A CRITICAL APPRAISAL OF THE LEGAL AND INSTITUTIONAL FRAMEWORK FOR ANTI CORRUPTION CRUSADE IN NIGERIA

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BEING DISSERTATION SUBMITTED TO THE SCHOOL OF POSTGRADUATE STUDIES, AHMADU BELLO UNIVERSITY, ZARIA, IN PARTIAL FULFILMENT FOR THE AWARD OF THE DEGREE OF MASTER OF LAWS – LL.M.

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DECLARATION

I hereby declare that this dissertation entitled, “A CRITICAL APPRAISAL OF THE LEGAL AND INSTITUTIONAL FRAMEWORK FOR ANTI CORRUPTION CRUSADE IN NIGERIA” has been written by me in the Department of Public Law under the Supervision of Dr. K.M. Danladi and Dr. I.F. Akande and that it is my own research work, no part of this thesis was previously presented for another Degree at any university. The information derived from the literatures has been duly acknowledged in the text and the list of references provided.

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CERTIFICATION

This dissertation entitled, "A CRITICAL APPRAISAL OF THE LEGAL AND INSTITUTIONAL FRAMEWORK FOR ANTI CORRUPTION CRUSADE IN NIGERIA " by Ismaila Idris meets the regulations governing the award of Master of Laws – LL.M Degree of Ahmadu Bello University, Zaria and is approved for its contribution to legal knowledge and literary presentation.

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ABSTRACT

This dissertation gives an appraisal of the legal regime for combating corrupt practices in the public service of the federation. The objectives of the study are to examine the legal regime for combating corrupt practices in the public service of the Federation. Highlight the merits, demerits, challenges and to proffer some recommendations.

The main problem with the legal regime to combat corruption in the public service is lack of focus on the issues that cause corruption therefore result in failure to apply the appropriate remedies to tackle corruption. Another key challenge affecting the fight against corruption in Nigeria is the location of anti-corruption functions within multiple and operationally diverse institutions, which despite their closely related and even overlapping mandates have limited interface and cooperation and seldom coordinate policies and operations. Other factors affecting the fight against corruption are lack of funding, and bureaucracy.

Furthermore, the immunity clause under section 308 of the Constitution of the Federal Republic of Nigeria precluding prosecution against some members of the public, the system to check those in authority is ineffective to supervise and be a motivating factor for individuals to be honest in their work and the constitutional safeguard for presidential pardon in insufficient to restrict the abuse of the power by the president.

Despite all efforts, Nigeria continues to fall short of the standards and requirements of an effective anti-corruption regime as embodied in regional and global anti-corruption conventions.

It is observed that the legal regime to fight corruption have failed to curb corruption in the public sector. Unfortunately, the trend is that corruption is exacerbating with the passage of time.

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CHAPTHER ONE

GENERAL INTRODUCTION

1.1 INTRODUCTION

Nigeria despite its oil wealth has one of the largest population of poor people on the African continent.[1] Corruption is however the major cause of poverty in Nigeria. Despite more than a decade of civilian democratic rule, Nigeria still faces huge governance and development challenges. Transparency International ranked Nigeria 136 with a score of 26 on its 2015 corruption perception index.[2] Despite efforts made by the government for the past decade to provide a better legal and institutional framework to curb corrupt practices in the public service, there are still major issues with corruption.

Giving the way the practice of corruption has become generally accepted in Nigeria, the research may think it is because there are no laws and institutions to curb corruption. This is not the case. In fact there are several laws that proscribe corruption and institutions to curb corruption in the public sector.

The Penal and Criminal Codes both contain anti-corruption provisions. Accordingly, the law prohibit demanding and receiving of bribes by public officials. The law also penalise anyone who either gives or offers bribe to public officers. The law also prohibit the activities of agents, relatives and other close

[1] http://www.vanguardngr.com/2015/08/over-1-million-nigerians-living-below-poverty-line-osinbajo/ 1st February, 2016.

[2] http://www.transparency.org/cpi2015 1st February, 2016.

associates of public officers to demand or receive gratification either for them or any other person.

The Constitution of the Federal Republic of Nigeria, 1999 provides for the establishment of the Code of Conduct Bureau.[3] The Bureau was designed to monitor compliance with anti-corruption regulations in the code of conduct for public officers. In addition to the Nigerian Constitution, there are other laws, regulations, and initiatives that have been enacted or implemented to fight corruption. The Corrupt Practices and Other Related Offences Act led to the establishing of the Independent Corrupt Practices Commission (ICPC). The Act prohibits corruption, corrupt practices and corrupt enrichments and aims at the enthronement of probity, accountability, transparency, honesty, integrity and credibility in public life. The Act also establishes an Independent Corrupt Practices and Other Related Offences Commission charged with the responsibility of investigating and prosecuting offender under the Act.

Also, Due Process was established to commence contract award review, oversight and certification process.[4] It is a mechanism that certifies for public funding only those projects that have passed the test of proper-implementation packaging. Those projects most comply with the stringent requirements of international competitive bid approach in award process.

[3] Section 153, Constitution of the Federal Republic of Nigeria, 1999.

[4] Public Procurement Act, 2007 (Act No. 14 of 2007).

Furthermore, there is the transparency in privatisation and market liberalisation process. The aim of which is to comply with the Extractive Industries Transparency Initiatives (EITI) and it involves the implementation of transparency in the privatisation and liberalisation of key economic sectors. Also, there is the move for transparency in the oil and gas sector, pursuant to this mandate the government will allow for checks and balances by providing information about its actions, receipts and expenditures in the oil sector.

Nigeria has made host of reforms and put into place a host of measures designed to help fight corruption in the country. But there appears to be a long way before it realise the benefits of such reforms.

1.2 STATEMENT OF PROBLEM

The persistent high level of corruption in Nigeria in the public service was due to lack of enforcement legal regime. The legal regime to combat corrupt practices in the public service of the federation has failed to prevent corrupt practices. The introduction of anti corruption functions within multiple legal and diverse institutions was meant to provide an effective and efficient legal regime to combat corruption in the public service. The issue for consideration now is whether the multiple legal and diverse institutions have sufficiently covered issues to tackle corruption in the public service.

In view of the forgoing this research has formulated the following research questions:

a) Whether the legal regime to combat corruption in the public service provides effective tools that stems corruption.

b) Whether there are limitations in the legal regime to combat corruption in the public service that need to be reviewed and improved upon in order to effectively combat corruption.

c) Whether there has been an improvement in combating corruption in the public service with the introduction of anti corruption functions within multiple legal and diverse institutions.

1.3 JUSTIFICATION

This dissertation is relevant in view of the fact that it will educate the public on the legal regime for combating corrupt practices in public service of the Federation. The dissertation will also look at the legal and institutional requirements to find out the missing link that has prevented the curbing of corrupt practices in the public service. The effectiveness of the laws and the institutions and their limitations will also be considered.

1.4 OBJECTIVES OF THE STUDY

The objectives are:

i) To examine the legal and institutional framework for anti corruption crusade in Nigeria.

ii) To highlight the merits and demerits.

iii) To highlight challenges and to proffer some recommendations.

1.5 SCOPE

The proposed research will focus on legal and institutional framework for anti corruption framework in Nigeria. The research will focus on examining the multiple legal and diverse institutions to combat corruption in the public service in Nigeria. However, the limitations of the research are lack of funding and accessibility to the institutions for curbing corruption.

1.6 METHODOLOGY

This research is intended to be carried out by library based research by consulting all relevant materials which include Laws of the Federation of Nigeria, judicial decisions and other materials such as text books and journals.

1.7 LITRETURE REVIEW

Oko, O[5]. Examined how Nigeria can use legal rules, economic reforms and changes in attitude to craft a more effective response to corruption. He argues

[5] Oko, O. Subverting the Scourge of Corruption in Nigeria. *N.Y.U. Journal of International Law and Politics* (2002) Vol.34.

that democracy, promulgation of new anti-corruption law, and the establishment of an independent anticorruption agency unaccompanied by wholesale changes in attitude, social practices, and economic reform will not end corruption in a country already tottering under the burden of ethnic strife, lawlessness, and economic instability.

However, this dissertation will examine other requirements to fight corruption such as the EFCC and the Due Process which the author under review did not examine.

Ogbu, O.N.[6], critically examined the legal and institutional framework for combating corruption in Nigeria before 1999, which he observed has some obvious defects. The author observed that the legal provisions are so technical and complex that in many cases persons who ought to have been found guilty were set free.

The author finally submits that the battle against corruption in Nigeria can only succeed when it is institutionalised and when there is demonstrated political will to fight corruption. Also, this dissertation will examine the Extractive Industries Transparency Initiatives and the due process as means in fighting corruption which the author failed to do.

[6] Ogbu, O.N. Combating Corruption in Nigeria: A Critical Appraisal of the Laws, Institutions and Political Will. *Annual Survey of International and Comparative Law* (2008) Vol.14:Iss. 1. Article 6.

Shola, J.O.[7] engages the crucial question of to what extent has the new war against corruption has succeeded in addressing the scourge. The author also submits that while the legal and institutional anchorages of the war offer a good point of departure, they remain grossly inadequate. The author further stated that this largely explains why the war has been underproductive and caught in a deepening crisis of legitimacy.

The author furthermore submitted that what is required is the nourishing and re-envisioning of such requirements, coupled with strong political will, to challenge the structure of power that currently generate and sustain the system and establish a truly democratic development state. The author also failed to examine the Extractive Industries Transparency Initiatives as a requirement to tackle corruption which this thesis will do.

Ijeoma,I.O.[8] examined Nigerian anti-corruption initiatives. The author examined the initiatives which include more accountability in the public sector, enforcement of existing anti-corruption laws, establishment of a Public Procurement Commission, the implementation of the due process mechanism the publication of information and requirement of transparency in the petroleum industry, the requirement of the market liberalisation process, and finally the requirement of transparency in the political process.

[7] Shola, J.O. Through a Glass Darkly: Assessing the 'New' War against Corruption in Nigeria. *Africa Insight* (2006) 36.3-4, pp.214-229.

[8] Ijeoma, I.O. Nigeria Anti-corruption Initiatives. *Bepress Legal Series*(2006) Working Paper, Paper 1392.

The author observed that it seems that a lot has been put in place to fight corruption but the most sweeping of them all is the Extractive Industries Transparency Initiatives.

The author concluded that even though Nigeria has taken certain steps in the right direction towards curbing corruption, more is still to be done. The author only briefly discussed the anti corruption initiatives such as the due process mechanism. This dissertation will give a more detailed examination of the initiatives such as examining the Extractive Industries Transparency Initiatives in light of the NEITI Act, 2007.

Nlerum S. Okogbule[9], examined the adequacy or otherwise of the existing legal and institutional mechanisms for combating corruption, and found that the earlier statuary enactments have proved ineffective in combating corruption in contemporary Nigeria, Hence the enactment of the Corrupt and Practices and other Related Offences Act, 2000 and the Economic and Financial Crimes Commission Act, 2004, with the objective of dealing with various aspects of corruption.

Furthermore, he also found that for the process of fighting corruption to be effective, legislative measure to tackle corruption must take cognizance of the multifarious nature of the menace coupled with the requisite political will to enforce the provisions of such statutory enactments. Finally, he demonstrates

[9] Nlerum S. Okogbule, An Appraisal of the Legal and Institutional Framework for Combating Corruption in Nigeria. *Journal of Financial Crime* (2006) Vol. 13 Iss: 1, pp. 92-106.

the great benefit of the use of additional legislative measures in tackling corruption. He suggests the strengthening of these mechanisms and a re-orientation of social values as the best strategy for dealing with the corruption virus in the country. The author also failed to examine the due process mechanism and the Extractive Industries Transparency Initiatives which this dissertation will do.

Moreover, Ignatius Adeh[10], examined the corruption from an environmental perspective, and further restricts his examination within the Niger Delta region. However, he still went on to discuss the loopholes in the system and observed that despite the wide range regulatory provisions designed to checkmate the conducts of public officials, there is still growing corruption in the public sector. Furthermore, John Hatchard[11], examined legal approaches in combating corruption. He demonstrates that Nigeria being a signatory of the African Union Convention on Preventing and Combating Corruption and the United Nations Convention against Corruption, in practice the country continues to experience problems of bad governance and the looting of state asset. He also explores how the art of persuasion can help develop the necessary political will through which to address these challenges. The author failed to examine the Extractive Industries Transparency Initiatives.

[10] Adeh, I. *Corruption and Environmental Law*: *The Case of the Niger Delta*. Lit Verlag Munster, (2010). pp .1-371.

[11] Hatchard, J. *Combating Corruptions: Legal Approaches to Supporting Good Governance and Integrity in Africa*. Edward Elgar Publishing, (2013) pp.1-345.

Enweremadu, D. U.[12], examined the struggle against corruption in Nigeria. The author examined the failure of the ICPC to stem the tide of corruption in Nigeria since its inception. The author contends that, except the putting in place of such institutions are accompanied by a radical change in social values and practices beginning from the top, corruption may likely remain a major problem in Nigeria.

