ramshackle infrastructure in the country, election rigging, failed promises, high level of youths unemployment even among the literate ones, disconnection of masses from leaders with attendant insecurity such as sectional, religious and tribal agitations, armed-robbery, kidnapping for ransom which is most prevalent crime presently, nepotism and impediment of flow of foreign direct investment.⁷

2. Institutions that Fight Against Corruption in Nigeria.

There are many institutions established in Nigeria whose aim is fighting corruption. Such institutions could be broadly divided into two, namely: those that are established specially to tackle corrupt practices in the country such as EFCC, ICPC, CCB etc. and those

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

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

² *Ibid.*

³ Among the Organization of Petroleum Exporting Countries (OPEC) Nigeria was ranked sixth largest oil producer, OPEC: Annual Statistical Bulletin, Vienna, Austria, 2018.

<http://www.opec.org/opec_web/static_files_project/media/download/publications/ASB2018_23072018.pdf>, accessed on the 28th July, 2019, p.6.

⁴ Ngozi Okonjo Oweala, (n.1), p.17.

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

⁶ Ogbewere Bankole Ijewereme, 'Anatomy of Corruption in the Nigerian Public Sector: Theoretical Perspectives and Some Empirical Explanations,' <<http://www.uk.sagepub.com/aboutus/openaccess.htm>>, p.5, accessed 2nd August, 2019.

⁷ *Ibid.*

institutions that are regarded as important stakeholders in the fight against corruption such as judiciary, legislature, Offices of the Honourable Attorney General of the Federation, religious and traditional institutions, mass media, etc. This paper is dedicated to appraise the said two types of institutions with a view to achieve the objectives of this research and to equally answer the formulated research questions.

2.1. Economic and Financial Crimes Commission

Amongst the Anti-graft agencies in Nigeria, most commonly known and prominent of them which is on the lips of up-to-date Nigerians is the EFCC.⁸ The EFCC has been in active fight against corruption since its establishment in 2003 and it has been involved in investigation of cases ranging from high profile corruption cases, advanced fee fraud, money laundering, tax evasion, contract scams, identity theft, illegal oil bunkering, bribery, looting, foreign exchange malpractices etc.⁹ EFCC has been able to cleanse the banking sub-sector, sanitizing it through investigation and prosecution of Chief Executives and other officials for Money Laundering and other frauds.¹⁰ Establishment of the EFCC has immensely assisted in move to restructure important agencies and institutions of government such as the Nigerian Police, Nigerian Customs Services and the National Drugs Law Enforcement Agency (NDLEA) by sanitising them of their hitherto immersed corruption.¹¹

The Commission was established by the Economic and Financial Crimes Commission Act. The Act confers on the Commission juristic personality, hence, it can sue and be sued in its corporate name and may, for the purposes of discharging its functions, acquire, hold or dispose of property whether moveable or immovable.¹² The Board of the Commission is an inter-agency board which comprises 22 members, selected from all Nigerian Law Enforcement Agencies (LEAs) and regulators. Apart from the Commission's Chairman who shall be the chief executive and accounting officer of the Commission,¹³ other members of the Board shall include the Governor of the Central Bank of Nigeria or his

⁸ Hassan Said Umar and Kasim Umar, 'The Economic and Financial Crimes Commission and Corruption Management in Nigeria: A Perceptual Assessment of its Legal Framework', [2016], 3, 2, *Asian Journal of Social Sciences and Management Studies*, 141, available at: <<http://www.asianonlinejournals.com/index.php/AJSSMS>>.

⁹ Arinze Ngwube and Chuka Okoli, 'The Role of the Economic Financial Crime Commission in the Fight against Corruption in Nigeria', [2013] 4, 1 *Journal of Studies in Social Sciences*, 102.

¹⁰ *Ibid*.

¹¹ Faboyede Olusola Samuel, Okafor Chinonye and Onochie Maxwell Prosper 'Economic and Financial Crimes Commission (EFCC) As A Strategy for Managing Nigerian External Reserves for Sustainable Development', [2013], 1, 2, *Journal of Economics and Finance*, 50.

¹² EFCC Act, s 1 (1)(2) (a)(b).

¹³ *Ibid*, s 2 (1); The chairman must be a serving or retired member of any government security or law enforcement agency not below the rank of Assistant Commissioner of Police or equivalent and shall possess not less than 15 years cognate experience.

representative, one representative from Federal Ministries of Foreign Affairs, Finance and Justice, the Chairman of National Drugs Law Enforcement Agency or his representative, the Director-Generals of the National Intelligence Agency or his representative, Securities and Exchange Commission or his representative and the Department of State Security Services or his representative. Other members are the Registrar-General of the Corporate Affairs Commission or his representative, the Managing Director of Nigeria Deposit Insurance Corporation or his representative, the Commissioner for Insurance or his representative, the Postmaster-General of the Nigeria Postal Service or his representative, the Chairman, Nigerian Communications Commission or his representative, the Comptroller-General of Nigeria Customs Service or his representative, the Comptroller-General of Nigeria Immigration Service or his representative, the Inspector-General of Police or his representative, four eminent Nigerians with cognate experience in finance, banking, law or accounting and the Secretary to the Commission who shall be the head of administration.¹⁴ All members of the Board of the Commission other than the Chairman and the Secretary shall be part time members, but shall be appointed by the President and the appointment shall be subject to confirmation of the Senate for a period of four years and may be re-appointed for a further term of four years and no more.¹⁵

The Commission's functions and powers are expressly stated by its establishment Act,¹⁶ which extend from investigation to prosecution of anybody whether natural or artificial persons (corporate bodies) involved in advance fee fraud, money laundering, theft, outright looting public funds, embezzlement, bribery, smuggling, human trafficking, child labour, illegal arms transactions, oil bunkering, unauthorized mining, tax related offenses, cyber-crimes, foreign exchange malpractices, issuing dud cheque, currency counterfeiting, tracking, freezing as well as confiscation of proceeds of crime or any illegally acquired wealth including those of terrorist outfits.¹⁷ It is worthy of mention that

¹⁴ EFCC Act, s. 2 (1)(b)(c).

¹⁵ *Ibid*, s. 2 (2) (3) and 3 (1).

¹⁶ *Ibid*, s. 6 and 7.

¹⁷ Ethelbert Okey Lawrence, 'Economic and Financial Crimes Commission (EFCC) and the Challenges of Managing Corruption in Nigeria: a Critical Analysis', [2016], 6, 4, *International Journal of Scientific and Research Publications*, 341.

from 2003 to 2019 the staff strength of the Commission has been expanded from roughly 500 staff to over 3,000.¹⁸

The EFCC establishment Act empowers the Commission to operate five units/sections, namely: The General and Assets Investigation Unit, the Legal and Prosecution Unit, the Research Unit, the Administration Unit and the Training Unit.¹⁹ The Commission is also empowered to set up any other additional unit, section or committee as may be necessary to assist it in discharging its duties and functions under the Act in addition of the five statutory units stated above.²⁰ The Commission pursuant to such power conferred on it has set up several additional units which include: the Advance Fee Fraud Section (AFF), Counter-Terrorism and General Investigation (CTGI), Intelligence and Special Operation Section (ISOS), Property and Land, Economic Governance (EG), Account and Finance Section, Security, Media Unit, Transport Unit, Medical Unit and Bank's Fraud sections.²¹ Furthermore, the Commission is empowered to coordinate the investigation and prosecution of offences provided under: The Money Laundering Act 2004; 2003 No.7. 1995 No. 13, the Advance Fee Fraud and Other Related Offences Act 1995, the Failed Banks (Recovery of Debt and Financial Mal-practices in Banks) Act, as amended, the Banks and Other Financial Institutions Act 1991, as amended, Miscellaneous Offences Act and other law or regulation relating to economic and financial crimes, including the Criminal Code and Penal Code.²²

The Supreme Court of Nigeria in the case of *Kalu v. FRN*²³ while interpreting the powers and function of the Commission held that the Commission is vested with a wide power to investigate, prevent, and prosecute offenders who engage in money laundering, embezzlement, bribery, looting and any form of child labour, illegal oil bunkering, illegal mining, tax evasion, foreign exchange and privacy, open market abuse, dumping of toxic waste, and prohibited goods. Per Pemu JCA in the case of *Matthew v. FRN*²⁴ held that the

¹⁸ Matthew T. Page, Innovative or Ineffective? Reassessing Anti-Corruption Law Enforcement in Nigeria, Gi-Ace Project: Fighting High-Level Corruption in Africa: Learning from Effective Law Enforcement, [2021], 9, *Chatham House Working Paper*, 33.

¹⁹ EFCC Act, s 12 (1).

²⁰ *Ibid*, s 12 (2).

²¹ Muhammad Mansur Aliyu, 'The Sokoto Zonal Office of Economic and Financial Crimes Commission (EFCC): Successes and Challenges (2018-2020)', [2020], 1, 1, *UDUS Law Journal*, 407.

²² EFCC Act, s 1 (2) c) and 7 (2); Section 46 of the Act interprets 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 includes any form of fraud, narcotic drug trafficking, money. laundering, embezzlement, bribery, looting and any form of corrupt malpractices, illegal arms deal, smuggling, human trafficking and child labour, illegal oil bunkering and illegal mining, tax evasion, foreign exchange malpractices including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic wastes and prohibited goods, etc.

²³ (2016) 9 NWLR (Pt. 1516) 1.

²⁴ (2013) LPELR -22016 (CA).

prosecutorial power of EFCC is unique but not exclusive of the concurrent powers of the other sister agencies such as police, ICPC etc. The Commission can exercise power to prosecute offence without regard as to who owns the subject matter involved in the case. In *Jolly Nyame v. FRN*,²⁵ Per Adekeye JSC affirmed the wide prosecutorial power of the EFCC including where the subject matter of the crime is property of a State government.²⁶ The Commission can also exercise its prosecutorial powers through private legal practitioners by delegating its power to prosecute to the Commission. In the case of *FRN v. Kenny Martins*²⁷ the prosecution filed an appeal before the Court of Appeal and the Respondent filed preliminary objection to the appeal premised that Festus Keyamo being a private legal practitioner was not competent to prosecute the matter on behalf of the EFCC, the court dismissed the objection and held that Keyamo did not need the fiat of Attorney General of the Federation before he could prosecute for the EFCC. Also, in the case of *Daudu v. FRN*²⁸ the Supreme Court held that the Commission is vested with a wide power to place bank accounts under surveillance and carry out actions designed to assist investigators to identify and locate proceeds or property derived from crimes.²⁹ In *Alhaji Sani Dododo v. EFCC & Ors*³⁰ the Court Appeal in distinguishing the powers of EFCC and that of Independent Corrupt Practices and Other Related Offences Commission (ICPC) held that:

The 2nd Respondent (EFCC) enjoys specific statutory power not publish but the 1st Respondent (ICPC) is under duty to communicate their decision to investigate or not and the report of the investigation to the Appellant. This is a private right of the Appellant as a citizen of this country...³¹

The above suit emanated from prerogative writ of mandamus applied by the Appellant to compel EFCC, ICPC and other security agencies to investigate Senator Adamu Aleiro, who was a governor of Kebbi State. Preliminary objection was filed by Aleiro challenging the competency of the application. The trial court held that EFCC and other agencies have

²⁵ (2010) CLR 3 (B) SC; see also *Shema v. FRN* (2019) All FWLR (Pt. 976) 929.

²⁶ *Ibid.*

²⁷ (2012) 14 NWLR (Pt. 1321) 287.

²⁸ (2018) 10 NWLR (Pt. 1626) 169 SC.

²⁹ *Ibid.*, see also EFCC Act, s 34.

³⁰ (2013) 1 NWLR (1336) 468.

³¹ *Ibid.*

discretion as to whether to investigate or not to investigate any complaint.³² Moreover, in the case of *Audu v. FRN*³³ one of the issues for determination is whether the EFCC can prosecute offences under the Corrupt Practices and other Related Offences Act, the court held that the ICPC Act did not oust the jurisdiction of the EFCC to investigate and prosecute cases of corruption and abuse of office. It is clear that Section 67 of the ICPC Act, made provision for the prosecution of offences under the ICPC Act, by other agencies with the power to investigate and prosecute (such as the EFCC) any form of corrupt practices. The court further held:

On the other hand, as rightly argued by the learned counsel to the Respondent in his brief of argument, the Attorney General of the Federation should be the one to complain about the alleged exercise of his power without his consent or donating same and not the appellant. I hold that the EFCC can rightly investigate and or prosecute the offences under the CPOROA without express delegation of the power donated by the Attorney General of the Federation. "Per UWA, J.C.A. (Pp. 20-23, Paras. A-A).³⁴

The aggressive manner in which EFCC fought against economic and financial crimes, abuse of office and corruption led to the prosecution and conviction of kingpins such as past governors, ministers, former Inspector General of Police, Legislators and Ministers³⁵. The most recent commendable and praiseworthy act of EFCC is how the Commission's investigation and findings saved Nigeria from paying an arbitral award of about \$10 Billion (about Three Trillion Naira) entered against Nigeria in favour of Process and Industrial Development Company Limited (P&ID) in the United Kingdom (UK), which was set aside by the UK's court largely relying on the Commission's investigation report.³⁶ It is not a gainsaying, the Commission has been impacting positively in the fight against corruption in Nigeria. The Commission has made the country more attractive and safer to foreign investors, assets worth millions of dollars recovered from fraudsters and

³² *Ibid.*

³³ (2018) LPELR-45642(CA)

³⁴ *Ibid.*

³⁵ Arinze Ngwube and Chuka Okoli, (n. 2), 104.

³⁶ Federal Republic of Nigeria v. Process and Industrial Development Company Limited, Case No. CL-2019-000752, delivered on the 4th September, 2020 by Sir Ross Cranston Royal Court of Justice UK.

hundreds of suspects being prosecuted in court are evidence of the commission imprints.³⁷

However, the Commission is sometimes accused of being debt collector in transactions that are completely civil and contractual which is *ultra vires*. In the case of *Diamond Bank v. Opara*³⁸ Supreme Court admonished the Commission to scrutinise any petition brought before it and determine whether it is within its vires. The court held that:

It is important for me to pause and say here that the powers conferred on the 3rd Respondent, i.e., the EFCC to receive complaints and prevent and/or fight the commission of Financial Crimes in Nigeria pursuant to Section 6(b) of the EFCC Act (supra) does not extend to the investigation and/or resolution of disputes arising or resulting from simple contracts or civil transactions in this case. The EFCC has an inherent duty to scrutinize all complaints that it receives carefully, no matter how carefully crafted by the complaining party, and be bold enough to counsel such complainants to seek appropriate/lawful means to resolve their disputes. Alas! The EFCC is not a debt recovery agency and should refrain from being used as such. Generally, abuse of process involves circumstances and situations of infinite variety and conditions and which may be occasioned by malice, bias and desire to misuse or pervert the system of administration of justice.

According to many scholars and anti-corruption crusaders, EFCC is the most promising agency in Nigeria which aggressively undertakes to fight corruption.³⁹ The EFCC is a vigorous and active organization but risks becoming overstuffed with bureaucracy that loses its elite status. The Commission's mandate to fight cybercrime or fraud in land transaction, for example, distracts it from its core mandate of fighting high profile corruption cases and purposefully economic crime which brought Nigeria to its knees.⁴⁰ Finally, it is worthy of mention that all past chairmen of the Commission vacated the

³⁷ Arinze Ngwube and Chuka Okoli, (n. 2), 105.

³⁸ (2018) LPELR-43907(SC).

³⁹ Human Rights Watch (HRW), 'Corruption on Trial? The Record of Nigeria's Economic and Financial Crimes Commission' (HRW 2011) 1 <www.hrw.org/sites/default/files/reports/nigeria0811WebPostR.pdf> accessed 25 April 2018.

⁴⁰ Matthew T. Page, (n. 11), 3.

headship of the Commission un-ceremonially without completing their term which is majorly believed to be not unconnected with interference of politicians into the activities of the Commission.⁴¹

4.2.2. Independent Corrupt Practices and Other Related Offences Commission

The Commission was established by the Corrupt Practices and other Related Offences Act (ICPC Act).⁴² The Commission is conferred with a juristic personality, perpetual succession and power to sue and be sued in its corporate name.⁴³ The governing board of the Commission consists of a chairman and twelve members; two of them shall come from each of the six geo-political zones of the country,⁴⁴ and among the said twelve members there must be, a retired Police Officer not below the rank of Commissioner of Police, a legal practitioner with at least 10 years post-call experience, a retired Judge of a superior court of record, a retired Public Servant not below the rank of a Director, a woman, a youth not being less than 21 or more than 30 years of age at the time of his or her appointment and a chartered accountant.⁴⁵ The Chairman and members of the Commission who shall be persons of proven and high standard integrity who shall be appointed by the President, upon confirmation by the Senate.⁴⁶

The Chairman of the Commission shall hold office for a period of five years which may be renewed for another five years but shall not be renewed again. However, members of the Commission shall hold office for a period of four years and may be reappointed for another term of four years but shall not be eligible for reappointment thereafter.⁴⁷

The Commission has power to appoint, dismiss and exercise; disciplinary control over its staff and shall be independent. Hence, in discharging its statutory functions, the Commission shall not be subject to the direction or control of any other person or authority.⁴⁸ The Commission shall have a Secretary who is to be appointed by the

⁴¹ Femi Falana, 'Unequal Criminal Justice System', <<https://thenigerialawyer.com/unequal-criminal-justice-system-by-femi-falana-san/>>, accessed on 21st July, 2019.

⁴² ICPC Act, s 3 (1).

⁴³ *Ibid*, s 3 (2); see also the case of *Auwalu v. FRN* (2018) ALL FWLR (PT.954), 294.

⁴⁴ Nigeria is politically divided into six geo-political zones, namely: North West Zone (Katsina, Sokoto, Zamfara, Kaduna, Kano, Jigawa and Kebbi), North East (Adamawa, Borno, Gombe, Yobe, Bauchi and Taraba), North Central (Kwara, Kogi, Nasarawa, Niger, Benue and Plateau), South West (Ogun, Ondo, Osun, Oyo, Lagos and Ekiti), South East (Abia, Enugu, Ebonyi, Imo and Anambra) and South-South (Akwa Ibom, Bayelsa, Cross River, Delta, Edo and Rivers).

⁴⁵ ICPC Act, s 3 (3).

⁴⁶ *Ibid*, s 3 (6).

⁴⁷ *Ibid*, s 3 (7).

⁴⁸ *Ibid*, s 3 (8) and (12).

President, but the secretary shall be under the general direction of the Chairman and shall equally be responsible for keeping the records of the Commission and the general administration and control of the staff of the Commission.⁴⁹

It is important to note that after the establishment and inauguration of the Commission, its operation was put on hold when the constitutionality of its establishment Act was challenged by the Ondo State government.⁵⁰ However, in September 2002, it resumed its full activities after the Supreme Court upheld the constitutionality of the Act.⁵¹ But despite the validation of the ICPC Act by the Supreme Court, in a case of *Ehindero v. FRN*⁵² the Commission faced another constitutional crisis, where the gravamen of the appellant in the case was having regards to the provisions of Section 6(a), 26(2) and 61(1) of the ICPC Act, 2000, whether the Commission and its officers can initiate and prosecute him for offences under its Act. The Supreme Court resolved the Appellant's contention in affirmative, when it held that:

The provisions of Section 6(a) and 61(1) of the - Act, 2000 seem to validate a criminal prosecution under the Act where the prosecution was not initiated by the Attorney-General of the Federation himself... The lower Court was right in this view, and I endorse it. It is unfortunate that the appellant persisted in his erroneous view that the ICPC cannot, under Section 26(2) of its enabling Act, initiate and maintain criminal proceedings against any person, including the appellant herein, for an offence under the said Corrupt Practices and other Related Offences Act, 2000 (i.e. the ICPC Act), in spite of the loud allusions by the 1st respondent and the learned trial judge to the undoubted and authoritative pronouncement on it by this Court in *A. G, ONDO STATE v. A. G. FEDERATION & ORS* (2002) 6 SC. (pt. 1) 1. All the senior counsel to the appellant needed to do, as an officer in the temple of justice, is simply picking the decision of the Full Panel

⁴⁹ *Ibid*, s 4 (6).

⁵⁰ ICPC, 'History of ICPC', <<http://icpc.gov.ng/icpc-history/>> accessed 25th April 2021

⁵¹ *Ibid*; *Attorney-General of Ondo State v. Attorney-General of the Federation and 35 Others* [2002] 9 NWLR (Part 772) 222–474.

⁵² (2017) LPELR-43458(SC).

of this Court in *A. G, ONDO STATE v. A. G, FEDERATION & ORS* (supra), read it and advise his client accordingly. Be that as it may, the full Court of this Court had cause to consider the constitutional validity of several provisions of the ICPC Act in 2002 in the *A. G, ONDO STATE v. A. G, FEDERATION & ORS* (supra). Sections 26(3) and 35 of the ICPC Act were struck down as being unconstitutional.⁵³

The Commission is empowered to investigate and prosecute anybody who violates the provisions of its establishment Act and other related corruption offences created by any other law.⁵⁴ Also in the course of investigation, the Commission can summon anybody reasonably suspected to have committed an offence under its establishment Act or to produce any document or article required for the purpose of investigation or to cause his arrest where he fails to honour the summons served on him.⁵⁵ The Commission is also empowered to conduct search on any premises after first obtaining court order to that effect⁵⁶ and may seize any property movable or immovable it reasonably suspected to be acquired through illegal means in violation of the provision of the Act.⁵⁷ The Commission may sell the seized movable property capable of deteriorating or decaying, the Act provides that:

Where any movable property seized is liable to decay or deterioration, or is property which cannot be maintained without difficulty, or which it is not practicable to maintain, and which cannot be dealt with under subsection (3), an officer of the Commission may sell or cause such property to be sold at the prevailing market value and shall hold the proceeds of the sale, after deducting there-from the costs and expenses of the maintenance and of the sale of the property, to abide the result of any proceedings under this Act.⁵⁸

⁵³ *Ibid.*

⁵⁴ ICPC Act, s 6 (a).

⁵⁵ *Ibid.*, s 28 and 29.

⁵⁶ *Ibid.*, s 36.

⁵⁷ *Ibid.*, s 37.

⁵⁸ *Ibid.*, s 38.