Babatunde, I.O.[13], examined the impact of national legislations on corruption control in Nigeria. He observed that despite the magnitude of available anti-corruption legislation, corruption and abuse of power have been in the increase in Nigeria. He also observed that the major problems of the agencies are that they do not have enough capacity, independence and resources to adequately perform their functions. The author only briefly discussed anti corruption legislations and institutions.

Abdullahi Y.S., examined the issue of illicit enrichment involving political exposed persons, as well as the legal framework for asset recovery in Nigeria. He observed that strengthening prosecutorial and judicial capacity to achieving conviction and record successful asset recovery constitute an area of priority. He also observed that where bureaucracy is stronger than institutions for maintaining accountability, equity and justice, such a situation would facilitate

[12] Enweremadu, D.U., The Struggle Against Corruption in Nigeria: The Role of the National Anti-Corruption Commission (ICPC) under the Fourth Republic. *IFRA Special Research Issue* (2006) Vol.2, pp. 41-66.

[13] Babatunde, I.O., Stamping out Corruption out of our System: The Impact of National and International Legislations on Corruption Control in Nigeria. *Journal of Law, Policy and Globalization* (2014) Vol.23, pp. 101-108.

corruption. However, the author restricted his examination to the Economic and Financial Crimes Commission.[14]

Emmanuel, E.O., examined combating corruption in Nigeria by discussion the Economic and Financial Crimes Commission. He examined the activities of the Economic and Financial Crimes Commission and notes that corruption occurs primarily when there is a failure of established institutions and lack of capacity by these institutions to manage frameworks of social, judicial, political and economic check and balances.[15]

Adeleke, F.A.R. and Olayanju, O.F.[16], examined the role of the judiciary in combating corruption. They discussed the factors that are necessary to assist in building an effective, vibrant and corruption free judiciary. However, they observed that the Nigerian judiciary has failed to live up to its responsibility in its role of combating corruption in the country and is even itself accused of corruption.

Paul, D.O.[17], the socio-legal analysis of Nigeria's Corrupt Practices and Other Related Offences Act, 2000. He examined the social environment which corruption operates and points out that in the past the environment was such that anti-corruption measures were bound to fail, but concluded in optimistic vein

[14] Abdullahi, Y.S., Key Legal Issues and Challenges in the Recovery of the Proceeds of Crime: Lessons from Nigeria. *International Law Research* (2014) Vol.3, pp. 186-201.
[15] Emmanuel, E.O., Combating Corruption in Nigeria: The Nigerian Economic and Financial Crimes. *African Studies Quarterly* (2010) Vol.12, pp. 17-44.
[16] Adeleke, F.A.R and Olayanju ,O.F., The Role of the Judiciary in Combating Corruption: Aiding and Inhibiting Factors in Nigeria. *Commonwealth Law Bulletin* (2014) Vol.40, pp. 589-607.
[17] Paul, D.O., Law and Social Change: A Socio-Legal Analysis of Nigeria's Corrupt Practices and Other Related Offences Act, 2000. *Journal of African Law* (2001) Vol.45, pp.173-195.

that the return to civilian rule is likely to have an effect in the fight against corruption.

Abubakar, K.A.[18], examined the long-term legal and extra-legal recipe for Nigeria. He observed that the dilemma over cogent policies against corruption is borne out of the reality of the incessant military rules in Nigeria. He also observed that military rule lacks the basic accessories for checking administrative/executive indiscipline, lawlessness and malpractices which are usually the root of corruption in society. The author failed to examine the Extractive Industries Transparency Initiatives.

Olakunle, O.O.[19], examined the extra-territorial scope of the anti-corruption legislation in Nigeria. He examined the Corrupt Practices and Other Related Offences Act, 2000. Central to the article's focus, is a historic examination of Nigeria's institutionalised corruption through the relationships between corrupt private enterprises and public officers.

Furthermore, the thematic compilation of relevant information submitted by Nigeria to the United Nations Convention against Corruption only captured the specific mandates of some of the agencies that combat corruption. However, the report did not capture the due process.[20]

[18] Abubakar, K.A., Curbing Corruption in a Democracy: A Long-Term Legal and Extra-Legal Recipe for Nigeria. *The Advocate: A Journal of Contemporary Legal Issues* (2000) Vol.4, pp. 110-122.

[19] Olakunle, O.O., The Extra-territorial Scope of the Anti-Corruption Legislation in Nigeria. *The International Lawyer* (2004) Vol.38, pp. 71-88.

[20] https://www.unodc.org/documents/corruption/WG-Prevention/Art_6_Preventive_anti-corruption_bodies/Nigeria.pdf 29th February, 2016.

Furthermore, report on corruption risk assessment in the Nigerian port sector puts forward specific recommendations for actions to eliminate corruption in the Nigerian port sector. The report which was conducted by United Nations Development Programme and the Maritime Anti-Corruption Network, identified some challenges which include weak internal ethics in port agencies, an under developed system for investigating complaints of demands for bribes, and no effective system for handling grievances and protecting whistle blowers. However, the report was restricted to the Nigerian port sector.[21]

However, even though the efforts of the above authors are to be applauded, but they seem to focus on issues of the Independent Corrupt Practices and Other Related Offences Commission and the Economic and Financial Crimes Commission. Furthermore, where they discuss other anti corruption initiatives they tend to highlight the issues therein without critical analysing them.

This however gives room for issues such as the extractive industries transparency initiatives and the due process mechanism to be critically analysed.

1.8 ORGANIZATIONAL LAYOUT

The dissertation is divided into five chapters. Chapter one provides the general background of the study highlighting the introduction of the topic, statement of

[21] http://www.maritime-acn.org/s/MACN-Brief_web_oct14.pdf 29th February, 2016.

the problem, justification, objectives of the study, scope, methodology, literature review and the organizational layout.

Chapter two examines conceptual analysis of terms. Under it, an attempt to give the meaning of corruption is made. Furthermore, forms of corruption, other forms of corruption, causes and effects of corruption will be examined.

Chapter three examines legal framework for combating corruption in Nigeria. Under it, the Penal and Criminal Codes will be briefly discussed. Also, Auditor General of the Federation, Public Procurement Act and Nigeria Extractive Industries Transparency Initiatives and presidential pardon will be discussed so as to show the loopholes that prevents such legal framework from curbing corruption in the public service.

Chapter four examines the institutional framework for combating corruption in Nigeria. Under it, judiciary, ICPC, EFCC and the Nigerian Police and Public Complaints Commission will be discussed so as to show the effectiveness and otherwise of such institutions to curb corruption.

Chapter five provides the summary, conclusion, finding of the study, and recommendations to address the issues of corruption in the public service.

CHAPTHER TWO

CONCEPTUAL ANALYSIS OF TERMS

2.1 INTRODUCTION

Corruption is dangerous and detrimental to the systemic existence of any society. The upsurge of corruption in Nigeria in recent times is disturbing, that it is common belief that corruption is endemic in all facets of Nigerian society. It seems the menace has defied all treatment and the damages it has done to the national life cannot be qualified. However if corruption is not checked, it will continue to be detrimental to the social, cultural, economic and political foundations of the country, as well as her economic and social developments and efforts to eradicate poverty.

2.2 THE MEANING OF CORRUPTION

There is no comprehensive and universally accepted definition of corruption because what seems corrupt in one society may not be necessarily be perceived in another. Though there have been different attempts to define it, there is no precise, clear definition that can be applied to all forms, types and degrees.

Black's law dictionary defines corruption as the act of doing something with an intent to give some advantage inconsistent with official duty and the rights of others; a fiduciary's or official's use of a station or office to procure some benefit either personally or for someone else, contrary to the rights of others.[22]

When the negotiations of the United Nations Convention against Corruption began in 2002, one option under consideration was to avoid the problem of

[22] *Black's Law Dictionary*, Ninth Edition, West, Minneapolis, (2009) p.397.

defining corruption by simply listing a whole series of specific types or acts of corruption. The United Nations has adopted a descriptive approach and criminalization of the act to describe what act is corruption. The United Nations therefore highlighted the acts to include embezzlement, misappropriation or other diversion of property by a public official, bribery, illicit enrichment, abuse of office, and laundering of proceeds of crime.[23] For example Article 15 states: Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

> a) The promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official for himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duty.

Also Article 20 states:

> Subject to its constitution and the fundamental principles of its legal system, each state party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

However, Osita Nnamani Ogbu defines corruption as an abuse of position or inducement of an abuse of position for an undeserved benefit, advantage or relief.[24] He said that corruption in the widest sense connotes the perversion of anything from its original state of purity, a kind of infection or infected

[23] Article 15-42, UNCAC, 2004.
[24] Obgu, O.N. *Combating Corruption in Nigeria: A Critical Appraisal of the Laws, Institutions and Political Will*. *Annual Survey of International and Comparative Law* (2008) Vol. 14:Iss 1. Article 6. P.103

condition. Corruption may involve cash or economic benefit, power or influence, or even less-tangible interest.[25]

Transparency International defines corruption as the abuse of entrusted power for private gain.[26] However the World Bank defined corruption as the abuse of public office for private gain.[27] The law dictionary defines corruption as the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty or the rights of others.[28]

The Penal Code and Criminal Code did not provide a definition for corruption. But the Corrupt Practices and other Related Offences Act, defines corrupt act to include bribery, fraud and other related offences.[29]

However, in *Biobaku v. Police*[30], Bairamian, J. defined corruption as the receiving or offering of some benefit as a reward or inducement to sway or deflect the receiver from the honest and impartial discharge of his duties.

However, the researcher defines corruption as the misuse of entrusted resources for personal benefit.

2.3 FORMS OF CORRUPTION

a) Political Corruption

[25] Okonkwo and Naish, *Criminal law in Nigeria*. Second Edition, Spectrum Law Books, Ibadan, (2005) p.357.
[26] http://www.transparency.org/whoweare/organisation/faqs_on_corruption#defineCorruption 5th April, 2013.
[27] http://www1.worldbank.org/publicsector/anticorrupt/corruptn/cor02.htm 5th April, 2013.
[28] http:www.thelawdictionary.org/corruption/ 5th April, 2013.
[29] Section 2, Corrupt Practices and other related Offences Act, Cap.C31,L.F.N., 2004.
[30] (1951)20, N.L.R., 30.

Political corruption means the abuse of political power by the government leaders extract and accumulate for private enrichment, and to use politically corrupt means to maintain their hold on power. However, abuse of political powers for other purposes, such as repression of political opponents and general police brutality, is not considered political corruption. Political corruption takes place at the highest levels of the political system. It can be distinguished from administrative or bureaucratic corruption.[31]

However, Nye defines political corruption as behaviour which deviates from the formal duties of a public role because of private regard (personal, close family, private clique) pecuniary or status gains; or violates rules against the exercise of certain types of private regarding influence. This includes such behaviour as bribery (use of reward to pervert the judgement of a person in position of trust); nepotism (bestowal of patronage by reason of ascriptive relationship rather than merit); and misappropriation (illegal appropriation of public resources for private-regarding uses).[32] Van Klaveren defines political corruption as a market-centred conception which means that a civil servant abuses his authority in order to obtain an extra income from the public.[33]

b) Bureaucratic Corruption

[31] http://definitions.uslegal.com/p/political-corruption/ 7th April, 2013.
[32] Nye, J.S. "Political Corruption: a Cost-benefit Analysis", in Arnold J. Heidenheimer, M.Johnston and V.Le Vine (eds) , *Political Corruption: a Handbook.* New Brunswick NJ, Transaction, (1989), p.966.
[33] Jacob Van Klaveren,"Corruption as a Historical Phenomenon", in Arnold J.Heidenheimer and Michael Johnson (eds), *Political Corruption:Concepts and Contexts*, Transaction Publishers, (2002), p.49

Bureaucratic corruption takes place at the implementation end of politics, where the public meets public officials. Bureaucratic corruption is linked with the activities of bureaucrats. Traditionally the concept was used to denote practice of buying favour from bureaucratic which formulate and implement governments' economic and political policies. The concept however transcends to the buying of favour; it refers to the violation of public duty by bureaucrats or public officials.[34] Also, bureaucratic corruption is seen as any form of inducement or gratification 'given and taken' in order to do some official work or assignment which ought to be done as a normal routine, or to jump some protocols or bend some rules and regulations. Thus bureaucratic corruption entails an intricate network of favours provided only in exchange for other favours rendered, anticipated and expected.[35]

c) Abuse of Electoral Process

Electoral corruption also referred to as electoral fraud is the illegal interference with the process of an election. The definition term varies from country to country. Generally it includes illegal voter registration, intimidation at the polls and improper vote count. Even though the term electoral fraud covers only illegal acts, the term is used to describe acts morally unacceptable, outside the spirit of electoral laws or in violation of the principles of democracy. Electoral