From 2000 to 2019 the Commission filed total number of 759 cases and secured conviction of 149 cases. In 2019 alone the Commission filed 105 cases and secured 25 convictions.⁵⁹ In fighting corruption the Commission focuses heavily on preventive measures, and through such preventive measures; the Commission has succeeded in establishing more than 524 Anti- Corruption and Transparency Units (ACTUs) in MDAs to serve as watchdog of the Commission and replicate the function of the Commission with the exception of prosecution.⁶⁰

Apart from underfunding and political interference, failure to file appeal in some serious cases is the major challenge that bedevilled the Commission in fighting corruption. For example, High Courts of Rivers and Ekiti States granted injunctions restraining the Commission from investigating the financial activities of the States and the Commission could not deem it fit to file an appeal challenging the injunctions.⁶¹

4.2.3. Code of Conduct Bureau (CCB)

The Bureau was established by the Constitution⁶² and the Code of Conduct Bureau and Tribunal Act (CCBT Act).⁶³ The Bureau is headed by a chairman and nine other members, who according to the Act, shall be persons of unimpeachable integrity and at the time of their appointment they shall not be less than fifty years old. The chairman and the members shall be appointed by the President subject to confirmation of the Senate. But they shall vacate office upon attaining the age of seventy.⁶⁴

The Bureau is empowered to receive declarations forms filled by public officers, examine the declarations forms in accordance with the requirements of the Code of Conduct or any other law, retain the custody of such declaration forms and make them available for inspection by any citizen of Nigeria on such terms and conditions as the National Assembly may prescribe, ensure compliance with and, where appropriate, enforce the provisions of the Code of Conduct or any law relating thereto, receive complaints about non-compliance with or breach of the provisions of the Code of Conduct or any law in

⁵⁹ Grace Oriema Agha-Ibe, 'Conception and Establishment of the Independent Corrupt Practices and Other Related Offences', in Bolaji Owasanoye, Sola Akinrinade and Elijah O. Okebukola, (eds), *ICPC and the War against Corruption in Nigeria: Reflection for a New Vision*, (Anti-Corruption Academy of Nigeria, 2020), 68-69.

⁶⁰ *Ibid*, 69.

⁶¹ *Ibid*, p. 70.

⁶² CFRN, s 153 (1) (a).

⁶³ CCBT Act, s 1 (1).

⁶⁴ CFRN, s 1 of Part 1 of the Third Schedule and CCBT Act, s 1 (2)(3)(4).

relation thereto and to investigate complaint and where appropriate, refer such matters to the Code of Conduct Tribunal for trial.⁶⁵ The Constitutional provision which conferred exclusive jurisdiction on the Bureau to receive, investigate and refer a case to its Tribunal was given flesh and blood by the Supreme Court of Nigeria in *Ahmed & Ors. v. Ahmed & Ors*⁶⁶ while interpreting Paragraph 12 of the Fifth Schedule to the Constitution on the jurisdiction of the Code of Conduct Tribunal, the court held as follows:

Any allegation that a public officer has committed a breach of or has not complied with the provisions of this Code shall be made to the Code of Conduct Bureau. The foregoing provisions are clearly unambiguous and so construed literally mean that any breach of the provisions of the said 5th Schedule or matters of noncompliance with any provisions of the Code shall, (meaning that it is mandatory i.e., must) be made to the Code of Conduct Bureau that has established its Tribunal with the exclusive jurisdiction to deal with any violations of any provisions under the Code.⁶⁷

The Bureau has eight operational departments, namely: Administration; Account and Finance; Education and Advocacy Services; Intelligence, Investigation and Monitoring; State and Local Government Services; Federal Republic Services; Human Resources Management; Federal Political Office Service and Legal Services.⁶⁸ The Bureau became more pronounced and noticeable during the current regime of President Muhammad Buhari when the Bureau referred the cases of former Chief Justice of Nigeria Justice Walter Nkanu Onnoghen and the former Senate President Bukola Saraki to its Tribunal for trial on alleged offences of assets declaration malpractices.⁶⁹ The trial led to the disgraceful removal of the former Chief Justice of Nigeria Justice Onnoghen after his conviction by the Tribunal.⁷⁰

The CCB is very important institution for watching the actions and behaviour of public officers in order to ensure that they discharge their duties with highest standard of morality and accountability. One of the major criticisms levelled against the CCB recently

⁶⁵ *Ibid*, s 3 of Part 1 of the Third Schedule of the CFRN and CCBT Act, s 1 (2)(3)(4).

⁶⁶ (2013) LPELR 21143 SC.

⁶⁷ *Ibid*.

⁶⁸ Code of Conduct Bureau, 'About Us', <<http://ccb.gov.ng/about-us/>> accessed March, 25th 2021.

⁶⁹ Code of Conduct Bureau, 'Cases of the Tribunal', <<http://ccb.gov.ng/legal-matters/cases-at-the-tribunal/>> accessed March, 25th 2021.

⁷⁰ BBC News, 'Nigeria's top judge Walter Onnoghen to Forfeit Bank Accounts', <<https://www.bbc.com/news/world-africa-47974690>> accessed March, 25th 2021.

was its inability to make public assets declaration forms of senior public officials. Though, the Bureau stated many times that there is need to have legislative backing before it could make public, the assets declaration forms of public officials.⁷¹

4.2.4. Special Presidential Investigation Panel for the Recovery of Public Property.

The Recovery of Public Property (Special Provisions) Act (RPP Act) empowers the President of Nigeria to constitute a special investigation panel for the recovery of public property.⁷² The Act specifically listed the function of the Panel if constituted by the President. The function of the Panel is, *inter alia*, to conduct an investigation into the assets of any public officer who has engaged in corrupt practices or has corruptly enriched himself or any other person in the course of the performance of his duties as a public officer; has breached the Code of Conduct for public officers; or has abused his office to the economic adversity of the Federal Republic of Nigeria⁷³ or any other person other than public officer who engages in any form of corrupt practice or corruptly enriches himself or any other person (whether a public officer or not) or has engaged in any unlawful activity in any form whatsoever, including banking or other financial business.⁷⁴ The Panel is authorized to issue notice to the affected person to declare his assets as in Form A in the schedule of the Act, together with a Form of declaration of assets as in Form B in the schedule of the Act.⁷⁵

Upon the receipt of completed declaration of assets form from the person concerned by the Panel; the Panel is to direct a qualified person to check the statement in the declaration of assets and verify the accuracy of the statement of account therein. Any report issued to the Panel by the said qualified person, having completed his investigation as far as possible, together with the conclusions drawn by him and the reason therein, the Panel shall likewise thereafter report to the President the findings, reasons and conclusions drawn by the qualified person appointed by the panel.⁷⁶ The President will

⁷¹ Premium Times, 'Why CCB Denies Nigerians Access to Public Officers' Assets Information-Official' <<https://www.premiumtimesng.com/news/top-news/452495-why-ccb-denies-nigerians-access-to-public-officers-assets-information-official.html>> accessed 14th June, 2021.

⁷² RPP Act, s 1 (1)(b).

⁷³ *Ibid*, s 1 (2)(a)(b)(c)(d).

⁷⁴ *Ibid*, s 2(2).

⁷⁵ *Ibid*, s 3 (1)(a).

⁷⁶ *Ibid*, s 4 (4).

then decide the next line of action to take. In effect, the function of the Panel if constituted is investigatory and not prosecutorial entity.⁷⁷

The current administration constituted the Panel which is called Special Presidential Investigation Panel on Recovery of Public Property (SPIP) and was inaugurated by the then Acting President Yemi Osinbajo in August, 2017, headed by Okoi Obono-Obla.⁷⁸ Beside the commendable efforts of EFCC, the next shining light in the fight against corruption is SPIP. The Panel before its dissolution has recorded milestones in unravelling corrupt practices in the civil service, political office holders and ordinary Nigerians within and outside the country.⁷⁹ SPIP traced and recovered billions of Naira held in various bank accounts by civil/public servants, properties and assets worth billions of Naira which were forfeited to the Federal Government.⁸⁰

In the case of *Tumsah v. FRN*⁸¹ a civil servant in whose house in Apo Abuja, 86 luxury cars were found was investigated and charged by the Panel. Tumsah challenged the vires of the Panel to file charge against him. Court of Appeal held that the powers of the Panel is limited to investigation and cannot prosecute, the court declared that:

The Recovery of Public Property (Special Provisions) Act, which establishes the Presidential Panel on Recovery of Public Property, does not give the panel the *vires* to initiate proceedings in any court of law. The panel's primary function as manifested in the preamble to the Act is investigation of the assets of any public officer or any other person subject to inquiry under the Act. While the panel plays a complimentary role to other agencies fighting corruption like the Economic and Financial Crimes Commission (EFCC) and others, it cannot perform the functions of those agencies or encroach on their powers in a clear disregard of its enabling Act... The combined provisions of sections 3 and 4 of the Recovery of Public Property (Special Provisions) Act show clearly that the primary function of the Special Presidential Investigation Panel on Recovery of Public Property is to investigate and report its findings,

⁷⁷ *Tumsah v. FRN* (2018)17 (PT.1648) 238.

⁷⁸ News Agency of Nigeria, 'Obono-Obla Led Presidential Panel Recovers N6.5 Billion Loot', <<https://www.today.ng/news/nigeria/okoi-obono-obla-led-presidential-panel-recovers-5-billion-loot-161805>>, accessed March, 13th 2021.

⁷⁹ Uche Diala, 'Special Presidential Panel on Recovery of Public Property (SPIP): Urgent Matters Arising', <<https://scorenigeria.com.ng/special-presidential-panel-on-recovery-of-public-property-spip-urgent-matters-arising/>>, accessed March, 13th 2021.

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

reasons for its findings and conclusion to the President who will then decide the next line of action to take.⁸²

The effect of the above case and other controversial issues in which the panel found itself, led to its dissolution by President Muhammad Buhari and new panel is yet to be constituted by the President.⁸³

4.2.5. Public Complaints Commission (PCC)

The Public Complaints Commission (PCC) was established by the Public Complaints Commission Act.⁸⁴ The Commission aims to protect citizens from the arbitrary and oppressive exercise of the executive power of government.⁸⁵ The Commission consists of Chief Commissioner and other Commissioners who shall be appointed by the National Assembly and shall be persons of proven integrity and shall also possess such other qualifications as the National Assembly may determine. They shall hold office for a period of three years in the first instance and are be eligible for re-appointment for a second term of additional three years and shall vacate their office at the expiration of a period of six years.⁸⁶ National Assembly has the exclusive power to nominate, appoint and confirm the appointment of Chief Commissioner and other Commissioners of the Commission without input from any other arm of government. Moreover, the commissioners could be removed by the National Assembly, hence, the commissioners are responsible and answerable only to the National Assembly.⁸⁷ As a result of that it is argued that the nature of the appointment violates the principle of separation of power due to lack of checks and balances in the appointments.

The major duty of the Commission is to provide independent investigation on behalf of Nigerian citizens who feel they have suffered injustice through the actions or inactions of three tiers of government, their ministries, departments and agencies, statutory corporations or public institutions set up by any Government in Nigeria, any company

⁸² *Ibid.*

⁸³ Samuel Lamai, 'President Buhari Dissolves Special Presidential Investigation Panel for Recovery of Public Property', <<https://fmic.gov.ng/president-buhari-dissolves-special-presidential-investigation-panel-for-recovery-of-public-property/>> [accessed March, 13th 2021](#).

⁸⁴ PCC Act, s 1.

⁸⁵ Ebiziem Jude Ebiziem and Amadi Chidinma Juliet 'Appraisal of Ombudsman in Nigeria: Operations, Benefits and Challenges', [2015], 1, 2, *International Journal of Advanced Academic Research - Social Sciences and Education*, 59.

⁸⁶ PCC Act, s 2 (1)(2).

⁸⁷ *Ibid*, s 5 (1).

incorporated under or pursuant to the Companies and Allied Matters Act whether owned by any Government aforesaid or by private individuals in Nigeria or otherwise howsoever or officer or official of any of the aforementioned bodies.⁸⁸

However, the Commission is restricted from investigating matters pending before the National Assembly, the National Council of State or National Council of Ministers, matters pending before any court of law in Nigeria, matters relating to anything done or purported to be done in respect of any member of the armed forces in Nigeria or the Nigeria Police under the Armed Forces Act and the Police Act, as the case may be etc.⁸⁹

For the purpose of its duties, the Commission is empowered to devise the proper manner by which complaints are to be lodged with it. Currently, the only way complaints are lodged with the Commission is by way of writing petition to the Commission or the Chief Commissioner and attach all relevant documents. After the Commission concluded investigation it could only give advice to the relevant authority, it has no coercive power whatsoever.⁹⁰ Apart from minimal degree of awareness of the existence of Commission among members of the public, the major problem of the Commission is lacks adequate government support and funding.⁹¹ It is difficult for one to effectively investigate institutional, political and bureaucratic corruption without adequate funding and legal support.⁹²

4.2.6. Nigeria Police Force

The Nigeria Police Force was established by section 214 of the Constitution and section 3 of the Nigeria Police Act 2020.⁹³ The Constitution provides that:

There shall be a Police Force for Nigeria, which shall be known as the Nigeria Police Force, and subject to the provision of this

⁸⁸ *Ibid*, s 5 (2).

⁸⁹ In Complaint Number PCC/KD/C.9704/Vol. I (2004) An Ex-Inspector lodged a complaint alleging wrongful dismissal from service after having served 31 years of meritorious service with the Nigeria Police Force. He was enlisted in 1963 as Constable and rose to the rank of Police Inspector. He alleged that he was wrongfully dismissed in 1994. According to him, the problem started in 1993 when he obtained leave from his Divisional Police Office to visit his mother. At the expiration of the granted “pass days”, he received another message that his two sons had died in Yola as a result of motor accident on their way to school. He proceeded to Yola in a confused state without requesting an extension of the expired “pass days.” On return from Yola, he was sent to orderly Room Trial, which found him guilty of abscondment which led to his dismissal. Investigation conducted by the Commission showed that the complainant’s dismissal was based on the provision of the Police Act, which it was restricted to entertained, the complaint was dismissed.

⁹⁰ PCC Act, s 7 (4).

⁹¹ Benjamin O. Igwenyi and Others, ‘The Ombudsman in Nigeria: A Jurisprudential Overview’, [2020], 20, 3, 10, *Global Journal of Human-Social Science Interdisciplinary*, 37.

⁹² *Ibid*.

⁹³ The new Nigeria Police Act repeals the Police Act Cap P19 LFN 2004.

section no other Police Force shall be established for the Federation or any part thereof.⁹⁴

The Nigeria Police Force is the primary and foremost law enforcement agency in Nigeria. The Force deploys its staff across the 36 states of the federation and the Federal Capital Territory (FCT).⁹⁵ The control and command of the Nigeria Police Force is under the Inspector General of Police. For administrative convenience and easing duties, the Force is divided into eight (8) administrative departments, viz. Finance and Administration; Operations; Logistics; Force Criminal Investigation Department; Training; Research and Planning; Force Intelligence Bureau and Information and Communication Technology, each headed by a Deputy Inspector General of Police.⁹⁶ The Force is further divided into 17 operational Zonal Commands, each zone is headed by Assistant Inspector General of Police. There are equally 37 State Commands including the FCT which are headed by a Commissioner of Police, there are Area Commands headed by an Assistant Commissioner of Police and the Division by officers in the Superintendent cadre.⁹⁷

The major function of the police as provided under the Act is to prevent and detect crimes⁹⁸ which apart from heinous crimes; corruption and other corruption related offences are included.⁹⁹ Prior to the establishment of EFCC and ICPC, police used to be the major institution which is saddled with the responsibility of investigating and prosecuting corrupt practices.¹⁰⁰ All police formations in the country have Anti-Fraud Units where corruption and corruption related offences are being investigated.¹⁰¹ However, police are equally accused of being corrupt, hence, the need to devise other means of fighting corruption different from the police arose.¹⁰²

⁹⁴ CFRN, s 214.

⁹⁵ Nigeria Police Force, *History of Nigeria Police Force*, <https://www.npf.gov.ng/aboutus/History_Nigeria_Police.php> accessed on the 4th April, 2021.

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

⁹⁸ Nigeria Police Act 2020 (NP Act), s 4.

⁹⁹ See the case of *Onah v. Okenwa* (2010) 7 NWLR (Pt. 1194) 512.

¹⁰⁰ David Igboodo and Shehu B. Dauda, 'Practical Ideological Peculiarities of Anti-Corruption Investigation in Nigeria', in Bolaji Owasanoye, Sola Akinrinade and Elijah O. Okebukola, (eds) *ICPC and the War against Corruption in Nigeria: Reflection for a New Vision*, (Anti-Corruption Academy of Nigeria, 2020), p.265; Emilia Onyema and Others, *The Economic and Financial Crimes Commission and the Politics of Effective Implementation of Nigeria's Anti-corruption Policy*, [2018], 007, *Working Paper: Anti-Corruption Evidence*, 12, available at: <<https://www.acauthorities.org/country/ng>> downloaded on the 16th August, 2019.

¹⁰¹ P. O. Itua and Others, 'The Nigeria Police and the Fight Against Corruption: An Assessment of Government Policies', 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 Auditorium and Faculty of Law University of Ilorin from 22nd to 26th April, 2013), 66.

¹⁰² *Ibid.*

Nigeria has been suffering from corruption at all levels of its police. While senior police officials most times are accused of embezzling funds meant to run operations of their commands that could have gone toward improving the capacity of the police to conduct patrols, respond to emergency calls, or investigate crimes.¹⁰³ The lower levels, rank-and-file police officers regularly extort money from the public, and crime victims must pay bribes before the police will handle their cases.¹⁰⁴ To take just one example, the former Inspector General of Police, Tafa Balogun, in the year 2005, was convicted for fraud after plea bargain agreement was reached and he pleaded guilty to the charges filed against him.¹⁰⁵ Recently his name appeared on an official report by International Centre for Investigating Reporting (ICIR) that Balogun is among the Nigerian government officials that own choice property in Dubai (UAE).¹⁰⁶ Moreover, a report by Human Rights Watch¹⁰⁷ found that a police extortion is so institutionalized to the extent that Nigerians are more likely to encounter police demanding bribes than enforcing the law.¹⁰⁸ Many Nigerians viewed police as more of predators than protectors.¹⁰⁹ You hardly get bail of your relations without paying for the bail, although there are posters and signs indicating that bail is free.¹¹⁰ Some senior police officers also operate a perverse system of returns in which rank-and-file officers must send up their chain of command a share of the money they extort from the public.¹¹¹ About 69% of Nigerians think that most or all police officers are corrupt.¹¹² In March 2018, Nigeria's Accountant General revealed that he had discovered over 80,000 ghost (or fake) workers in the Nigeria Police Force payroll, which is over 20 percent of the total workforce of the force.¹¹³ As stated earlier it was as a result

¹⁰³ Marvellous Iheukwumere 'Fighting Police Corruption in Nigeria: An Agenda for Comprehensive Reform', <<https://www.google.com/amp/s/globalanticorruptionblog.com/2019/09/06/fighting-police-corruption-in-nigeria-an-agenda-for-comprehensive-reform/amp/>>, accessed on 5th March, 2021.

¹⁰⁴ *Ibid.*

¹⁰⁵ ProShare, 'Tafa Balogun Jailed' <<https://www.proshareng.com/news/General/Tafa-Balogun-Jailed/632>>, accessed on 5th March, 2021.

¹⁰⁶ International Centre for Investigating Reporting (ICIR), 'Tafa Balogun, Olisa Metuh and other prominent Nigerians who own properties in Dubai', <<https://www.icirnigeria.org/tafa-balogun-olisa-metuh-and-other-prominent-nigerians-who-own-properties-in-dubai/>>, accessed on 5th March, 2021.

¹⁰⁷ Human Right Watch, 'Corruption and Human Rights Abuses by the Nigeria Police Force', <<https://www.hrw.org/report/2010/08/17/everyones-game/corruption-and-human-rights-abuses-nigeria-police-force>>, accessed on 5th March, 2021.

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*

¹¹⁰ Madubuike-Ekwe, Dr. Ndubuisi J. and Obayemi, Dr. Olumide K. 'Assessment of the Role of the Nigerian Police Force in the Promotion and Protection of Human Rights in Nigeria', [2019], 23, 1, 3, *Annual Survey of International & Comparative Law*, 18, available at: <<https://digitalcommons.law.ggu.edu/annlsurvey/vol23/iss1/3>>, accessed March, 23, 2021.

¹¹¹ Matthew T. Page, 'A New Taxonomy for Corruption in Nigeria', <<https://carnegieendowment.org/2018/07/17/new-taxonomy-for-corruption-in-nigeria-pub-76811> or <http://justiac.org/a-new-taxonomy-for-corruption-in-nigeria/>> accessed on the 3rd February, 2020.

¹¹² Marvellous Iheukwumere, 'Fighting Police Corruption in Nigeria: An Agenda for Comprehensive Reform' <<https://www.google.com/amp/s/globalanticorruptionblog.com/2019/09/06/fighting-police-corruption-in-nigeria-an-agenda-for-comprehensive-reform/amp/>>, accessed on the 23rd March, 2021.

¹¹³ *Ibid.*

of failure to combat corruption by the police, institutions like EFCC and ICPC were created.

Empirical research conducted in 2019 by the United Nations Office on Drugs and Crime (UNODC) revealed that of all adult Nigerians who had direct contact with a police officer in twelve months prior to the research, almost half (46.4 percent) paid them a bribe.¹¹⁴ This rate varied widely between states, however, suggesting that some state police commands are more corrupt than others.¹¹⁵

4.2.7. Bureau of Public Procurement

The need to create an energetic institutional framework for regulating public procurement activities to ensure transparency, accountability and to checkmate the high incidence of corruption in Nigeria necessitated substantial reforms in the public procurement sector.¹¹⁶ The creation of Bureau as institution to checkmate procurement processes in Nigeria was largely as a result of the insistence of the pressure exerted on Nigeria by World Bank and International Monetary Fund (IMF) in order to get rid of corruption in procurement sector. Consequently, Nigeria enacted into law Public Procurement Act in 2007 (PPA) which established the Bureau of Public Procurement (BPP). The Bureau is conferred with juristic personality, hence, it may sue and be sued in its corporate name and may acquire, hold or dispose of any property, movable or immovable for the purpose of carrying out any of its functions.¹¹⁷ The Bureau is empowered by its establishment the Act to oversee the public procurement procedure and practice in the country with the aim of ensuring full adherence and compliance to the “Due Process Policy” by all public procurement stakeholders and actors with a view to curbing the phenomenon of corruption and related abuses in the procurement process.¹¹⁸ The objectives of the Bureau as provided by the Act include harmonization of existing government policies and practices on public procurement and ensuring probity, accountability and transparency in the procurement process, establishment of pricing

¹¹⁴ United Nations Office on Drugs and Crime (UNODC) ‘Corruption in Nigeria: Patterns and Trends Second Survey on Corruption as Experienced by the Population’ <https://www.unodc.org/documents/data-and-analysis/Crimestatistics/Nigeria/Corruption_Nigeria_2019_07_31_web.pdf> p.35.