[34] Gbenga Lawal and Ariyo Tobi, *Bureaucratic Corruption, Good Governance and Development: The Challenges and Prospects of Institution Building in Nigeria*, Journal of Applied Sciences Research,(2006) Vol. 2(10), p.645.
[35] Aluko, M.A.O. and Adesopo, A.A. *Bureaucratic Corruption in Nigeria: A General and Sociological Insight into the Problem*, Journal of Social Sciences, (2003) Vol. 7(1), p. 47.

fraud is also termed voter fraud.[36] Electoral corruption includes rigging of election and buying electoral votes. It also includes promises of office or special favours, coercion, intimidation, and interference with electoral procedures.[37]

2.4 OTHER FORMS OF CORRUPTION

a) Bribery

Bribery is the receiving or offering any undue reward by or to any person whosoever, whose ordinary profession or business relates to the administration of public justice, in order to influence his behaviour in office, and to incline him to act contrary to his duty and the known rules of honesty and integrity. The term bribery also includes the offence of giving a bribe to many other officers; it applies both to the actors and receivers, and extends to voters, legislators and other classes. [38]

However, the Criminal Code makes it an offence generally for any public official to accept for himself or any other person any gift or consideration as an inducement or reward for doing or not doing any act in relation to his official duties or as a public official.[39]Furthermore, the Corrupt Practices and other Related Offences Act (2000), covers a wide range of provision on bribery and corruption.[40] It is however important to note that the law makes it an offence, not only for a public officer to receive any benefit, but it also makes it an

[36] http://definitions.uslegal.com/e/electoral-fraud/7th April, 2013.
[37] Olagunju, O. Corruption Control in Nigeria: Holistic Approach. *Sedinst International Journal* (2012) Vol. 2(1), p.78.
[38] http://www.thelawdictionary.org/bribery/7th April, 2013.
[39] Section 98, Criminal Code Act, Cap.38, LFN, 2004.
[40] Section 8(1), Corrupt Practices and other Related Offences Act, Cap.C31, L.F.N., 2004.

offence to give any benefit to public officers to do or not to do any act in the course of their normal duties.

b) Fraud

Fraud consists of some deceitful practice or wilful device, restored to with intent to deprive another of his right, or in some manner to do him an injury.[41]

However, the Advance Fee Fraud and other Fraud Related Offences Act, 2006 generally mentioned that any person, who by any false pretence and with the intent to defraud obtains, induces a person to confer a benefit on him or any other person has committed an offence.[42]

c) Embezzlement

Embezzlement is the fraudulent appropriation to his own use or benefit of property or money entrusted to him by another, by a clerk agent, trustee, public officer or any other person acting in a fiduciary capacity.[43]

Also, the Advance Fee Fraud and other Fraud Related Offences Act,2006 cover the issue of embezzlement generally mentioning that any person who by any false pretence and with the intent to defraud obtains, induces a person to confer a benefit on him or any other person has committed an offence.[44]

d) Extortion

Extortion is any oppression by colour or pretence of right, and particularly the exaction by an officer of money, by colour of his office, either when none at all

[41] http://www.thelawdictionary.org/fraud/7th April, 2013.
[42] Section 1, Advance Fee Fraud and Other Fraud Related Offences Act, Cap.A6, L.F.N., 2004.
[43] http://www.thelawdictioary.org/embezzlement/7th April, 2013.
[44] Section 1, Advance fee fraud and Other Fraud Related Offences Act, Cap.A6, L.F.N., 2004.

is due or not so much is due or when it is not yet due. Extortion consists in any public officer unlawfully taking, by colour of his office, from any person money or thing of value that is not due to him or more than his due.[45]

Whereas bribery involves the use of payments and positive incentives, extortion relies on coercion to induce cooperation, such as treats of violence or the exposure of sensitive information

e) Favouritism and Nepotism

By definition favouritism and nepotism involve abuses of discretion; such abuses usually involve not a direct personal benefit to an official but promote the interests of those linked to the official, be it through family, political party, tribe, or religious group without regard to merit[46]. Favouritism can be demonstrated in hiring, honouring or awarding contracts. A related idea is patronage, giving public service jobs to those who may have helped elect the person who has the power of appointment. Nepotism however covers favouritism to members of the family[47].

2.5 CAUSES OF CORRUPTION

There has now being a consensus that corruption is universal.[48] It exists in all countries, both developed and under developing, in public and private sectors, as well as in non-profit and charitable organisations. Yet analysts tend to

[45] http://www.thelawdictionary.org/extortion/10th April, 2013.
[46] *United Nations Handbook on Practical Anti-Corruption Measures for Prosecutors and Investigators*. Vienna, (2004) P.28.
[47] http://www.scu.edu/ethics/practicing/focusareas/government_ethics/introduction/cronyism.html 10th April, 2013.
[48] *United Nations Handbook on Practical Anti-Corruption Measures for Prosecutors and Investigators*. Vienna, (2004) P.3.

believe that developed countries are less corrupted than under developed ones. The research is of the view that the level of corruption in a country depends on the strength of laws and institutions. Different theories associate this with particular historical and cultural traditions, levels of economic development, political institutions and government policies. However, corruption tends to flourish when institutions are weak.[49]The widespread corruption in Nigeria is evident in the increasing wave of covetousness, greed, inordinate ambition, material and get rich quick syndrome of the post independent era[50].

(a) Poverty

One of the most common causes of corruption is poverty. Poverty is one of the main causes of corruption in the third world countries. As it has been mentioned above; Nigeria is rated among the most corruption nations in the world by Transparency International.[51] Nigeria is a country rich in different resources, but because the leaders are corrupt average masses do not enjoy the resources the nation is endowed with.[52]

(b) Social Insecurity

[49] http://www1.worldbank.org/publicsector/anticorrupt/corruptn/cor02.htm.15th February, 2016.
[50] http://www.tribune.com.ng/sun/index.php/zero-hour/2520-corruption-in-nigerian-society-i 14th November, 2010.
[51] http://www.transparency.org/cpi2015 1st February, 2016.
[52] Ajodo-Adebanjoko, A. and Okorie ,N., Corruption and the Challenges of Insecurity in Nigeria: Political Economy Implications. *Global Journal of Human-Social Science* (2014) Vol.14, pp. 11-16.

Furthermore, the nationwide inadequate social security and the corrupt and extravagant political system being operated also contribute to widespread corruption. The motivation to be honest may be weakened if there is insecurity of collective remedies against adversities and deficiencies; ranging from pensions to disability compensation, death benefits as well as free/quasi healthcare and education. Inadequate social security may result to poverty. However, there may not be enough resources that should be used to strengthen institutions to curb corruption due to extravagant spending by the government.

(c) Legislative Organ

In addition, the legislative organ by being complacent in the fight against corruption could exacerbate corruption. In the legislative organ even though accountability was largely to be facilitated through scrutiny of administration, the legislature appeared to be concerned with the material and financial benefit it could accumulate using its office and power instead of serving the interest of the people they represent . Indeed the National Assembly have persistent reputation for corruption. It is really unfortunate that members of the National Assembly have at various times being indicted over allegation bordering on shady financial deal. Recently, the House Committee on Capital Market ex-chairman Hon. Herman Hembe was embroiled in allege bribe demand. While

also the Security and Exchange Commission (SEC) Director General, Ms. Arunmah Oteh had accused Committee members of seeking graft.[53]

In addition the Committees of the National Assembly tend to extract money illegally from government departments and agencies over which they have responsibility to oversight. The Ministry of Education was accused by President Olusegun Obasanjo allegedly with the Education Committees of the Senate and the House of Representatives to enable them to increase its budget.[54]

The legislative assembly seems to have failed in the area of combating corruption through law making. The legislature appears weak and incapable of effectively utilizing its law making power to curb corruption. The legislature appears bereft of initiatives to tackle corruption.

Surprisingly, a bold effort by the United Nation to criminalise corruption through the United Nations Convention against Corruption (2003) was never accommodated through ratification by the Nigerian legislature. Specifically, the convention requires countries to implement a detailed range of anti corruption measures. These include the criminalised behaviour such as the bribery and the embezzlement of public funds, influencing trading, and the concealment and the laundering of the proceeds of corruption.[55]

[53] http://www.vanguardngr.com/2012/03/national-assembly-and-allegations-of-corruption/ 27th March, 2012.

[54] https://www.utexas.edu/conferences/africa/ads/519.html 25th September, 2015.

[55] http://onlineresearchjournals.com/ijopagg/art/50.pdf 10th April, 2013.

The domestication of the convention was expected to promote and strengthened measures to prevent and combat corruption, facilitate and support international cooperation and technical assistance and lastly ways of monitoring a countries compliance with the convention. Even though the EFCC, ICPC and Money Laundering Acts would have captured some of the issues addressed by the convention, but the domestication of such international articles would have strengthened the extant rules against corruption.[56]

(d) Remuneration Regime

Most often judicial systems are weak as result of poor conditions of service. The accusation of large scale corruption among the electoral tribunal adjudicating over series of electoral disputes has further dented the image of the Nigerian judiciary. Many have often doubted the objectivity and the neutrality of most Nigerian judges who are perceived as corrupt and often subvert justice.[57] An illustration of the weak judicial system in Nigeria is the case of James Ibori the former Governor of Delta State. On December 12, 2007 he was arrested by the Economic and Financial Crimes Commission (EFCC). The charges he faced include theft of public funds, abuse of public office, and money laundering. However, on December 17, 2007, A Federal High Court sitting in Asaba, Delta State discharged and acquitted Ibori on all 170 charges of

[56] *Id.*

[57] Mojeed Olujinmi A. Alabi and Joseph 'Yinka Fashaga, *The Legislature and Anti-Corruption Crusade under the Fourth Republic of Nigeria: Constitutional Imperatives and Practical Realities.* International Journal of Politics and Good Governance (2010), Vol.1, pp.12-13.

corruption brought against him. However, on February, 2012, accused of stealing US$ 250 million from the Nigerian public purse, Ibori pleaded guilty to ten counts of money laundering and fraud. However, the judge said the total amount stolen might be in excess of 200 million pounds.[58]

Scope of Corruption

(a) Misappropriation of Public Funds

At the lower level of government, the trend is for the state and local executive to use substantial part of their annual budgets to buy expensive cars for traditional rulers in their domains. Contracts are awarded to cronies' especially family members, friends, party officers and associates or club members. Most often such contracts were awarded in utter disregard for due process as official bidding or set standard are neglected. In every level of government in Nigeria, incompetent and in extreme cases, non-existence construction engineering companies may be awarded contracts for the purpose of siphoning funds from the public purse.[59] In fact, security vote is often considered as part of the personal emolument of the chief executive of the state or local government. There is concern over the high level of corruption perpetuated by political office holders under the guise of utilising security votes. The institute of Directors said that it was aware billions of naira was squandered every year in Nigeria under the guise of security votes, adding that the funds that are supposed to be used to

[58] http://www.thisdaylive.com/articles/ibori-loses-appeal-to-get-jail-term-reduced/146643/15th August, 2013.
[59] http://onlineresearchjournals.com/ijopagg/art/50.pdf 10th April, 2013.

provide security for public officers and the society ends up in being transferred into personal bank accounts.[60]

(b) Corrupt Officials in the Education Sector

In Nigerian universities, there has been allegation of corrupt practices and abuses in most of them. Such allegations are said to include admission processes, conduct of examinations, appointments and promotion of staff, manipulation and falsification of academic records. Others are illegal accreditation process through deception, running un-approved study centres, affiliating programmes to accredited schools, establishing and running unapproved and consequently illegal universities.[61]

Furthermore, the organisations that are charged with the responsibility for conducting examinations for final year students of secondary schools examination have been accused of being complicit in exam malpractice. They are often being alleged to have colluded with candidates to sell question papers and alter grades.[62]

(c) Job Appointment and the Corrupt Media

Another disturbing dimension of corruption in Nigeria is in relation to securing appointment in government establishments. Securing appointment in

[60] http://www.vanguardngr.com/2012/07/iod-flays-public-officers-over-security-votes/ 11th July, 2012.
[61] http://www.vanguardngr.com/2012/07/icpc-beams-searchlight-on-corrupt-practices-in-nigerian-universities/ 25th July, 2012.
[62] Mojeed Olujinmi A. Alabi and Joseph 'Yinka Fashaga, *The Legislature and Anti-Corruption Crusade under the Fourth Republic of Nigeria: Constitutional Imperatives and Practical Realities.* International Journal of Politics and Good Governance (2010), Vol.1, pp.12-13.

government paid jobs in modern Nigeria is close to impossible unless you are favoured by the high and the mighty in the society. In fact the operators of the mass media are not spared as they make their reports after based on usually the financial benefit they receive, especially from government officials.[63] Many media houses today are owned by politicians or those with political interest and have unwittingly allowed themselves to be their mouth-pieces.[64]

2.6 THE EFFECTS OF CORRUPTION

Some of the effects of corruption are:

1. **Social Consequences**

Corruption exacerbates poverty and disproportionately affects those of lower incomes because it pulls resources from the national treasuries and placing the money into the bank accounts of a few individuals who are politically powerful. Corruption is destructive of governmental structures and erodes the constitutional capacity of government as procedures are disregarded, resources are siphoned off, and public offices are bought and sold.

Furthermore, corruption debases the nation's human rights, compromises the rule of law and destroys confidence in democracy and the legitimacy of governments. Corruption leads to pervasive cynicism about politics and politicians which is disastrous for democracy. A distrustful or apathetic society

[63] *Id,* p.16.
[64] http://www.bribenigeria.com/are-we-really-winning-the-war-against-corruption/16th August, 2013.

can then become yet another hurdle to challenging corruption. It is extremely challenging to develop accountable political leadership in a corrupt climate.[65]

The effects of corruption are noted on the poor state of infrastructure and road networks. Consequently as a result of the state of the roads accidents are common. Corruption has taught the Nigerian a dangerous and wrong lesson that it does not pay to be honest, hardworking and law abiding. Corruption upsets ethnic balance, and exacerbates problems of national integration in the country.

In the judiciary, there are usually delays in the administration of justice. It has been observed by the former Chief Justice of Nigeria, Justice Dahiru Musdapher that some judges wittingly and utterly aid this process by failing in their duty to be firmly in control of criminal proceedings in their courts and allow these gimmicks to go on unabated. According to him almost every criminal trial especially on serious charges of corruption is now preceded by endless objections and applications to quash the charges. This he added effectively stalls the main proceedings and results in the misuse of judicial time resources.[66]

It is observed by the punch editorial board that some judges sell injunctions at will against the dictates of the code of conduct for judicial officers. The situation is particularly worst in election cases. Besides, there are innocent citizens who find themselves in detention as awaiting trial inmates for crimes they know nothing about. Sometimes, the law enforcement agents lock them up

[65] https://www.transparency.org/whoweare/organisation/faqs_on_corruption/2/ 10th April, 2013.
[66] http://www.punchng.com/editorial/judges-and-delays-in-criminal-justice-system/ 14th June, 2012.

and expect them to put up bail for themselves with huge sums of money. Those who cannot afford this are made to stay in detention for years and sometimes even die there without anybody coming to their rescue. In addition, in Nigeria government officials act with impunity, security agents harass and intimidate citizens at will and some companies treat their customers and staff with disdain. Most of the time perpetrators go scot-free because the victims are weary of litigation, knowing that they may never get justice at the law courts.[67]

2. Political Consequences

Politics has become a big business in Nigeria, because anything being spent to secure a political office is regarded as an investment, which matters immediately one gets into office[68]. Corruption is politically destabilising, as it leads to social revolution and military take over. Some argue that it contributes to war and political instability.[69]

3. Economical Consequences

Corruption causes a reduction in quality of goods and services available to the public, as some companies could do less than a thorough job to increase profit

[67] *Id.*
[68] http://www.afbis.com/analysis/corruption_dike.htm 4th November, 2008.
[69] Billion, L.P. *Buying Peace or Fuelling War: The Role of corruption in Armed Conflict.* Journal of International Development (2003) Dev.15, p. 117.

margins. Corruption effects investment, economic growth and government expenditure choices and also reduces private investment.

Corrupt politicians invest score public resources in projects that will benefit their pockets rather than benefit the communities, and prioritise projects such as dams that are made unnecessarily complex to justify the corrupt and huge expense on it. Such attitudes make fraud easier in large and hard to manage projects such as airports.

Corruption wastes skills as precious time is often wasted to set up unending committees to fight corruption.

2.7 CONCLUSION

It would be observed that from the findings of this chapter that there is no comprehensive and universally accepted definition of corruption because what seems corrupt in one society may not be perceived in another. Also, the level of corruption in a country depends on the strength of laws and institutions. Furthermore, corruption has social, political and economic consequences.

CHAPTHER THREE

LEGAL FRAMEWORK FOR COMBATING CORRUPTION IN NIGERIA

3.1 INTRODUCTION

Nigeria has a legal framework to tackle corruption, which, unfortunately, seems to come into existence or go through changes during every change of government. However, process seems to little or no effect on the fight against corruption in the public sector.

This chapter will analyse some legal framework for combating corruption in Nigeria. This framework include; the Penal and Criminal Codes, Public Auditing, Due Process, Extractive Industries Transparency Initiatives and Presidential Pardon on Corrupt Public Officers and its effects on combating corruption in Nigeria . The analysis will cover purpose and workings of the framework, and extend of the success and failures of the framework. Such problems include vague legislation, lack of organisation, lack of enough funds, and delay process due to bureaucracy. It will be shown how such issues lead to lack of curbing of corruption in the public sector.

3.2 PENAL and CRIMINAL CODES

Both the Penal Code and Criminal Code, which are comprehensive, set out laws that apply in Southern and Northern Nigeria, which contain provisions that aimed at tackling corruption in the public sector. The two codes prohibit both the demand for and the receipt of bribes by public officers, as well as giving and offering bribes to public officers.

The Criminal Code provides for the offences of bribery and extortion. The offence of bribery is committed when:

> Any public official who corruptly asks for, receives or obtains any property or benefit of any kind for himself or any other person, on account of anything done or omitted, or any favour and disfavour already shown to any person, by himself in the discharge of his official duties or in relation to any matter connected with the functions, affairs or business of a Government department, public body or other organisation or institution in which he is serving as a public official,.....[70]

While the offence of extortion was provided as follows:

> Any person, who, with intent to steal anything, demands it from any person with threats of any injury or detriment of any kind to be caused to him, either by the offender or by other person, if the demand is not complied with, is guilty of a felony, and is liable to imprisonment for three years.[71]

While the Penal Code provides for the offence of bribery as:

> Whoever being a public officer in his capacity as such dishonestly receives from a person any money or other property which he is not authorised to receive or which is in access of the amount which is authorised to receive, shall be punished with imprisonment for a term which may extend to five years or with fine or with both.[72]

[70] Section 98(1)(a), Criminal Code Act, Cap.38, LFN, 2004.
[71] Section 406., *Id.*
[72] Section 122, Penal Code Act, Cap.,LFN,2004.

Unlike the crime of bribery, extortion is a situation where the giver of the bribe is often a powerless victim who offers a bribe to avoid the wrath of an over-bearing and rent-seeking public servant. Prosecutions under the Criminal Code are rare and problematic. Prosecutions were rare because of the inability of key components of the justice system-the police, prosecutors and the courts to discharge their duties effectively. Investigatory agencies, notably the police, lack the resources, technical competence and in some case the willingness to conduct thorough investigations.[73]

Moreover successful prosecution under the Criminal Code was dependent upon the cooperation of one of the parties to the illegal act; there had to be a credible victim willing to testify against the erring public official. The Criminal Code provision works fairly well in cases where corrupt public officers use their position to extort money from unwilling victims.[74] The Criminal Code was somewhat drained of relevance, however, in cases of corruption involving consensual relationships where the public officer and the third party willingly engaged in corruption. Given the mutual beneficial relationship between the bribe giver and the bribe-receiving public official, very few witnesses ever came forward. Conclusively, the provisions of the Criminal Code are so technical and complicated that otherwise guilty persons escape punishment.[75]

[73] Oko, O. Subverting the Scourge of Corruption in Nigeria. *N.Y.U. Journal of International Law and Politics* (2002) Vol.34, p. 426.
[74] *Id*.
[75] *Id.*

However, the provisions on corruption in the Penal Code are more lucid and less technical. Under the Penal Code the relevant provision on corruption can be found in Sections 115-122.Section 115 provide for the offence of gratification by public servants, and violators are liable to a term of imprisonment ranging from 7-14 years.

Both the Penal and Criminal Codes contains glaring inadequacies. For instance, the rules are confusing, thus leaving open the likelihood that guilty persons might escape punishment on technical grounds.[76]

The provisions of the Penal and Criminal codes reflect efforts made by the state to curb corruption in the public sector. However, in spite of these legislative efforts, in their application, the two codes tend to be grossly inadequate in dealing with cases of corruption.

3.3 AUDITOR GENERAL OF THE FEDERATION

One of the measures provided for in the constitution for monitoring corruption is auditing process of public accounts. Auditing in the public sector is an independent examination of, and an expression of an opinion on the financial statement of the governments by duly appointed person(s) in accordance with all relevant statutory obligations.

In other words auditing does not concentrate on fraud detection alone, but rather to look at the financial and non-financial activities of the organisation in terms

[76]http://www.isrcl.org/Papers/Ojukwu.pdf 23th May, 2013.

of management, procedure, system and statutory requirements to test the compliance level in terms of operation with the overall aim of preventing fraudulent activities of public officers. The auditor in the public sector is a watchdog of public officers in terms of financial activities. He critically examines the financial activities of governments to ensure stewardship in the utilization of public funds by ultimately adhering to all relevant statutory provisions.

This is provided for in section 125 and 85 of the Constitution of the Federal Republic of Nigeria, 1999.

However, Section 85(2) of the Constitution provides that:

> the public accounts of the Federation and of all offices and courts of the federation shall be audited and reported on by the auditor-general who shall submit his report to the National Assembly; and for that purpose, the Auditor-General or any person authorized by him in that behalf shall have access to all the books, records, returns and other documents relating to those accounts.

Similarly, section 85(4) of the Constitution provides that:

> the Auditor-General shall have power to conduct periodic checks on all government statutory corporations, commissions, authorities, agencies, including all persons and bodies established by an Act of the National Assembly.

Furthermore, Section 301 vests the Auditor-General of the Federation with the power to audit account of Area Councils in the Federal Capital Territory.

While, Section 85(6) of the Constitution provides that: "In the exercise of his function under the constitution, the auditor-general shall not be subject to the direction or the control of any other authority or person."

Furthermore, Section 85(5) of the Constitution provides that:

> The Auditor General shall, within 90 days of receipt of the Accountant General's financial statement, submit his Report to each House of the National Assembly (The Senate and The House of Representatives) and each House shall cause the Report to be considered by a Committee of the House of the National Assembly responsible for Public accounts.

However, the essence of the public account process is to ensure that the expenditure on projects and programs is in accordance with the sums and projects the legislature has approved.[77] According to Rule 91(e) (2), (3) and (4) of the standing rules of the House of Representatives, when the Auditor-General's Report is laid before the House, the House must refer it to the Public Accounts Committee of the House, who examines the report and makes recommendations to the House. The House is then required to consider the report of the Public Accounts Committee.

Unfortunately, these provisions garner attention more often when they are breached.[78] However, it has been observed that the Auditor-General is not provided with the financial muscle to carry out his work. Over 80 percent of his workers are in the ministries as resident federal auditors. Some have forgotten they are even the workers of the auditor-general. To hear of billion or trillions missing but the Auditor-General would not have seen anything. The Auditor General was not allowed to audit the NNPC or all the parastatals that have been

[77] Ogbu, O.N.Combating Corruption in Nigeria: A Critical Appraisal of the Laws, Institutions and Political Will. *Annual Survey of International and Comparative Law* (2008), Vol. 14, p. 10.

[78] http://www.dailytrust.com.ng/daily/old/index.php/business/44232-auditor-general-should-take-charge-in-auditing-public-accounts-senetor-lawan 23th May, 2013.

using public funds to donate public funds. There is a lot of confusion as of today, the Auditor General does not audit more than 50 percent of what he is suppose to audit due to lack of funds. He is suppose to audit close to 600 parastatals and countless number of MDAs (Ministries, Departments and Agencies) and ministries and may be over 70 diplomatic missions and so many organisations.[79]

3.4 PUBLIC PROCUREMENT ACT

Due process implies that governmental activities and business can be carried out openly, economically and transparently without favouritism and corruptible tendencies. The essence of this is to ensure that rules and procedures for procurement are made in such a way as to be implementable and enforceable. It is hoped that this Due Process should put an end to doing business without following procedure in Nigeria. Due Process is a mechanism that certifies for public funding only projects that have passed the test of proper implementation packaging and that adhere stringently to the international competitive bid in the award process.[80]

The Public Procurement Act was thereafter passed by the National Assembly on 30th of May, 2007.[81]The government therefore established the Budget

[79] *Id.*

[80] Ladan, M.T. The Role of Law in Combating Public Procurement Corruption In Nigeria. A Paper Presented at Conference Organised by the Bureau of Public Procurement, held at Command Guest House, Kaduna, on September 10, 2009.

[81] Public Procurement Act, 2007 (Act No. 14 of 2007).

Monitoring and Price Intelligence Unit (BMPIU) with the aim at formulating and implementing appropriate policies on procurement and contract awards. However, the Budget Monitoring and Price Intelligence Unit (BMPIU) objectives are:

- To harmonize existing government policies/practices on public procurement and ensure probity, accountability and transparency in the procurement process;
- To establish pricing standards and benchmarks;
- To ensure application of fair, competitive, transparent, value-for-money standards and practices for the procurement and disposal of public assets; and
- To attain transparency, competitiveness, cost effectiveness and professionalism in the public sector procurement system.[82]

To ensure its efficacy, the due process office has established instruments to be employed in the implementation of its mandate.