¹¹⁵ *Ibid.*

¹¹⁶ Hassan A. Saliu and Solomon I. Ifejika ‘An Assessment of the Nigerian Bureau of Public Procurement, 2007-2015’ [2015], 6, 2, *Political Science Review*, 39.

¹¹⁷ PPA 2007, s 3 (1)(2).

¹¹⁸ Hassan A. Saliu and Solomon I. Ifejika, (n. 109).

standards and benchmarks, ensuring the application of fair, competitive, transparent, monitory standards and practices for the procurement and disposal of public assets and services etc.¹¹⁹ The major power conferred on the Bureau is the exclusive power of issuance of Certificate of ‘No Objection’ to Contract Award in all federal contracts that are within the scope of the application Public Procurement Act.¹²⁰

The Bureau has recorded remarkable successes since its inauguration.¹²¹ Undeniably, before its inauguration, Nigeria had lost several hundreds of billions of Naira due to flagrant abuse of procedures for the award of public contracts. Contracts were given based on who you knew coupled with inflated contractual costs and lack of transparency. Apart from a decrease in the costs of projects, more people are winning contracts without necessarily having to know anybody in government.¹²² However, accusations of wrongdoings are reported on daily basis against the Bureau which include abuse of its power to issue “No Objection Letter” which encourages corruption in process of obtaining the letter, to the extent that the Bureau is accused of refusal to issue no objection letters to MDAs that refuse to “play ball” even if all the procurement processes have been fully complied with.¹²³ The Bureau is also accused of the habit of encouraging capital flight owing to its preference for multinational companies against local contractors.¹²⁴ The most worrisome thing is that Nigeria pays more for construction contracts than any other country in the world. Reliable estimates show that Nigeria pays at least three times what it costs for equivalent projects in most African countries.¹²⁵ It also takes at least four times duration of time to complete projects than in most African countries. Hence, it is not surprising, Nigeria has the highest proportion of abandoned projects in the world.¹²⁶

The Bureau has a governing council called National Council on Public Procurement (NCP) which is yet to be inaugurated by the government.¹²⁷ The NCP’s role in

¹¹⁹ PPA 2007, s 4.

¹²⁰ *Ibid*, s 16 (4); Any contract which is within the competence of the Act purported to be awarded without a “Certificate of ‘No Objection’ to Contract Award” duly issued by the Bureau shall be null and void; Section 60 of the Act defines “Certificate of No Objection” to mean a document evidencing and authenticating that due process and the letters of this Act have been followed in the conduct of a procurement proceeding and allowing for the procuring entity to enter into contract or effect payments to contractors or suppliers from the Treasury.

¹²¹ United Nations Office on Drug and Crime (UNODC), ‘Public Procurement Corruption in Nigeria’, <<http://gopr.unodc.org/gopr/en/nigeria-profile.html>>, accessed on the 21st August, 2020.

¹²² Hassan A. Saliu and Solomon I. Ifejika (n. 109), 44.

¹²³ *Ibid*, 53.

¹²⁴ *Ibid*, 54.

¹²⁵ Hakeem Baba-Ahmed, ‘Cost of Contracts in Nigeria’, <<http://baba-ahmed.blogspot.com/2011/11/cost-of-contracts-in-nigeria.html>>, accessed on the November, 20th 2021.

¹²⁶ *Ibid*.

¹²⁷ James Kwen, ‘Reps ask FG to Set up National Council on Public Procurement’, <<https://businessday.ng/news/article/reps-ask-fg-to-set-up-national-council-on-public-procurement/amp/>>, accessed on the November, 20th 2021.

procurement processes in Nigeria is highly needed in making the current public procurement system meaningful. This is because while the PP Act empowers the Bureau to monitor and regulate the public procurement process, the NCPP on the other hand is empowered by the Act to supervise the activities of the Bureau in order to ensure complete compliance with the guidelines provided by the Act and block room for corruption and other abuses in the procurement process.¹²⁸

4.2.8. Fiscal Responsibility Commission

The Fiscal Responsibility Commission (FRC) was established by Fiscal Responsibility Act (FRA).¹²⁹ The Act provides that the Commission shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.¹³⁰ The Commission has the power to compel any person or government institution to disclose information relating to public revenues and expenditure and the Commission can cause an investigation into whether any person has violated any provisions of FRA.¹³¹ The Act provides that:

If the Commission is satisfied that such a person has committed any punishable offence under this Act violated any provisions of this Act, the Commission shall forward a report of the investigation to the Attorney- General of the Federation for the possible prosecution.¹³²

The Commission is central to the country's quest for the improvements in fiscal governance.¹³³ It has the responsibility of coordinating national economic policy between various tiers of government, and enable monitoring of agencies that are 'off-budget' but whose activities have significant impact on fiscal policies.¹³⁴ Moreover, the Commission is responsible for monitoring budget implementation in the various MDAs at both the Federal and State levels to avoid mismanagement of public funds. The commission is also

¹²⁸ Hassan A. Saliu and Solomon I. Ifejika, (n. 109), 53.

¹²⁹ FRA 2007, s 1 (1).

¹³⁰ *Ibid*, s 1 (2).

¹³¹ *Ibid*, s 2 (1).

¹³² *Ibid*, s (2)(2).

¹³³ Raheem Akingbolu, 'Domesticating Fiscal Responsibility Act in States'

<<https://www.com/amp/s/www.thisdaylive.com/index.php/2019/10/10/domesticating-fiscal-responsibility-act-in-states/amp/>>, August, 1st 2020.

¹³⁴ *Ibid*.

responsible for ensuring that annual budgets are derived from the Medium-Term Expenditure Framework (MTEF) prepared by the Ministry of Finance for a period of three financial years, and approved by the National Assembly.¹³⁵

The Act provides that the composition of the Commission shall consist of the chairman, who shall be the Chief Executive and accounting officer of the Commission and one member representing the organised private sector, Civil Society engaged in causes relating to probity, transparency and good governance, Organised labour, a representative of the Federal Ministry of Finance of a level not below the rank of a Director. Other members are one member to represent each of the six geographical zones of the country, namely: North-Central, North-East, North- West, South- East, South-West, and South-South.¹³⁶ The Chairman and other members of the Commission shall be appointed by the President subject to confirmation by the Senate.¹³⁷ The Chairman and members of the Commission shall hold office for a single term of 5 years.¹³⁸

The Commission was inaugurated by the former President late Alhaji Umaru Musa Yaradua and in his speech delivered during the inauguration, President Yar'adua stressed the importance of more prudent utilization of scarce domestic resources. As a specialized fiscal institution, therefore, he insisted must take charge and enforce prudential rules in Nigeria's fiscal management.¹³⁹ However, the Commission appears to be a toothless bulldog, which cannot enforce compliance with its Act through any kind of sanction because by the powers conferred on the Commission, the Commission can only report its findings of violation of its Act to the Attorney General of the Federation who may file charge against the defaulting entity or person and some violations of the its statute attract no sanction.¹⁴⁰ Recently the Executive Chairman of the Commission, Victor C. Muruako disclosed that Commission is proposing amendment of its establishment Act, in order to secure power of prosecution, so that the Commission could imprison heads of Ministries, Departments and Agencies (MDAs), robbing the Federal Government (FG) of statutory funds. He stated that MDAs were presently owing the federal government over N1.3

¹³⁵ *Ibid.*

¹³⁶ FRA 2007, s 5 (1)(a)-(d).

¹³⁷ *Ibid.*, s 5 (3).

¹³⁸ *Ibid.*, s 6.

¹³⁹ John Daniel Ndan, 'Fiscal Responsibility and Repositioning of Nigerian Budgetary Process and Outcomes', [2013], 2, 2, *ABU Journal of Public Administration*, 79.

¹⁴⁰ *Ibid.*

trillion unremitted revenues.¹⁴¹ The Executive Chairman of the Commission further stated that several offences were actually provided for in the Fiscal Responsibility Act, but without a single accompanying sanction, stressing that heads of the MDAs also realised this; and so, they cheat government of its statutory funds with impunity.¹⁴² Inter-alia, this may be the reason why the Stephen Oronsaye's Committee's report on the rationalization of the Federal Government agencies, recommended for the scrapping of the Commission or its merger with any other relevant agency.¹⁴³

4.2.9. Nigerian Financial Intelligence Unit

Nigerian Financial Intelligence Unit (NFIU) was established by the Nigerian Financial Intelligence Unit (Establishment) Act 2018.¹⁴⁴ However, it is important to note that the NFIU was initially established in 2004 and became operational in 2005 as a Unit of the EFCC.¹⁴⁵ But in 2018, the NFUI Act transformed the Unit into an autonomous and independent agency domiciled with the Central Bank of Nigeria.¹⁴⁶

The NFIU is expected to receive and analyse financial information, Currency Transaction Reports (CTRs) and Suspicious Transaction Reports (STRs) from Financial Institutions and Designated Non- Financial Institutions with a view to disseminating intelligence information arising thereof to the relevant authorities.¹⁴⁷ In other words, the NFIU is the central national agency responsible for the receipt of disclosures from reporting organisations, the analysis of these disclosures and the production of intelligence for dissemination to competent authorities for further necessary action.¹⁴⁸ The NFIU is the secretariat and central coordinating body for the Nigeria's Anti-Money Laundering, Counter-Terrorist Financing and Counter-Proliferation Financing (AML/CFT/CPF) in accordance with Intergovernmental Action Group Against Money Laundering in West Africa (GIABA) framework.¹⁴⁹ The Unit is also the Secretariat of the National Sanctions

¹⁴¹ Fiscal Responsibility Commission, 'FRC Seeks Imprisonment To Heads Of MDAs Robbing FG Of Funds', <<https://fiscalresponsibility.ng/?p=3252>>, accessed on the March, 21, 2021.

¹⁴² *Ibid.*

¹⁴³ Ugo Jim-Nwoko, 'The role of the fiscal responsibility commission', <<https://businessday.ng/analysis/article/the-role-of-the-fiscal-responsibility-commission/>>, accessed on the March, 21, 2021.

¹⁴⁴ NFIU Act 2018, s 2 (1).

¹⁴⁵ EFCC Act, s 1 (2)(c).

¹⁴⁶ NFIU Act 2018, s 2 (2) (3).

¹⁴⁷ *Ibid.* s 3; Richard Amaechi Onuigbo and Eme, Okechukwu Innocent, 'Analyses of Legal Frameworks for Fighting Corruption in Nigeria: Problems and Challenges,' [2015], 5, 3, *Kuwait Chapter of Arabian Journal of Business and Management Review*, 8.

¹⁴⁸ NFIU Act 2018, s 3.

¹⁴⁹ *Ibid.* s 2 (4).