3.4.1 Regulatory Instruments

The regulatory tools set standards, including the enforcement of harmonised bidding and tender documents; formulate general policies and guidelines related to public sector procurement; develop, regulate and maintain an updated system, wide data base and technology. It also undertakes procurement research and survey in order to determine information needs and project costing coupled with enforcement of professional ethics and sanction erring officers and

[82] http://www.bpp.gov.ng/index.php?option=com_content&view=article&id=110&Itemid=740 2nd June, 2014.

professionals.[83] On sanctions, it could step down the contract or order the disqualification of unqualified contractors. When this happens, the relevant contractor and the sending ministry will be informed to seek technically competent contractors. The role of the due process office here is purely regulatory. It does not participate in the packaging or preparation of project proposals. It does not award contracts neither does it determine where projects are sited which is the responsibility of the ministries and agencies (FG appropriation). The due process office merely reviews what has been awarded to ensure transparency, fair competition and value for money.[84]

Furthermore, the Bureau of Public Procurement exercises its fiduciary and development responsibilities with respect to procurement by:

(a) Certification

Certification is a process where federal projects and procurement processes are examined to determine their value and whether proper procedure and laid down guidelines had been followed. The due process carries out the certification of all projects and procurement services emanating from the federal government. This is done through two internal bodies.

-The Resident Due Process Team or the Ministerial Tenders Board is responsible for capital and minor capital projects below 50 million naira.

[83] Adeh, I. *Corruption and Environmental Law*: *The Case of the Niger Delta*. Lit Verlag Munster, (2010).p.194.
[84] *Id.*

-While, the Full Due Process Team is responsible for the certification of capital projects above 50 million naira.

After certification has been completed, a "contract award certificate" and "payment certificate" are issued depending on the report of the team. No contracts would be bidded for without due process certification, which is issued (subject to FEC ratification) once project reasonableness has been determined.[85]

(b) Monitoring

The due process office supervises the implementation of established procurement policies and the prices of tendered items coupled with procurement audits. It also engages in the monitoring of capital projects that exceed 50% of contract sum and document all awarded projects at various stages of completion and publish same in designated journals.[86]

(c) Training and Advisory

The due process office co-ordinates and directs institutional capacity building through training programs and regular public enlightenment campaigns. It also engages in advisory programs to interested stakeholders. To this end, it regularly interacts with government and parastatal officials, National Assembly members, consultants and relevant professional.[87]

[85] *Id.,*p.195.
[86] *Id.*
[87] *Id.,*p.196.

Furthermore, the due process review requirements are:

-The project policy file

-Tender returns

-Tender evaluation report

-Contract award letter and agreement

-Original contract bills of quantities (if any)

-Contract drawings (if any)

-Other contract documents

-Financial summary and statements

-Progress reports

-Variation requests and variation orders arising

-Interim valuation and certificates.

However, there is the general feeling that due process is another obstacle to speedy project implementation and execution. The due process time frame according to the interview conducted by ignatius adeh suggests that a period of 7 to 10 days is required for a complete process. But informal interview reveals a stark difference with the official view. In fact some projects take as long as 5 to 6 months without any information whatsoever from the due process. Sometimes the old game rear its head i.e. attachments are missing or the work load is much or the usually known tricks. Thus making some to question if this is another

channel to simply provide the elite a more safe and fertile environment to engage in corruption at a high level.[88]

3.5 NIGERIA EXTRACTIVE INDUSTRIES TRANPARENCY INITIATIVE (NEITI)

Nigeria Extractive Industries Transparency Initiative (NEITI) is the Nigerian version of the global Extractive Industries Transparency Initiative (EITI). The EITI is a global standard that promotes revenue transparency and accountability in the extractive sector.[89] The EITI implementation has two core components:

> -Transparency: Oil, gas and mining companies disclose their payments to the government, and the government discloses its receipts. The figures are reconciled and published in annual EITI reports alongside contextual information about the extractive sector.
> -Accountability: A multi stakeholder group with representatives from government, companies and civil society is established to oversee the process and communicate the findings of the EITI Report.[90]

The initiative asks participants to acknowledge that transparency is crucial to effective financial management and accountability, and to recognise the need for consistent and workable approach to disclosure of payments and revenues especially in the petroleum industry.[91]

However, information on numerous sources of revenue to the government from extractive industries companies in Nigeria was indeed shallow leading to inconsistencies and discrepancies in the accounting systems. Transparency and

[88] *Id.*
[89] http://www.eiti.org/eiti 19th August, 2013.
[90] *Id.*
[91] Ijeoma,I.O. *Nigeria Anti-corruption Initiatives*. Bepress Legal Series, Working Paper. (2006).p.18.

accountability in the oil and gas sector were at their lowest point. Recognising this flaw and the need to extend the government due process mechanism to oil and gas sector, the government signed on to global EITI and launched the national chapter in 2004 with the aim of improving the transparency of extractive industries' revenue data that is relevant for the effective management of public resources and also to improve the image of Nigeria at home and abroad. [92]

The National Stakeholder Working Group (NSWG) is the governing body of the NEITI and formulates policies, programmes and strategies for implementing NEITI's mandate. It brings together stakeholders from different sectors-notably oil, the federal and state governments, and civil society including the media. It reports to the presidency and the National Assembly.[93] NEITI was formed in 2004 with only three civil society members, and was strengthened in June 2005 by a Civil Society Steering Committee which was designed to bring in additional civil society members and to address some of the NSWG's shortcomings. Goldwyn International Strategies LLC (GIS) of Washington, DC has served as the lead adviser to the NSWG for the tender for the 1999-2004 audits. The tender was won by the Hart Group, which worked in partnership with SS Afemikhe & Co. and SS Afemikhe Consulting Ltd of Nigeria. The 2006 report on NEITI said that there was no mechanism for the civil society

[92] Adeh, I. *Corruption and Environmental Law*: The Case of the Niger Delta. Lit Verlag Munster, (2010).p.197.
[93] http//www.neiti.org.ng/index.php 19th August, 2013.

representatives on the NSWG to report back to larger civil society and insufficient civil society consultation in the design of the work plan and the reporting format. The passing of the NEITI Act in May 2007 saw the NSWG cut back to 15 members appointed by the President, but importantly enshrined the body in law.[94]

The Objects of the NEITI

Section 2 of the NEITI Act provides that the primary objectives of the NEITI are:

> (a) To ensure due process and transparency in the payments made by all extractives industry companies to the Federal Government and statutory recipients;
>
> (b) To monitor and ensure accountability in the revenue receipts of the Federal Government from extractive industry companies;
>
> (c) 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; and
>
> (d) To ensure conformity with the principles of Extractive Industries Transparency Initiative.

The exercise under the Nigerian EITI will be three-tiered, including a physical audit of oil output, exports, and domestic consumption; a financial audit of payments made by oil companies and revenues received by the government; and a process audit looking at operations and procedures in terms of financial management and procurement relating to joint ventures. It will investigate the

[94] Shaxson, N. *Nigeria's Extractive Industries Transparency Initiative: Just a glorious Audit?* Chatham House, (2009).p.16.

theft of crude oil and illegal bunkering.[95] On top of this there are the secondary elements: fostering growth and reducing poverty, as well as curbing political instability, enhancing reputation of companies, improving the investment climate – generally, improving developmental outcomes.[96]

To meet these laudable objectives NEITI is empowered among others to develop a framework for transparency in the reporting and disclosure by extractive industries (EI) of revenue due to or paid to the FG and to request from EI companies an accurate record of the cost of production and volume of sale of oil, gas or other minerals extracted by the company.[97]

Moreover, NEITI received praise from some observers, for instance the president of GIS, David Goldwyn said that in a subsequent EITI guide for Revenue Watch Institute in which every EITI country was surveyed, it was found that the Nigerian audits were the most complete. Also the EITI's practices and documents are the most transparent of any country surveyed.[98]

Furthermore, it has been observed that penetrating audits of the 1999-2004 accounts and industry were conducted and then published in April 2006, and to this day, these audits remain NEITI's crowning achievement.

[95] Ijeoma,I.O. *Nigeria Anti-corruption Initiatives*. Bepress Legal Series, Working Paper. (2006).p.19.
[96] Shaxson, N. *Nigeria's Extractive Industries Transparency Initiative: Just a glorious Audit?* Chatham House, (2009).p.18.
[97] *Op.Cit.*p.17.
[98] Shaxson, N. *Nigeria's Extractive Industries Transparency Initiative: Just a glorious Audit?* Chatham House, (2009).p.5.

Even though Goldwyn is not independent because of his links to NEITI and his own funding related to NEITI, Nicholas Shaxson has observed that no interviewee dissented to such praises.[99]

However it has been observed that despite the progress, NEITI lost momentum during 2006 amid a more general slowing of the reformist climate. Today the NEITI is still held up by some as an EITI showcase whereas in reality the process is becalmed. This was confirmed by a participant at an EITI West Africa conference in Abuja, September 2008, where since 2006 there has been nothing much.[100]

Recently, NEITI recovered about two billion dollars from revenue loss through collaboration with relevant agencies working under the aegis of the inter-Ministerial Task Team. However, NEITI is of the view that about 9.8 billion dollars could be recovered from companies into federation account.[101]

Whereas some outsiders have expressed a view, or assumed that EITI helped drive oil-sector reforms in Nigeria, it has been observed that it was the reformist climate from 2003-2006 that created the conditions that allowed NEITI to prosper. While not driving reforms, NEITI has helped provide tools and international supporters to assist the reformist team, already armed with the

[99] *Id.*
[100] *Id*.p.6.
[101] http://www.leadership.ng/news/100613/fg-review-neiti-s-enabling-law-jonathan 13th May, 2013.

political will to push forward, to properly understand and get serious access to the oil sector.[102]

NEITI does have significant success to its name, but this do not match up to its or EITI's core mandate and goals, and it is hard to argue that it has delivered sustained better governance or better lives for ordinary Nigerians.[103]

3.6 PRESIDENTIAL PARDON ON CORRUPT PUBLIC OFFICERS AND ITS EFFECT ON COMBATING CRIMES IN NIGERIA.

Pardon is act or an instance of officially nullifying punishment or other legal consequences of a crime. A pardon is usually granted by the chief executive of a government.[104] Section 175 of the Constitution of the Federal Republic of Nigeria, 1999, provides that:

(1) The President may-

(a) grant any person concerned with or convicted of any offence created by an Act of the National Assembly a pardon, either free or subject to lawful conditions.
(b) grant to any person a respite, either for an indefinite or for a specific period, of the execution of any punishment imposed on that person for such an offence.
(c) substitute a less severe form of punishment for any punishment imposed on that person for such an offence; or
(d) remit the whole or any part of any punishment imposed on that person for such an offence or penalty forfeiture otherwise due to the state on account of such offence.

(2) The powers of the President under sub-section 1 of this section shall be exercised by him after consultation with the Council of State.

[102] Shaxson, N. *Nigeria's Extractive Industries Transparency Initiative: Just a glorious Audit?* Chatham House, (2009).p.14.
[103] *Id.*p.43.
[104] *Black's Law Dictionary*, Ninth Edition, West, Minneapolis, (2009) p.1221.

> (3) The President, acting in accordance with the advice of the Council of State, may exercise his powers under subsection (1) of this section in relation to persons concerned with offences against the army, naval or air force law or convicted or sentenced by a court-martial.

However, the granting of pardon strikes at the heart of the whole criminal justice system for a convicted criminal is freed by way of executive order and this is always liable to be used for political purposes.[105]

The Federal Government announced in March 2013, state pardon for Chief Alamieyeisegha, Mr. Shettima Bulama and five others after a National State Council meeting. Alamieyeisegha was impeached and later convicted of money laundering and other corruption offences in 2007, while Bulama was convicted for defrauding the defunct bank of the North.[106]

The United States has expressed disappointment over the state pardon, and sees this as a setback in the fight against corruption.[107] However, according to Transparency International the decision undermines anti–corruption efforts in Nigeria and encourages impunity. If the government is serious about uprooting public opinion, sanctions against those who betray the public trust should be strengthened, not relaxed.[108]

[105] Hatchard, J. *Combating Corruptions: Legal Approaches to Supporting Good Governance and Integrity in Africa*. Edward Elgar Publishing, (2013) p.84.

[106] http://www.thisdaylive.com/articles/us-condemns-presidential-pardon-for-alamieyeseigha/142294/ 15th December, 2013.

[107] *Id*.

[108] *Id*.