Committee (NSC) chaired by the Honourable Attorney-General and Minister of Justice of the Federation which is responsible for the implementation of United Nations Security Council Resolutions to combat global crime.¹⁵⁰

It is worthy of mention that the establishment of the NFIU is based on global standards that promote effective implementation of legal, regulatory and operational measures to combat proliferation of money laundering and terrorist as contained in the Financial Action Task Force (FATF) 40 Recommendations.¹⁵¹ The NFIU has also been a member since 2007 of the Egmont Group, an international network of 165 Financial Intelligence Units of many countries which provides a platform for the secure exchange of expertise and financial intelligence to combat money laundering and terrorist financing.¹⁵² Nigeria is regarded as a critical stakeholder in international anti-corruption/AML campaign by not only acceding to international AML instruments, international treaties, regulations and best practices were domesticated across all sectors but because Nigeria is regarded globally as a country which involved in the real acts of money laundering.¹⁵³

The NFIU is headed by a director who is to be appointed by the President, subject to confirmation by the Senate. The Director shall be the chief executive and accounting officer of the Unit having at least a recognised degree in the areas of law, humanities, management or any of the social sciences with 15 years cognate experience. He shall be responsible for the day-to-day administration and management of the Unit and the keeping of books and records of the Unit; and he shall hold office for a term of five years in the first instance and may be eligible for re-appointment for another term of five years and no more.¹⁵⁴

Recently, in an operation led by the NFIU armed with information at its disposal, **about 400 people were arrested by security agents in a nationwide crackdown on suspected financiers and collaborators of Boko Haram and other criminal groups in Nigeria.**¹⁵⁵ The suspects comprising bureau de change operators, gold

¹⁵⁰ *Ibid*, s 2 (5).

¹⁵¹ For details about Financial Action Task Force (FATF) 40 Recommendations surf the following link: <www.fatf-gafi.org/40/recommendations/> accessed 4th May, 2021.

¹⁵² NFIU, 'About Us', <<https://www.nfiu.gov.ng/Home/about/us>> accessed 4th May, 2021.

¹⁵³ Rahmon Olalekan Yussuf, 'Anti-Money Laundering Framework in Nigeria: An Umbrella with Wide Leakage', [2017], 66, *Journal of Law, Policy and Globalization*, 173.

¹⁵⁴ NFIU Act 2018, s 5 (1)(2)(3).

¹⁵⁵ Abdulaziz Abdulaziz, 'Terrorism financing: Dozens arrested in nationwide crackdown', <<https://dailytrust.com/terrorism-financing-dozens-arrested-in-nationwide-crackdown>> accessed on 4th May, 2021.

miners and sellers, and other businessmen are being investigated.¹⁵⁶ The operation was said to have received presidential approval, so that it could to be conducted out of the established bureaucracy. Daily Trust Newspaper reported that:

Because this is economic warfare against the insurgents and other militant groups, the president, when approving the operation directed that the NFIU take the lead as the country's financial intelligence powerhouse.¹⁵⁷

4.2.10. Nigeria Extractive Industries Transparency Initiative

The Nigeria Extractive Industries Transparency Initiative Act establishes a body corporate called the Nigeria Extractive Industries Transparency Initiative (NEITI) which shall be an autonomous self-accounting body, reporting directly to the President and the National Assembly and may sue and be sued in its corporate name and acquire, hold and dispose of movable and immovable properties.¹⁵⁸

The primary objectives of the NEITI include to ensure due process and transparency in the payments made by all extractive industry companies¹⁵⁹ to the Federal Government and the statutory recipients, to monitor and ensure accountability in the revenue receipts of the Federal Government from extractive industry companies and 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.¹⁶⁰

In order to achieve the aforesaid objectives, the Act confers on the NEITI a number of powers and functions, which include, power to request and obtain from any extractive industry company in Nigeria an accurate record of the cost of production and volume of sale of oil, gas or other minerals extracted in Nigeria by the company or request the company or any relevant organ of the Federal State or Local Government, an accurate account of money paid by and received from the company at any period, as revenue accruing to the Federal Government from such company for a particular period, ensure

¹⁵⁶ *Ibid.*

¹⁵⁷ *Ibid.*

¹⁵⁸ NEITI Act, s 1 (1)(2).

¹⁵⁹ Section 21 of NEITI Act defines Extractive Industry Company to mean any company in Nigeria that is engaged in the business of prospecting, mining, extracting, processing and distributing minerals and gas including oil, gold, coal, tin, bitumen, diamonds, precious stones and such like, includes any agency or body responsible for the payment of extractive industry proceeds to the Federal Government or its Statutory Recipient.

¹⁶⁰ NEITI Act, s 2.

that all fiscal allocations and statutory disbursements due from the Federal Government to statutory recipients are duly made and to monitor and ensure that all payments due to the Federal Government from all extractive industry companies, including taxes, royalties, dividends, bonuses, penalties, levels and such like are duly made.¹⁶¹

The governing body of the NEITI shall be called the National Stakeholders Working Group (NSWG) which shall be responsible for the formulation of policies, programmes and strategies for the effective implementation of the objectives and the discharge of the functions of the NEITI.¹⁶² The NSWG shall be constituted by the President and shall consist of a chairman and not more than 14 other members one of whom shall be an Executive Secretary and in making appointment into the NSWG, the President shall include: representative of extractive industry companies, representative of Civil Society, representative of Labour Unions in the extractive Industries, experts in the extractive industry, and one member from each of the six geopolitical zones. The Chairman and other members of NSWG other than the Executive Secretary shall serve on part-time basis. The appointment of Executive Secretary shall be for 5 years and no more.¹⁶³ The Executive Secretary shall be responsible for the day-to-day administration of the NEITI; and serves as Secretary to NSWG,¹⁶⁴ while any person appointed as a member of the NSWG shall hold office for 4 years only and no more.¹⁶⁵

Though, since its establishment the NEITI has been recording some achievements which consist of exposing several under-payments by extractive industry companies to the Federal government which runs into billions of US Dollars. However, despite sanctions provided by the NEITI Act in respect of giving false information about the quantum of production by the extractive company,¹⁶⁶ so far, no oil and gas multinational company has been reported to have been sanctioned or penalized despite gross violations or breaches of the NEITI Act, 2007.¹⁶⁷ Recently, the Executive Secretary of NEITI, Ogbonna Orji, during a courtesy visit to Director General of Federal Radio Corporation (FRCN), stated that as head of government institution saddled with the responsibility to keep and compile

¹⁶¹ *Ibid*, s 3 (d)(e).

¹⁶² *Ibid*, s 5.

¹⁶³ *Ibid*, s 6 (1)(2)(3).

¹⁶⁴ *Ibid*, s 12.

¹⁶⁵ *Ibid*, s 7.

¹⁶⁶ *Ibid*, s 16.

¹⁶⁷ Ochalibe Alexandra Ibu and Others, 'Nigeria Extractive Industries Transparency Initiative (NEITI) and Sustainability of Nigeria's Natural Capital: Status, Prospects and Challenges', <<https://www.researchgate.net/publication/334599912>>, p.20.

data of quantity of crude oil being produced by Nigeria, is not aware of the quantity of the crude oil being produced by the country.¹⁶⁸

4.2.11. National Assembly

The National Assembly has an important role to play in the anti-corruption crusade. Apart from enjoying unfettered power to make laws for fighting corruption; which indeed many laws were enacted by the National Assembly in that respect; the National Assembly also has power of control of public expenditure, approval of important appointments by the executive, investigative power and power for removal of the President.¹⁶⁹ The legislative oversight function guaranteed by the Constitution for investigating and exposing corruption conferred upon the National Assembly and State Houses of Assembly is another role conferred on the legislature to expose corruption.¹⁷⁰ These powers should be used to guard against corruption and be deployed to supervise government business. Hence, the National Assembly clearly possesses the power to expose corruption.¹⁷¹

However, it is important to note that National Assembly which is a critical stakeholder in fighting corruption has for several times found itself in allegations of numerous corruption scandals,¹⁷² which include budget padding, non- execution of constituency projects, soliciting kickbacks during oversight visits etc.¹⁷³ Some legislators instead of discharging their constitutional role as anti-corruption watchdogs, go so low for monetizing their constitutional roles, enriching themselves and building up their campaign war chests.¹⁷⁴ Legislative corruption extends beyond demands for kickbacks and the odd *quid pro quo* from ministries and agencies; the federal legislators' excessive salaries, allowances, and other benefits amounting to over 100 billion Naira annually for

¹⁶⁸ Unini Chioma, 'We Don't Know Quantity of Crude Oil Nigeria Produces – NEITI Boss', <<https://www.thenigerialawyer.com/we-don't-know-quantity-of-crude-oil-nigeria-produces-neiti-boss/>> accessed 16 April, 2021.

¹⁶⁹ G. O. Akinrinmade and Others, 'An Assessment of the Role of National Assembly in the Fight against Corruption, in Nigeria', 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 Auditorium of Faculty of Law University of Ilorin from 22nd to 26th April, 2013), 453.

¹⁷⁰ CFRN, s 88 (1) (2) (b) and 128 (1) (2) (b).

¹⁷¹ *Ibid.*

¹⁷² Agugum O. Theophilus and Ehiogu Chizoba Perpeta, 'Budget Padding: The Nigerian Perspective', [2016], 2, 12, *International Journal for Advanced Academic Research*, 48.

¹⁷³ *Ibid.*

¹⁷⁴ Kemi Busari, 'National Assembly Members 'Harassing' Us for Bribes to Pass Budgets—Heads, Federal Agencies,' <<https://www.premiumtimesng.com/news/headlines/262815-nassembly-members-harassing-us-for-bribes-to-pass-budgets-heads-federal-agencies.html>>, accessed on the 12th April, 2021.

less than 500 Nigerian federal lawmakers are also considered by many Nigerians as corruption.¹⁷⁵

Other examples include the accusation of bribery between the former House of Representatives Chairman of Committee on Capital Market, Herman Hembe, and the former Director-General of the Securities and Exchange Commission (SEC), Ms. Arunma Oteh. There was also that former House of Representative Chairman of ad-hoc Committee on Subsidy Regime Probe, Mr. Farouk Lawan, accused of receiving bribe from Otedola to remove his company's name from the indicted list in the subsidy probe result; and after investigation, Lawan was charged before a court, tried, convicted and sentenced for seven years imprisonment.¹⁷⁶ Also, the electricity bribery scam which involved the former House of Representatives Chairman of Committee on Power, Mr. Ndudi Elumelu, is another scandal.¹⁷⁷

Former President Obasanjo had once stated that majority of members of the National Assembly are rogues and armed robbers.¹⁷⁸ Obasanjo lampooned the legislature at Annual National Conference of Academy for Entrepreneurial Studies (AES), Lagos, when he stated that: "integrity is necessary for systems and institutions to be strong. Today, rogues, armed robbers are in the state Houses of Assembly and the National Assembly, what sort of laws will they make?"¹⁷⁹

4.2.12. Judiciary

The Judiciary comprises all the courts in Nigeria from the Supreme Court to the lower courts, which include: The Magistrates, Area/Shari'a and Customary courts. Constitution vested all federal and state judicial powers on the said courts.¹⁸⁰ Judiciary is the guardian of the Constitution, and the only arm of government that pronounces the actions or inactions of legislature and the executive constitutional or unconstitutional, legal or

¹⁷⁵ Matthew T. Page, (n. 104); Yomi Kazeem, 'A Dogged Transparency Campaign Reveals Why It Pays to Be a Lawmaker in Nigeria', <<https://qz.com/983331/a-dogged-transparency-campaign-reveals-why-it-pays-to-be-a-lawmaker-in-nigeria/>>, accessed on the 12th April, 2021.

¹⁷⁶ Premium Times, 'How Faruq Lawan, 'Cap Banker' was Sent to Jail for Taking \$ 500,000 Bribe', <<https://www.premiumtimes.com/news/headlines/469425-howfaruq-lawan-cap-banker-was-sent-to-jail-for-taking-500000-bribe.html>> accessed 1st July, 2021.

¹⁷⁷ Ogbewere Bankole Ijewereme, 'Anatomy of Corruption in the Nigerian Public Sector: Theoretical Perspectives and Some Empirical Explanations', <<http://www.uk.sagepub.com/aboutus/openaccess.htm>> accessed 2nd August, 2019.

¹⁷⁸ Channels Television, 'National Assembly is Filled with Rogues and Armed Robbers – Obasanjo', <<https://www.channelstv.com/2012/05/23/national-assembly-is-filled-with-rogues-and-armed-robbers-obasanjo/amp>>, accessed on the 1st June, 2021.

¹⁷⁹ *Ibid.*

¹⁸⁰ CFRN, s 6 (1) (2).

illegal.¹⁸¹ Hence, it is stronger than the two other arms of government and by implication it supervises the other arms and must of necessity be superior to the supervised.¹⁸² Independent and impartial judiciary is one of the basic requirements of true democracy, also, appointment of judges, their promotion, transfer, remuneration and assignment of cases should be done independently and impartially in a most depoliticised manner.¹⁸³ Judiciary has the exclusive duty to hear and determine cases filed against any person accused of corruption and pronounce him guilty or otherwise.¹⁸⁴

Nigeria's judiciary has been playing its role in the fight against corruption. It has convicted many corrupt officials including ex-governors and ministers. Different courts also issue practice directions to accelerate hearing corruption cases and appeals pending before courts.¹⁸⁵ The Supreme Court of Nigeria has delivered certain judgements demonstrating a strong will to fight corruption. For example, in the *A.G. Ondo State V. A.G. Federation*¹⁸⁶ the Supreme Court used judicial activism to save the ICPC Act 2000 and declared it constitutional. Had the Supreme Court relied on the existing judicial precedence the Act should have been declared unconstitutional, null and void.¹⁸⁷

However, Nigeria's judiciary being part and parcel of the Nigerian society is not immune from accusations bordering on corruption. For example, some judges of high courts are accused of being bottleneck in the fight against corruption through unwarranted grant of injunctions restraining Anti- Corruption agencies from investigating allegations of corruption levelled against PEPs.¹⁸⁸ Judicial corruption consists the act of corrupt practices by those involved in the administration of justice i.e., not judges alone. The Police, lawyers, prosecutors and all those involved in cases before they actually get to Courts or while in court are equally stakeholders, including Courts' bailiffs who are

¹⁸¹ F. A. R. Adeleke, Bose Lawal and Oluseyi Olayanju, 'The Role of Judiciary in Combating Corruption: Aiding and Inhibiting Factors in Nigeria', 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 Auditorium of Faculty of Law University of Ilorin from 22nd to 26th April, 2013), p.298.

¹⁸² *Ibid.*

¹⁸³ *Ibid.*, p.302.

¹⁸⁴ *Ibid.*

¹⁸⁵ Action Aid Nigeria, 'Judiciary and Corruption in Nigeria: A Report' <<http://www.actionaid.org/nigeria/publications/judiciary-and-corruption-nigeria>> accessed 4th May, 2021.

¹⁸⁶ (2002) NWLR (pt. 772) 222

¹⁸⁷ Ogbu, Osita Nnamani 'Combating Corruption in Nigeria: A Critical Appraisal of the Laws, Institutions, and the Political Will', [2008], 14, 1, 6, *Annual Survey of International & Comparative Law*, 167, available at: <<http://digitalcommons.law.ggu.edu/annlsurvey/vol14/iss1/6> p.167>.

¹⁸⁸ *Ibid.*, p.144.; In 2001 the Senate set up the Oyofo Committee to investigate alleged cases of impropriety in the award of contracts by the National Assembly. The Committee in its report indicted the then Senate President Dr. Chuba Okadigbo and Senators Rowland Owie, Gbenga Aluko, Abubakar Girei and Haruna Abubakar for impropriety in the award of contracts. The indicted persons obtained a court injunction restraining the Attorney-General of the Federation, the Inspector General of Police, and even the Senate from arresting or initiating criminal proceedings against them.

saddled with the responsibility of serving court processes and enforcing court orders after a case is determined.¹⁸⁹

Corruption spreads beyond the Nigerian top judges, it permeates into magistrates, Sharia/Area and customary court judges, lawyers, and the court's administrative staff, many of whom are overworked, poorly trained, and underpaid.¹⁹⁰ Wealthy accused persons in corruption cases usually use bribes to tamper with evidence and silence potential witnesses, or clandestinely convey cash gifts to judges hearing their cases.¹⁹¹ And a judge who accepted bribes in return uses incomprehensible technicalities to dismiss the case via either excluding important and material piece of evidence, or for allowing a defence lawyer to use bogus tactics to delay case for years on end. Such kinds of situations have been obstructing the work of the Anti- Corruption agencies.¹⁹²

Some judges are accused of expensive and luxurious lifestyle beyond their earnings coupled with complaints from the concerned public over judgment obtained fraudulently and on the basis of amounts of money paid such prompted Department of State Services (DSS) to carry out operations on some judges' houses where cash of various denominations, local and foreign currencies, with real estates, worth several millions of naira and documents affirming unholy acts by these judges were recovered.¹⁹³ A clear example could be seen in James Ibori's case where a judge dismissed 170 charges of corruption brought against him. However, on the same facts the same man pleaded guilty at Southwark Crown Court sitting in London, to 10 count charges of money laundering and conspiracy to defraud.¹⁹⁴ Some judges, during trials and from their judgements exhibit a parochial hostility toward anti- corruption prosecutions which makes prosecutors face an uphill battle in their courtrooms.¹⁹⁵ The President Muhammad Buhari had one time declared that the judiciary was his headache in his quest to combat corruption.¹⁹⁶

¹⁸⁹ Nnenna Joy Eboh, 'Judicial Corruption as a Clog on Economic Development in Nigeria', <<https://www.afribar.org/portHarcourt2017/papers/NNENNAEbohfinalpaper.pdf>>, p.8, accessed 14th April, 2021.

¹⁹⁰ Ahmed Mohammed Bachaka and Muhammad Mansur Aliyu, 'Access to Justice in Area/Sharia Courts: An Islamic Perspective', [2019], 1, 1, *Caliphate Bar Journal (CALIBAJ)*, 191.

¹⁹¹ *Ibid.*

¹⁹² Onozure Dania, 'Why EFCC Loses Good Corruption Cases', <<https://www.vanguardngr.com/2017/11/efcc-lose-good-corruption-cases-alabi/>>, accessed 1st august, 2019

¹⁹³ Reuters, 'Nigeria's security agency says \$800,000 seized in raids on judges', <<https://www.reuters.com/article/us-nigeria-corruption/nigerias-security-agency-says-800000-seized-in-raids-on-judges-idUSKCN1280TL>>, accessed 1st august, 2019.

¹⁹⁴ Nnenna Joy Eboh, (n. 182), p. 4.

¹⁹⁵ Matthew T. Page, (n. 11), p.36.

¹⁹⁶ Oladimeji Ramon, 'Unending trial of suspected looters in the corridors of power', <<https://punchng.com/unending-trial-of-suspected-looters-in-the-corridors-of-power/>> accessed 5th March, 2021.

The Supreme Court of Nigeria is also accused of making interpretations that inhibit the anti-corruption drive. The pronouncement of the Supreme Court in *Yusuf v. Obasanjo*¹⁹⁷ may contribute to the breeding of corruption in Nigeria's electoral process. The Supreme Court also in *Nwankwo v. Nwankwo*¹⁹⁸ held that a private person has no locus standi to prosecute violation of the Code of Conduct of public officers. Also, the cases of *Nganjiwa v. FRN*,¹⁹⁹ *Ude Jones Udeogu v. FRN*,²⁰⁰ *Adesanya v. The President*²⁰¹ and other similar cases pronounced by the court are considered as bottleneck to fight corruption.²⁰² Egbewole is of the opinion that without a functional, independent and impartial judiciary, fight against corruption would never be successful in any country.²⁰³ Integrity and independence of judiciary are key factors impacting the effectiveness of anti-corruption law enforcement, though, in Nigeria the duo remain lacking.²⁰⁴ Nigeria's judiciary was ranked very low in terms of integrity and independence by the World Economic Forum's Global Competitiveness Report and in the World Justice Project's Rule of Law Index.²⁰⁵ Although the Nigerian Constitution provides for an adequate judicial independence, the judiciary remains susceptible to pressure from the executive and legislative branches. Politicians influence the judiciary, particularly at the state and local levels.²⁰⁶ Inadequate staffing, the salaries of court officials are low, and they often lack proper equipment and training, poor funding, inefficiency and corruption prevents the judiciary from functioning effectively. Some judges regularly fail to appear for trials without notice and undue delay in delivery of judgement. There was a widespread public perception that judges were easily bribed and litigants could not rely on the courts to render impartial judgments.²⁰⁷

¹⁹⁷ [2003] 16 N.W.L.R. (Pt.847) 554.

¹⁹⁸ [1995]5 N.W.L.R. (pt.394) 153.

¹⁹⁹ (2018) 4 NWLR (Pt. 1609) 301.

²⁰⁰ Case No. SC622 C /2019.

²⁰¹ [1981] S.C. 112; 2.

²⁰² Ogbu, Osita Nnamani (n. 180).

²⁰³ Wahab Egbewole and Ibrahim Imam 'Nigerian Judiciary and the Challenge of Corruption: Islamic Options as Panacea', [2015], 1, 1, *Journal of Islam in Nigeria*, 84.

²⁰⁴ Matthew T. Page (n. 104), p.36.

²⁰⁵ Rule of Law Index: Nigeria, (Washington DC: World Justice Project, 2019), <<http://data.worldjusticeproject.org/pdf/rule-of-law-index-NGA.pdf>>; Nigeria 2018 Human Rights Report (Washington DC: U.S. Department of State, 2018), <<https://www.state.gov/wp-content/uploads/2019/03/Nigeria-2018.pdf>>, 14.

²⁰⁶ Matthew T. Page, Innovative or Ineffective? Reassessing Anti-Corruption Law Enforcement in Nigeria, Gi-Ace Project: Fighting High-Level Corruption in Africa: Learning from Effective Law Enforcement, *Working Paper 9* Chatham House January 21st, 2021, p.35.

²⁰⁷ Matthew T. Page, (n. 11), p.35

Recommendation for appointment as judicial officers and their discipline is vested in the National Judicial Council (NJC) which is established by the Constitution.²⁰⁸ The Council is one-man council i.e. the Chief Justice of Nigeria (CJN); this is because out of 22 members of the Council, 18 are appointed by him. Hence, he has nobody to check his excess.²⁰⁹ The Council itself was accused of being corrupt by the former President of Court of Appeal, Justice Ayo Salami, when the Council according to Salami PCA put pressure on him to decide Sokoto State gubernatorial election in favour of the ruling party.²¹⁰

4.2.13. Office of the Attorney General of the Federation (OAGF).

The Office of Attorney General of the Federation (OAGF) is constitutionally created.²¹¹ Attorney General of the Federation (AGF) is the chief law officer of the federation. And being the office is fused with the office of Minister of Justice, AGF has some political role in running affairs of government.²¹² The Constitution of the Federal Republic Nigeria 1999 as amended and many other statutes provide enormous powers to the AGF particularly in criminal prosecution and making rules and regulations in order to regulate and to ease administration of criminal justice in Nigeria. By the provision of the Constitution, the AGF has powers to institute, undertake, take over, continue or discontinue any criminal offence created by Act enacted by the National Assembly before any court in Nigeria other than court martial.²¹³

The Supreme Court of Nigeria while interpreting the above constitutional provision, per Sanusi JSC in *Serah Ekundayo Ezekiel V. Attorney General of the Federation*²¹⁴ held that:

By the provisions of Section 174 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Attorney General of the Federation has been given wide powers to prosecute any person throughout the country either personally by himself or by officers in his ministry or any federal parastatals or agency in the federation. He can also exercise

²⁰⁸ CFRN, s 153.