But defending the decision to pardon Alamieyeisegha, the presidency said that apart from the remorse he had shown, the former Governor had been quietly playing a key role in stabilising the volatile Niger Delta region.[109]

Furthermore, it has been observed that the decision allows Alamieyeisegha, a close ally of the President to run for political office again (with all the financial benefits that this brings) and to rally support for him in the preparation for the 2015 presidential election.[110]Also, that the decision was made on the puerility of mind, devoid of distinguishing between good and evil. It has shaken the confidence of the enthusiast in the future of their choice of who will be their leader next.[111]

Also, it has been observed that the Council of State might have acted in error. The pardon granted to Shehu Yar'adua, Diya and Adisa (who were among those pardoned), were also pardon by the former Head of State, Gen. Abdulsalami Abubakar. But the Presidency defended its action saying that there was a difference between clemency granted to Adisa and Diya in 1999 and the recently granted pardon.[112]

However, the sole safeguard for the presidential pardon is that the decision is made after consultation with the Council of State. The Alamieyeisegha pardon

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[109] *Id*.

[110] Hatchard, J. *Combating Corruptions: Legal Approaches to Supporting Good Governance and Integrity in Africa*. Edward Elgar Publishing, (2013) p.84.

[111] Esiemokhai, E.O. *Commentaries on Contemporary Nigerian Politics*. Author House, (2013) p.288.

[112] http://www.thisdaylive.com/articles/us-condemns-presidential-pardon-for-alamieyeseigha/142294/ 15th December, 2013.

indicates that this constitutional safeguard is not sufficient and arguably the exercise of the presidential pardon should be restricted to preventing injustice that is where there are legal grounds for doing so or where there is a later ascertainment or innocence or a real doubt as to guilt. [113]

3.7 CONCLUSION.

The fight against corruption in the public sector in Nigeria the last decades have received a lot of attention which has failed to yield any fruitful results.

However, it would be observed that from the findings of this chapter that the obstacles to curbing corruption stems from the fact among others that there are issues relating to confusion of interpretation of the rules of the Penal Code and Criminal Code, bureaucracy seems to slow down the process of curbing corruption, which could also lead to underfunding, lack of staff, slow process of project implementation in the public sector, the NEITI has not match up to its or EITI's core mandate and goals, and the constitutional safeguard for presidential pardon is not sufficient.

With the time and huge amount of resources invested to curb corruption, it would have been expected that corruption in the public would have been at a minimum level. But, it will be safe to conclude that such efforts have been misused and such opportunity missed.

[113] Hatchard, J. *Combating Corruptions: Legal Approaches to Supporting Good Governance and Integrity in Africa*. Edward Elgar Publishing, (2013) p.84.

CHAPTHER FOUR

THE INSTITUTIONAL FRAMEWORK FOR COMBATING CORRUPTION IN NIGERIA

4.1 INTRODUCTION

Despite the investments made by the Nigerian government to fight against corruption in the public sector, such efforts are yet to deliver on the objective of effectively preventing and combating corruption in the management of public resources and public affairs. A key challenge affecting the fight against corruption in Nigeria is the location of anti-corruption functions within multiple and operationally diverse institutions, which despite their closely related and even overlapping mandates have limited interface and cooperation and seldom coordinate policies and operations. Despite all efforts, Nigeria continues to fall

short of the standards and requirements of an effective anti-corruption regime as embodied in regional and global anti-corruption conventions.

This chapter will focus on the institutional mechanism for combating corruption in Nigeria. These institutional mechanisms include the Code of Conduct Bureau, Code of Conduct Tribunal, ICPC, EFCC, the Nigerian Police and Public Complaints Commission. Furthermore, the chapter will analyse the nature and scope of the above mechanisms with the aim to examine to what extent they have been successful and to examine what prevents them from being effective in combating corruption in the public sector.

4.2 JUDICIARY

4.2.1.1 Code of Conduct Bureau

The Code of Conduct Bureau was established in 1989 under the military regime as the chief guardian of public morality and accountability among public officials. The Code of Conduct Bureau is an institution of monitoring and checking the behaviours of public office holders. The Code of Conduct Bureau and Tribunal Act give the Bureau the mandate to: "establish and maintain a high standard of morality in the conduct of Government business and to ensure that the action and behaviour of public office holders conform to the highest standards of public morality and accountability". [114]

[114] Section 2 Code of Conduct Bureau and Tribunal Act, Cap. C15, LFN, 2004.

In *Asogwa v. Chukwu*[115], the court stated that politicians, civil or public servants are public officers only for the purpose of the Code of Conduct Bureau. However, in *Sharika & Sons LTD v. The Governor of Kaduna State & Ors*[116], the court held that public officers are not limited to human beings or persons sued in their personal names but also include an artificial person, that is public bodies, or body corporate, or incorporate statutory bodies or persons.

The Code of Conduct Bureau is the Federal Executive Body established under section 153 of the Constitution of the Federal Republic of Nigeria, 1999. It is an Extra-Ministerial department which function under the presidency. The bureau has four departments which are asset declaration, investigation and monitoring, education and advisory service and administration and finance.

The Code of Conduct Bureau is the public watchdog, empowered by law to raise alarm – fish out the individual's involvement; where ever its routine reporting mechanism indicates a person in a position of public sector trust has accumulated unjustifiable wealth.[117]

In order to encourage public officers to cultivate appropriate conduct and ethics in the conduct of public business, all matters relating to good behaviour of public officers within each specified establishment must be investigated and remedied within guidelines provided in the manual of the establishment. If

[115] (2003) 4 NWLR (pt. 811) 540 at 551.
[116] (2013) LPELR-20379 (CA).
[117] Offu, A.K. The Nigerian Dependent Management & Leadership Development in Post World War II Colonial Nigeria. Author House. (2013) P.129.

matters are not satisfactorily within the establishment, these are to be reported to the Code of Conduct Bureau for appropriate action.[118]

4.2.1.2 Powers and Functions of the Bureau

The Code of Conduct Bureau and Tribunal Act[119] provide that the functions of the Bureau shall be to –

a) Receive assets of declarations by Public officers with accordance with the provisions of this Act;

b) Examine the assets declarations and ensure that they comply with the requirements of this Act and any Law for the time being in force;

c) Take and retain custody of such asset declarations; and

d) Receive complaints about non-compliance with or breach of this Act and where the bureau considers it necessary to do so, refer such complaints to the Code of Conduct Tribunal.

Under the constitution, persons both in federal and state public services are required to conform and observe the Code of Conduct.[120] The Code of Conduct requires a public officer to abstain from putting himself in a position where his personal interest will conflict with his official duties.[121] The Code of Conduct also prohibits the President, Vice President, Governor, Deputy Governors, Ministers, Commissioners and members of the National and State Assemblies

[118] Jain, R.B. *Corruption-free Sustainable Development: Challenges and Strategies for Good Governance*. Mittal Publications. (2004). P.134.
[119] Section 3a-d, Code of Conduct Bureau and Tribunal Act, Cap. C15, LFN, 2004.
[120] Section 172 and 209, Constitution of the Federal Republic of Nigeria, 1999.
[121] Section 5 Code of Conduct Bureau and Tribunal Act, Cap. C15, LFN, 2004.

and such other officers as prescribed in law by the National Assembly from maintaining and operating a foreign bank account.[122]

A public officer is also prohibited from accepting property or benefits of any kind or on behalf of any other person as payment for any commission or omission performed by him in discharged of his duties.[123]

Furthermore, every public officer shall, immediately after taking the oath of office, every four years thereafter, and at the end of his term of office, submit to the Code of Conduct Bureau a written declaration of all his (and those of his minor children) properties, assets, and liabilities. Any property or assets acquired by a public officer after the asset declaration which is not fairly attributable to his income or gift, or loan approved by the Code shall be deemed to have been acquired in breach of the Code unless the contrary is proved.[124]

Also, the Code of Conduct Bureau is to receive the asset declarations, examine them to ensure compliance with the constitutional requirements and retain custody of such declarations and make them available for inspection by any citizen of Nigeria on such terms and conditions as the National Assembly may prescribe.[125] However, any false declaration is a breach of the Code.[126]

Furthermore it is important to note that assets include any property, moveable or immoveable and incomes owned by a person, while liabilities include

[122] Schedule 5, Section 3, Constitution of the Federal Republic of Nigeria, 1999.
[123] Paragraph 6(2), *Id*.
[124] Section 15 (1),(3). Code of Conduct Bureau and Tribunal Act, Cap. C15, LFN, 2004.
[125] Paragraph 3 third schedule, Constitution of the Federal Republic of Nigeria, 1999.
[126] Section 15(2). Code of Conduct Bureau and Tribunal Act, Cap. C15, LFN, 2004.

responsibilities according to law to satisfy debt, duty or obligation quantifiable in monetary value, instant and contingent.[127]

The Code of Conduct Bureau prohibits a public officer, except where he is employed on a part-time basis, from engaging or participating in the management or running of any private business, profession or trade except farming. [128]

Furthermore, the law contains a time frame within which to declare assets on assumption of office every four years. But unfortunately, successive administrations of the Code of Conduct Bureau have not taken the necessary measures to make public officers to declare their assets. It is also worrisome that the leadership of the Code of Conduct Bureau over the years has always lack the political will not only to make public officers declare their assets but also to appropriately sanction erring public officers.[129]

Recently, the Code of Conduct Bureau said that 134.717 officers were yet to declare their assets. Chairman of the Bureau, Mr. Sam Saba, told journalist that 230,298 eligible public officers were identified and issued with the asset declaration forms for completion. But out of the figure only 109,026 duly completed forms were returned for processing and storage.[130]

[127] Paragraph 19, Constitution of the Federal Republic of Nigeria, 1999.
[128] Fifth schedule part 1 and 2, *Id*.
[129] http://www.nigeriaintel.com/2012/12/21/asset-declaration-lawless-and-irresponsible-public-officers/ 10th February, 2014.
[130] http://www.informationng.com/2012/11/134717-public-officers-yet-to-declare-assets-code-of-conduct-bureau.html 20th February, 2014.

However, it has been observed that to show the Code of Code Bureau was not set up to check self-enrichment of the rich and powerful public office holders in the land, the officers, who are required to declare their assets on assumption of office, do not do so. If they do, the public knows nothing of such declarations.[131] More so, it is quite doubtful that any public officer in Nigeria even declares his assets after leaving office.[132]

Unfortunately, it has been argued that it is not mandatory to make asset declaration public. That was the case when there was a request for details of the asset declaration of the President, Governor and Ministers. The Code of Conduct Bureau said that the Freedom Information Act exempted it from disclosing declaration of assets of public officials because the forms contain personal information about the assets of the officials and of their spouses and unmarried children. The Bureau in declining LEDAP's (Legal Defence and Assistance Project) request, cited sections 12(1) (v) and 14(1) (ii) of the Freedom of Information Act.[133]

However, section 12(1) (v) of the Freedom of Information Act, 2011 provides that:

A public institution may deny any application for information which contains-

> (v) Constitute an invasion of personal privacy under section 15 of this Act, except, where the interest of the public would be better

[131] Okoro, O.C. *Nigeria: Her Woes and their True Remedies*. iUniverse (2009) p.270.
[132] Obiyan, S.A. and Amuwo, K. *Nigeria's Democratic Experience in the Fourth Republic Since 1999: Policies and Politics.* Rowman & Littlefield. (2012) p.322.
[133] http://www.channelstv.com/2013/04/02/court-fixes-hearing-on-asset-declaration-case/ 12th June, 2014.

served by having such record being made available; this exemption to disclosure shall not apply.

And section 15(1) (2) provides that:

A public institution shall disclose any information that contains personal information if-

(a) the individual to it relates consents to the disclosure; or

(b) the information is publicly available.

Furthermore, the Bureau stated that even though paragraph 3(c) of the Third Schedule, Part 1 of the Constitution of the Federal Republic of Nigeria, 1999, provides that the Code of Conduct Bureau shall make the asset declaration available for inspection by any citizen of Nigeria, the terms and conditions under which that can be done have not been prescribed by the National Assembly as enjoined by the Constitution.[134]Thus, members of the public cannot contribute to the effective administration of the assets declaration process.[135]

Moreover, it has been observed that the decree that established the Bureau is one of the laws in the land enacted against the masses to keep them perpetually poor, wretched and defenceless.[136]

4.2.1.3 Objectives and Implementation

[134] http://tribune.com.ng/~tribunec/news2013/index.php/en/from-the-senate/item/8587-declaration-of-assets-to-be-or-not-to-be.html 12th June, 2014.

[135] Islam, R. *Information and Public Choice: From Media Makers to Policy Making.* World Bank Publications. (2008) p.208.

[136] Okoro, O.C. *Nigeria: Her Woes and their True Remedies*. iUniverse. (2009) p.270.

The Code of Conduct is more independent in its operations. The Code of Conduct Bureau could initiate on its own for a breach of the Code of conduct by any public officer. This is singularly possible after an examination of the Assets Declaration Form(s) of a public officer and the Bureau is satisfied that there were reasonable grounds for such investigations.[137] It has been observed that the likelihood of abuse of this power on the part of the Bureau has already been short-circuited by its being subject to supervisory jurisdiction of the High Court and such other courts of co-ordinate jurisdiction of equal legal authority.[138]

A major problem encountered by the Code of Conduct Bureau is traceable to its structural composition. The membership of the Code of Conduct Tribunal consists of a chairman and two other persons who shall be appointed by the president in accordance with the recommendation of the Federal Judicial Service Commission. It is observed by Olugbenga Soycle that the appointment had remained political despite the clause to the effect that it should be done in consultation with the Judicial Service Commission. To this effect, the Bureau had remained feeble pawns in the hands of successive executive arms of government.[139]

Despite the modest achievements of the Bureau it would appear that it lacked leadership (because to a larger degree it is ineffective) and focus. Furthermore, it seems that the perennial problems including insufficient budget, lack of

[137] http://dspace.unijos.edu.ng/bitstream/10485/291/1/59-68.pdf 15th January, 2014.
[138] *Id*.
[139] *Id.*

professional expertise and overall capacity to verify asset declarations by public officers all over the country still remain daunting challenges for the Bureau.[140]

The Code of Conduct Bureau subservient to the executive, its seeming incapacity to immunize itself from ethnic and partisan pressures, and more importantly successive presidents' unwillingness to activate the Bureau has comprised severely its potential to tackle corruption in the public sector.[141]

However, it is not surprising that recently the Attorney General of the Federation (AGF) at the hearing on the Review of the 1999 Constitution by the Senate Committee on Constitutional Review, recommended for the removal of the Code of Conduct Act from the constitution.[142]

4.2.2 Code of Conduct Tribunal

The Code of Conduct Tribunal is established under paragraph 15(1) of part 1 of the Fifth Schedule of the Constitution of Nigeria, 1999. The Tribunal investigates complaints refer to it by the Code of Conduct Bureau.[143]

Moreover, in *Ahmed v. Ahmed & ORS*.[144], the Supreme Court stated that the Code of Conduct Tribunal has the exclusive jurisdiction to handle matters pertaining to the Code of Conduct Bureau. It is therefore conclusive to hold that no ordinary Tribunal or court for that matter has been expressively or impliedly

[140] Oko, O. Subverting the Scourge of Corruption in Nigeria. *N.Y.U. Journal of International Law and Politics* (2002) Vol.34, p. 431.
[141] *Id.*
[142] http://www.nassnig.org/nass/news.php?id=389 20th January, 2014.
[143] Schedule 5, s.18, and Schedule 3, s.3(c), Constitution of the Federal Republic of Nigeria, 1999.
[144] (2013) LPELR-21143 (SC).

conferred with the power to deal with any violations and or non-compliance with the provisions of the Code. Also, in *Joshua Guting v. Tunyang Davwang*[145], the Court of Appeal stated that the court does not have original jurisdiction to the deal with the issue of breach of code of conduct against the Respondent. Jurisdiction to punish for any proven breach of the said code resides with the Code of Conduct Tribunal.

The Tribunal has the power to try cases of alleged infractions of the Code of Conduct and to impose appropriate sanctions once the Tribunal determines someone is guilty. The Tribunal may impose a variety of punishments on erring public servant including loss of public office or seat in the legislature,[146] disqualification from membership in the legislature and from holding any public office for a period not exceeding 10 years,[147] and seizure and forfeiture to the State of any property corruptly acquired.[148] However, the Code of Conduct Bureau could suspend a public officer pending the decision of the Code of Conduct Tribunal, and such would not constitute breach of right to fair hearing. The Tribunal's judgement is appealable to the Court of Appeal.[149]

Furthermore, it has been observed that the appointment of the chairman and two other persons, who shall be appointed by the President with the recommendation of the Federal Judicial Service Commission, had made the

[145] (2013) LPELR-21921 (CA).
[146] Schedule 5, s 18(2)(a), Constitution of the Federal Republic of Nigeria, 1999.
[147] Schedule 5, s18(2)(b)., *Id*.
[148] Schedule 5, s18(2)(c)., *Id*.
[149] Schedule 5, s18(5).,*Id.*

Tribunal feeble pawn in the hands of successive executive arms of government.[150]

However, it has been observed that some of the cases brought before the Tribunal were politically motivated, and most of these cases cannot be concluded.[151]

Unfortunately, the immunity clause under section 308 of the Constitution precludes the Code of Conduct Tribunal instigating criminal or civil proceedings against the President, Vice-President, Governor, and Deputy-Governor. However, in *Attorney General of the Federation, Code of Conduct Bureau and Code of Conduct Tribunal V. Alh. Atiku Abubakar*,[152] the Code of Conduct Bureau investigated certain corrupt allegations levelled against the respondent and made charges against him before the Court of Conduct Tribunal. The court held that restriction on legal proceedings whether civil or criminal against any person to whom section 308 of the Constitution applies is absolute during his period in office. Such person shall not be arrested or imprisoned (while still in office) either in pursuant of the process of any court or otherwise and no process of any court requiring or compelling his appearance shall be applied for or issued.

4.3 INDEPENDENT CORRUPT PRACTICES COMMISSION

[150] http://dspace.unijos.edu.ng/bitstream/10485/291/1/59-68.pdf 15th January, 2014.
[151] http://www.premiumtimesng.com/news/152030-apc-condemns-arrest-kano-lawmakers-blames-jonathan-administration.html 16th June, 2014.
[152] (2007) 8 N.W.L.R. (pt. 1035) 117 at 155 .

The Corrupt Practices and Other Related Offences Act 2000 established the ICPC whose main purpose is to fight corruption.[153] The main objective of the Act is the establishment of an independent commission with powers to receive, investigate and prosecute alleged crimes of corruption and other offences enumerated in the Act.[154]

The ICPC was established as part of the national reform agenda to address corruption and money laundering. The mandate of the ICPC is to prohibit and prescribe punishment for corrupt practices and other related offences.[155]

However, the constitutionality of the Act to have force throughout the Federation of Nigeria and enforceable against both State and Federal Government officials, as well as private citizens was challenged. But the issue was settled in the case of *A.G Ondo State and Others Vs A.G of the Federation*[156]. The Supreme Court unanimously upheld the constitutionality and validity of the Act but struck down sections 26(3) (three months period for trial of corruption cases) and section 35 (detention of any person indefinitely without the court's order when such person fails to appear after receiving summons.

Also, *FRN v Anache*[157], it was argued that Chapter 2 of the Constitution not being enforceable by virtue of section 6(6)(c) of the same Constitution, the ICPC and act done in pursuance of that law are not enforceable or justiciable

[153] Section 3(1), Corrupt Practices and Other Related Offences Act. Cap.31, LFN 2004.
[154] Section 6., *Id.*
[155] Ogundiya, I.S. *et al*. *Assessing of Democratic Trends in Nigeria*. Gyan Publishing House. (2011) p.198.

[156] (2013) 1 ICPCLR 254.
[157] *Id.*, 617.

because the subject matter of that legislation is founded on Chapter 2 of the Constitution. But court held the Act to be justiciable.

The Act sets out the duties of the commission which are:

> -To receive and investigate complaints from members of the pubic on allegations of corrupt practices and in appropriate cases, prosecute the offenders.
> -To examine the practices, systems and procedures of public bodies and where such systems aid corruption, to direct and supervise their review.
> -To instruct advice and assist any officer, agency or parastatals on ways on which fraud or corruption may be eliminated or minimized by them.
> -To advice heads of public bodies of any change in practice, systems or procedures compatible with the effective discharge of the duties of the public bodies to reduce the likelihood or incidence of bribery, corruption and related offences.
> -To educate the public on and against bribery, corruption or related offences.
> -To enlist and foster public support in combating corruption.[158]

Moreover, offences under the Act are broad which include, accepting gratification, giving or accepting gratification through an agent, fraudulent acquisition of property, fraudulent receipt of property, deliberate frustration of investigation by commission, making a false statement or return, gratification by or through an agent, bribery of public officials and using ones office or high position for gratification.

The Act prohibits any person to ask for, receive or obtain or attempt to receive or obtain any property for himself or for any other person in relation to anything done or omitted to be done or any favour or disfavour shown in the carrying out

[158] Section 6 (a)-(f)., Corrupt Practices and Other Related Offences Act. Cap.31, LFN 2004..

of his duties as a public officer.[159] The punishment for this offence is seven years imprisonment.[160]However, in *FRN v. Ameh*[161], the accused was charged and convicted for demanding the gratification for the purpose of releasing someone on bail. The accused was charged based on section 8 (1)(a) and punishable under section 8 (1)(b)(ii) of the Act. The court also identified ingredients of the offence of corrupt demand by a public officer under the said section.

Furthermore, to deter people in public service from awarding contracts to themselves or organisations that they have interests, the Act made it an offence for any person employed in the public service to take part in any business activity otherwise than a registered joint stock company, a private interest in any contract, agreement or investment emanating from his place of public service.[162]

The Act also prohibit for any person to knowingly receive anything which has been obtained by means of a felony or misdemeanour, or by a means of an act done in a place outside Nigeria, which done in Nigeria would have constituted to be an offence in Nigeria.[163]

Also, the Act makes it an offence for any officer in charge of receiving or managing property to knowingly furnish any false statements or returns with

[159] Section 8(1)., *Id.*
[160] *Id*.
[161] (2013) 1 ICPCLR 566.
[162] Section 12, Corrupt Practices and Other Related Offences Act. Cap.31, LFN 2004.
[163] section 13., *Id.*

respect with any money or property within his possession, control or care.[164]Furthermore, the Act prohibits making of statement which is false or intended to mislead.[165] Hence, in *FRN v. Ayoade Ogunsola*[166], the accused was charged for making false statement. It was discovered that the accused did not use money in his possession for the said purpose of rehabilitation of a college farm and hosting of games. He diverted the money for his personal use. He was found guilty by the court and sentenced to 2 years of imprisonment.

Moreover, the Act covers cases of discretional abuse in the distribution of public benefits. However, It is only when the abuse is for the advantage of the particular person, his relation, his associate or any other public officer, that liability under the provision arise.[167]

However, any public officer or other person found guilty of soliciting, offering or receiving gratification shall forfeit the gratification and pay a fine.[168] It is required that any person to whom any gratification is given, promised or offered, to report such matter to the nearest officer of the ICPC or police officer. Failure to do so will result to punishment.[169]Concealment of property acquired through gratification whether within or outside the country is an offence.[170]

The Commission has extensive powers to search, seize, inspect, examine, and audit bank accounts, records of financial institutions, share accounts, the

[164] section 18., *Id*.
[165] Section 25., *Id*.
[166] (2013) 1 ICPCLR 868.
[167] section 19, Corrupt Practices and Other Related Offences Act. Cap.31, LFN 2004.
[168] section 20., *Id.*
[169] Section 23(1),(2)., *Id.*
[170] Section 24., *Id.*

contents of safe deposit boxes, and electronically stored information.[171] The Commission can compel suspects to disclose information contained in any documents, accounts, or materials relating to any of the above items.[172] The Commission also is empowered, subject to obtaining a court order, to compel a suspect to surrender his passport, exit permit, or any other travel document in his possession.[173]

Moreover, in the case of *Elechi v. FRN*[174], the court decided issues in relation to the power of the ICPC to invite a person for interrogation. It was contended that invitation for interrogation over alleged involvement in a case of fraudulent cheque conversion amounted to a violation of right to personal liberty. However, the court held that invitation for questioning by the ICPC does amount prima facie evidence of threat to violate an invitee's fundamental right to liberty.

Furthermore, when an allegation is made against the President, Vice-President, Governor, Deputy-Governor, an independent counsel appointed by the Chief Justice of the Federation will investigate the allegation. The independent counsel's report shall be forwarded to the National Assembly or the relevant State House of Assembly.[175]Moreover, Section 308 of the Constitution confers

[171] Section 43 (2),(a-d)., *Id.*
[172] Section 43(d)., *Id.*
[173] Section 50(1)., *Id*.
[174] (2013) 1 ICPCLR 1.
[175] Section 53, Corrupt Practices and Other Related Offences Act. Cap.31, LFN 2004.

immunity on these Chief State Executives from civil or criminal process while in office.

However, Humphrey Assisi Asobie observed that the jurisdiction of the ICPC is in respect of what may be termed petty corruption. The offences covered are common and relate mostly to activities of middle and top level civil servants in the Ministries, Departments and Agencies, as well as their counterparts in the parastatals. The penalties provide for are mild; therefore, the cost of corruption is low in relation to its potential benefits.[176]

Furthermore, the powers to prosecute persons for an offence under the Act are vested in the Attorney-General of the Federation or any person or authority to whom he shall delegate such authority.[177]

In order to enlist public support to provide relevant information, the ICPC Act prohibits release of the identity of any informant. Any such information is to be treated as confidential between its provider and the Commission officer who received it. [178]Regrettably, the ICPC lacks the effective means of protecting the whistleblowers, thus affecting the willingness of the public to disclose the vital information it needs to do its work.[179]

One of the problems observed with the Act is the issue of federalism. Principles of federalism place the responsibility for checking the excesses of state

[176] http://nials-nigeria.org/PDFs/2012%20STATE%20OF%20THE%20FEDERATION.pdf 18th June, 2014.
[177] Section 26(2), Corrupt Practices and Other Related Offences Act. Cap.31, LFN 2004.
[178] Section 64(1)., *Id.*
[179] Omeje, K.C. *State Society Relations in Nigeria: Democratic Consolidation, Conflicts and Reforms*. Adonis & Abbey, (2007). P.249.

employees, including a state Governor on the constituent states. Thus, it is doubtful whether the Federal Government acting through the agency of the Commission can, without the consent of the states, foist an anti-corruption regime on the states. Overlooking all the excitement surrounding the war against corruption, the Act may interfere impermissibly with the powers of the state to promote and enforce probity in their governments.[180]

Another issue is the unexplained life style offence. When can one be said to living above his means? There are no clearly defined standards and no objective means to prove that one is living above one's means; a flair for flamboyance may be misconstrued as living above one's means.