²⁰⁹ I. O. Babatunde and A. O. Filani, 'Corruption in Nigerian Courts: Fashioning the Way Out Through Legal and Institutional Mechanisms,' [2017], 3, 1, *Journal of Law and Global Policy*, 8.

²¹⁰ *Ibid*, pp. 8-9.

²¹¹ Ese Malami, *The Nigerian Constitutional Law*, (Princeton Publishing Company, 3rd Ed, 2012), p.570.

²¹² *Ibid*.

²¹³ CFRN, s 174; and *The State v Ilori* (1983) 1 SCNLR 94.

²¹⁴ (2017) LPELR-SC.389/2014

such power by giving fiat to private legal practitioners or briefs to prosecute on his behalf. This presupposes that all criminal prosecutions are under the Attorney General's control, as he can institute, take over, continue or discontinue any criminal prosecution instituted by him or on his behalf, by any person or authority.²¹⁵

The court further held that Office of Attorney General of the Federation is designated as an "arrow-head" because all matters relating to the federal prosecuting agencies are referred or directed to him for advice and directive and he also gives policy guidelines. He also has power to give directions to the agencies on issue of institution of charges as well, regarding matters to be prosecuted or to be discontinued from prosecution. All criminal charges are therefore, *ipso facto*, instituted or prosecuted on his behalf or with his consent or authority.²¹⁶ The above position was reiterated in the case of *Anyebe v. The State*.²¹⁷

It is important to note that additional powers of AGF are also found in statutes. For instance, Administration of Criminal Justice Act, 2015 empowers the AGF to issue legal advice or other directives or even demand for a case file from the Police or any other law enforcement agency in respect of an offence created by an Act of the National Assembly which include: EFCC, ICPC etc.²¹⁸

Moreover, the law establishing EFCC empowers the AGF to make rules or regulations in respect of how Commission exercises its duties and functions and how to dispose stolen assets that are forfeited to the Federal Government as a result of the Commission's effort.²¹⁹ The Act provides that: "The Attorney-General of the Federation may make rules or regulations for the disposal or sale of any property or assets forfeited pursuant to this Act."²²⁰ The Act additionally, mandates the Commission to maintain a liaison with the office of AGF in fight against corruption.²²¹ Moreover, the Corrupt Practices and Other Related Offences Act provides that prosecution for an offence under the Act shall be

²¹⁵ *Ibid.*

²¹⁶ *Ibid.*

²¹⁷ (1986) 1 SC 87.

²¹⁸ ACJA 2015, s 105.

²¹⁹ EFCC Act, s 31 (4) and 43.

²²⁰ *Ibid.*

²²¹ *Ibid.*, s 6 (o).

deemed initiated by the AGF and every prosecution under the Act or any other law enacted to fight bribery, corruption, fraud or any other related offences. The Act provides that:

Prosecution for an offence under this Act shall be initiated by the Attorney- General of the Federation, or any person or authority to whom he shall delegate his authority, in any superior court of record so delegated by the Chief judge of a state or the chief judge of the Federal Capital Territory, Abuja under section 61 (3) of this Act; and every prosecution for an offence under this Act or any other law prohibiting bribery, corruption, fraud or any other related offence shall be deemed to be initiated by the attorney-General of the Federation.²²²

From the forgoing it is worthy of note that the powers of AGF in fight against corruption in this country is enormous, hence, his office is of utmost importance, crucial and invincible for a successful war against corruption in Nigeria.

However, there are series of allegations within the Anti-Corruption Civil Society Organisations levelled against the office of AGF for conducts that are inimical to the fight against corruption. For example, in the year 2020, a joint petition written by Civil Society Network Against Corruption (CSNAC) and Centre for Anti-Corruption and Open Leadership, (CACOL) to the President urging him to probe the AGF through a panel of public inquiry and listed 14 high profile corruption allegations against Malami. That according to them there is need for investigating the AGF.²²³ Private individuals equally wrote petitions to the President demanding probe of the AGF; one of them is a lawyer and human rights activist, Kabir Akingbolu, demanded the President to immediately set up a probe panel to look into several allegations of abuse of office, corruption and stealing, levelled against the Attorney-General of the Federation and Minister of Justice.²²⁴

Some of the corruption allegations made by the CSNAC and CACOL against the AGF include deduction of 16.4. Million Dollars under the bogus concept of 10% commission

²²² ICPC Act, s 26 (2).

²²³ [Unini Chioma](https://thenigerialawyer.com/coalition-writes-buhari-lists-14-high-profile-corruption-cases-against-agf-malami/), 'Coalition Writes Buhari, Lists 14 High Profile Corruption Cases Against AGF, Malami', <<https://thenigerialawyer.com/coalition-writes-buhari-lists-14-high-profile-corruption-cases-against-agf-malami/>>, accessed April, 2021.

²²⁴ Henry Ojelu, 'Lawyer writes Buhari, demands AGF Malami Probe over Alleged Corruption, Abuse of Office', <<https://www.vanguardngr.com/2020/07/lawyer-writes-buhari-demands-agf-malami-probe-over-alleged-corruption-abuse-of-office/>>, accessed April, 2021.

for himself through his cronies from recovered Abatcha's loot from USA, terminating of 25 billion Naira criminal charges against Senator Danjuma Goje after *prima facie* case was established against him and ordered by the trial court to open defence, terminating 1.97 billion Naira fraud case filed against Mr. Godsdan Orubebe, former Minister of Niger Delta, on the ground that in his opinion, there was no basis for filing the charge against him.²²⁵ The AGF is also accused of auctioning of sea vessels holding crude oil seized by the Federal Government without following due process, reinstatement of Abdulsasheed Maina, former Chairman of the Pension Reform Taskforce Team (PRTT) into the Federal Civil Service Commission without due process. Also the AGF was said to have sent a letter ordering the Economic and Financial Crimes Commission (EFCC), the Independent Corrupt Practices and Other Offences Commission, (ICPC), the Department of State Services (DSS) and the Nigeria Financial Intelligence Unit (NFIU), to stop probing the multi-billion naira fraud in Nigeria Incentive-Based Risk Sharing System for Agricultural Lending (NISRAL) describing the investigations as an "unhealthy competition" and "sheer waste of government resources".²²⁶ Moreover, AGF was said to have barred the prosecution of the former Comptroller General of Customs, late Mohammed Inde Dikko, through a suspicious deal between the AGF and the immediate past DSS Director on one side and the ex - Comptroller General of Customs to refund \$8 million to the Federal Government. Mr. Dikko had kept his promise under the agreement by refunding the agreed sum, while prior to the agreement Federal Government had accused Mr. Dikko of stealing over N40 billion.²²⁷

Due to the number and calibre of the organisations and individuals that demanded for AGF's probe, AGF responded to the accusations by writing a letter to the President refuting any wrong doing against him and insisted that he is not corrupt and had never embezzled public funds. In the letter, the AGF listed the sources of his income before his appointment as AGF and how he acquired them, asserting that he was not corrupt and had never taken a dime from public funds. AGF drew the President's attention to the fact that he had filed his assets declaration with the Code of Conduct Bureau(CCB) on time as

²²⁵ [Unini Chioma](#), (n. 216).

²²⁶ *Ibid.*

²²⁷ *Ibid.*

provided by the law.²²⁸ Office of the AGF is accused of negatively interfering into the activities of the ACAs by sometimes requesting for duplicate case files in some PEPs' cases which halts the investigation and legal advice may not be given for a very long time and other host of interferences.²²⁹

From 1999 to date, there have been a recurring of cold and open wars between the Office of the Attorney General of the Federation and Anti – Corruption Agencies (ACAs), particularly the EFCC which leads the ACAs.²³⁰ The warfare is inimical to Nigeria's integrity in her fight to end corruption. While Nuhu Ribadu, the pioneer Chairman of EFCC was chased away by Michael Aondooka; Farida Waziri's no-love-lost relationship with Mohammad Adoke was on public domain as Adoke openly declared in an interview that Farida was too powerful as EFCC Chairperson. It is the turn of Magu to face fire from the AGF, Abubakar Malami, and this fire is more ferocious than those faced by Magu's predecessors.²³¹ Nevertheless, a senior EFCC official while acknowledging inter institutional squabbles in fight against corruption asserted that the institutions work together "when they need to, to get the job done" and example of such is the institutional cooperation that saved Nigeria from paying an arbitral award of about \$10 Billion (about Three Trillion Naira) entered against Nigeria in favour of Process and Industrial Development Company Limited (P&ID) in United Kingdom (UK), which was set aside by UK's court largely relying on the Commission's investigation report.²³² However, successive AGFs have been denying any rift between them and the leadership of the ACAs.²³³

4.6. Conclusion

The institutional framework put in place to combat corruption in Nigeria is fairly adequate. Therefore, if the institutions are properly utilised, they are capable of reducing corrupt practices to the barest minimum in the country. It is also the observation of this paper that there is interference by the OAGF in prosecution of PEPs to the extent that

²²⁸ Halimah Yahaya, 'I'm not corrupt, Malami writes Buhari', <<https://www.premiumtimesng.com/news/top-news/407872-im-not-corrupt-malami-writes-buhari.html>>, accessed 19th April, 2021.

²²⁹ Matthew T. Page, (n. 11), p.34.

²³⁰ Tosin Omoniyi, 'Analysis: Impact of Perennial Turf War between Nigeria's EFCC Bosses, AGFs', <<https://www.premiumtimesng.com/news/top-news/405531-analysis-impact-of-perennial-turf-war-between-nigerias-efcc-bosses-agfs.html>>, accessed 19th April, 2021.

²³¹ *Ibid.*

²³² *Federal Republic of Nigeria v. Process and Industrial Development Company Limited*, Case No. CL-2019-000752, delivered on the 4th September, 2020 by Sir Ross Cranston Royal Court of Justice UK.

²³³ Ade Adesomoju, 'EFCC, ICPC collaborating with me – AGF', <<https://punchng.com/efcc-icpc-collaborating-with-me-agf/>>, accessed 19th April, 2021.

many people think there is no genuine and sincere synergy between the OAGF and the ACAs and between the ACAs themselves, in fact, sometimes within an ACA sincere synergy is lacking between investigators (investigation departments) and the prosecutors (legal department). The paper recommends that the OAGF and Minister of Justice be separated so that a neutral person who is not a politician and does not hobnob with politicians, at for example, Federal Executive Council be appointed as AGF and the office of Minister of Justice continues to be occupied by politicians. And there should be at least a quarterly meeting for staff of ACAs and LEAs, sensitising them on importance of cooperations amongst them in fighting corruption, exchange and share ideas in respect of the synergy among them.