The law leaves much room for speculation that often may rest only upon conjectural evidence or the views of the Commission. Unexplained lifestyle is an amorphous term with tremendous potential for abuse. The Commission can easily invoke this provision to harass and intimidate innocent citizens.[181]

In addition, there is also the issue of some practical problems with the Corrupt Practices and Other Related Offences Act. First, the Chairman and all members of the Commission are appointed by the President. Moreover, the powers of the Commission in the hands of the wrong set of people could quickly the degenerate into weapons of oppression and harassment.[182]

[180] Oko, O. Subverting the Scourge of Corruption in Nigeria. *N.Y.U. Journal of International Law and Politics* (2002) Vol.34, p. 448.
[181] *Id*., p.449.
[182] *Id*., p.452.

Furthermore, to safeguard its financial independence, the Act provides that the National Revenue Mobilization, Allocation, and Fiscal Commission shall determine remunerations for members of the ICPC.[183] However, the funding for ICPC's operations allocated and/or released to the Commission is at the pleasure of the executive arm of government. Unfortunately, this could undermine the anticipated financial independence that the Act seeks to protect in favour of the ICPC.

The Act also aims to supplement punitive measures with education. This is highly commendable. It has been suggested that for any effort at anti-corruption reform to succeed, such must include a clear understanding and diagnosis of the problem rather than merely treating the symptoms. Education and awareness programmes on corruption can change orientation and thoughts about corruption.[184]

Unfortunately, it has been observed that the ICPC was seen as a tool in the hands of the executive to witch hunts certain real or perceived political opponents.[185]Furthermore, it has been observed that the potential of abuse of power is further exacerbated by the immunity from legal action enjoyed by officers of the Commission. The only recourse open to victims will be to sue for malicious prosecution, a cause of action with several insurmountable

[183] Section 5, Corrupt Practices and Other Related Offences Act. Cap.31, LFN 2004.
[184] Abass, A. *Protecting Human Security in Africa*. Oxford University Press. (2010) p.231.
[185] Ogundiya, I.S. *et al. Assessing of Democratic Trends in Nigeria*. Gyan Publishing House. (2011) p.203.

hurdles.[186]It should be noted that the ICPC has devoted much time and attention to prosecuting corruption with little success recorded.[187]It is suggestive that the ICPC is either faced with judicial constraints or justice is being manipulated from the top by not allowing the sledge hammer to fall on the corrupt suspects.[188]

Moreover, it has been observed that establishing ICPC to implement the law is not enough. But, however, the ICPC should be self-sustaining, self propelling and must be jealously kept afloat at all times by adequate funding. [189]

4.4 ECONOMIC AND FINANCIAL CRIMES COMMISSION

The Economic and Financial Crimes Commission was established in 2002.[190] The Act was later repealed and replaced by the Economic and Financial Crimes Commission (establishment) Act of 2004[191].

The establishment of the EFCC was impelled by social, political and economic expediency and imperatives. Indeed, the coming into being of the EFCC was due mainly to pressure from the international community on Nigeria to do

[186] Oko, O. Subverting the Scourge of Corruption in Nigeria. *N.Y.U. Journal of International Law and Politics* (2002) Vol.34, p. 453.
[187] Abass, A. *Protecting Human Security in Africa*. Oxford University Press. (2010) p.231.
[188] Adedijji, B.O. *Deeper Insight into Nigeria's Public Administration*. Author House. (2013) p.168.

[189] *Id*., p.166.
[190] Section 1, Economic and Financial Crimes Commission (Establishment) Act, 2002.
[191] Section 1, Economic and Financial Crimes Commission (Establishment) Act, Cap.E1, LFN 2004.

something about its image and all-pervading nefarious crime and corruption situation in the country.[192]

The EFCC was created to prevent economic and financial crimes. Economic and financial crimes are defined in the Act to mean non-violent criminal and illicit criminal activity committed with the objective of illegally earning wealth individually, in a group, or in an organised manner, thereby violating existing legislation governing the economic activities of the government and its administrations.[193] Financial crimes include any form of fraud, narcotic drug trafficking, money laundering, embezzlement, bribery, looting and any form of corrupt practices.[194]

Stiff and hash penalties are provided as deterrence for the offences. According to the Act, anyone who contravenes the aforementioned provisions risks an imprisonment for a term not less than fifteen years without option of fine. This is in addition to forfeiture of all assets and properties being the subject matter of the crime to the Federal Government.[195]

However, the most perpetrated targeted fraud is the widely known scam commonly known as "419" crimes, referring to the Nigerian Penal Code that makes it an offence to obtain money by false pretences.[196]

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[192] Igbinovia, P.E. and Blessing, E.I. *The Economic and Financial Crimes Commission in Nigeria: An Appraisal*. Safari books Ltd. (2014) p.41.
[193] Section 46, Economic and Financial Crimes Commission (Establishment) Act, Cap.E1, LFN 2004
[194] *Id*.
[195] *Id*.
[196] Section 419, Penal Code Act, Cap.P3, LFN, 2004.

The functions of the Commission[197] are stipulated to include, the investigation of all financial crimes including advance fee fraud, money laundering, counterfeiting, illegal charge transfers, futures market fraud, fraudulent encashment of negotiable instruments, computer credit card fraud, contract scam and the enforcement of all economic and financial crimes laws. Important among these are the enforcement and the due administration of the provisions of the Act. These include the investigation of all financial crimes such as advance fee fraud, money laundering, counterfeiting, illegal change transfer etc.

Also, the Act empowers the Commission to trace and attach all the assets and properties of the accused person or persons suspected to have been acquired as a result of such economic or financial crime. Thus, in *Nwaigwe v. Federal Republic of Nigeria*[198], where the defendant appealed to set aside or discharge an ex parte order for interim forfeiture of their properties by the EFCC, the Court of Appeal dismissed the application and held, inter alia, that the Act confers a 'ready made licence' to the Commission to forfeit assets of corrupt culprits.

Also, in *Dangabar v. FRN*,[199] it was argued that the court acted unlawfully in issuing an order which froze the account of the appellant by the EFCC. But the court held that under section 28 of the EFCC Act the Commission is empowered to trace and attach assets and properties which are reasonably

[197] Section 6, Economic and Financial Crimes Commission (Establishment) Act, Cap.E1, LFN 2004.
[198] (2009) 16 NWLR 169 at 175 .
[199] (2012) LPELR-19732(CA).

suspected to have been acquired as a result of such Economic and Financial Crime. Therefore, such accounts and moneys found in them qualify as assets and properties envisaged under the said Act.

However, in *Chief Patrick T. Chidolue V. EFCC*[200], it was held that the EFCC derives its powers from the Act establishing it. It has no power under the Constitution to deprive a person suspected of committing a crime of his property when such a person has not been found guilty by a court competent jurisdiction.

Furthermore, terrorism is regarded as an offence under the Act. Apparently, a person who wilfully provide or collects by any means, directly or indirectly, any money from any other person with intent that the money shall be used or is in the knowledge that the money shall be used for any act of terrorism, commits an offence under the Act and is liable on conviction to imprisonment to life. [201]

Also, the Terrorism Prevention Amendment Act provides a similar provision. The Act provide that any person or entity who, in or outside Nigeria outside Nigeria, solicits, acquires, provides, collects, receives, possesses or makes available funds, property or other services by any means to terrorists, or terrorist groups, directly or indirectly with the intention or knowledge or having reasonable grounds to believe that such funds or property will be used in full or in part in order to commit an offence under this Act or breach of the provisions

[200] (2011) LPELR-CA/A/122/2010.
[201] Section 6, Economic and Financial Crimes Commission (Establishment) Act, Cap.E1, LFN 2004.

of this Act, commits an offence under this Act and is liable on conviction to imprisonment for life imprisonment.[202]

Furthermore, the commission is charged with the responsibility of enforcing provisions of other financial crimes related Acts. These include the Money Laundering Act 2004, the Advance Fee Fraud and other Fraud related Offences Act 1995, Failed Banks (Recovery of Debts) and Financial Malpractices in Bank 1994 as amended, and any other law or regulations relating to economic and financial crimes.[203]

Moreover, in *Ahmed v. Federal Republic of Nigeria*[204], the appellant contended that he is not guilty of some of the charges made against him (fraud and forgery) because they were done with the aim of earning wealth and did not contain the requisite mens rea of any economic and financial crime. Therefore, the EFCC lack the locus standi to prosecute him. The court held that the Commission, by virtue of section 7(1)(a) and 2(f) of the EFCC Act, had the power to cause investigations to be conducted as to whether any person, corporate body or organisation has committed an offence under the Act or other law relating to economic and financial crime; including the Criminal Code and Penal Code and to prosecute any other offences as long as they are financial crimes.

[202] Section 13(1)(a)(i) and (i), Terrorism (Prevention) (Amendment) Act, 2013.
[203] Section 7(2), Economic and Financial Crimes Commission (Establishment) Act, Cap.E1, LFN 2004.
[204] (2009) 13 NWLR 536 at 540 and 542

For effective conduct of the aforementioned task of the Commission, the Act provides for the establishment of certain administrative units. These are the General and asset Investigation Unit, the Legal Prosecution Unit, the Research Unit, the Administrative Unit and the Training Unit.[205]

Operating as the nation's Financial Intelligence Unit (FIU), the EFCC is saddled with the responsibility of coordinating the various institutions involved in the fight against money laundering and enforcement of all laws dealing with economic and financial crimes.[206]However, point of note is that the Commission has secured high government support. One example is the Central Bank of Nigeria directive that all banks should report suspicious transaction to the Nigerian Financial Intelligence Unit (NFIU).[207]

At the establishment of the EFCC, it was considered capable of excellent police work and the most professional law enforcement body in West Africa.[208]

Moreover, it has been observed that the Commission has investigated and prosecuted some high profile cases of corruption. The arrest and parading in handcuffs of the Inspector- General of Police Tafa Balogon, who was widely believed to have voraciously helped himself to millions of pension fund and salary allocations, became the symbol of courage, fearlessness and a fight

[205] Section 12(1), Economic and Financial Crimes Commission (Establishment) Act, Cap.E1, LFN 2004.
[206] Section 6., *Id.*
[207] http://www.punchng.com/business/money/money-laundering-cbn-issues-fresh-directives-to-banks/ 21st June, 2014.
[208] Campbell, John. *Nigeria: Dancing on the Brink*. Rowan and Littlefield Publishers. (2010) p.31.

against the corrupt establishment.[209]The EFCC has also successfully investigated and prosecuted the historic trial of the world's biggest advance fee fraud case, involving the sum of 242 million US Dollars stolen by some Nigerian con men from a Brazilian bank.[210]

Furthermore, one of factors that seem to be impeding the performance and public acceptance of the EFCC is the organisation's introduction and use of the novel and alien concept of plea bargain which the agency has been deploying to arbitrate, adjudicate or settle economic and financial crimes matters.[211]

Plea bargain is the practice involving negotiating between prosecutor and defendant and or attorney or lawyer, which often results in the defendant's entering a guilty plea in exchange for the state's reduction of charges, or in the prosecutor's promise to recommend a more lenient sentence than the offender would ordinarily receive.[212]

It has been observed that the EFCC has been employing plea bargaining to the extent that the Nigeria public seems to be losing confidence in the ability of the agency to fight crime without fear or favour.[213] However, in *FRN v. Igbinedion & Ors*[214], the issue was whether a plea bargain agreement prevents fresh charges of money laundering to be filed against the respondent. The court held that there

[209] Larr, F. Nigeria's *Journalistic Militantism: Putting the Facts in Perspective and how the Press Failed Nigeria Setting the Wrong Agenda and Excessively Attacking Ex-President Obasanjo!* Author House. (2011) p.96-97.
[210] Tive, C. *419 Scam: Exploits of the Nigerian Con Man*. iUniverse. (2006) p.80.
[211] Igbinovia, P.E. and Blessing, E.I. *The Economic and Financial Crimes Commission in Nigeria: An Appraisal*. Safari books Ltd. (2014).p.116.
[212] *Id.*
[213] *Id.*
[214] (2014) LPELR -22760 (CA).

was no agreement between the accused and the EFCC he would not face trial on fresh allegations.

Unfortunately, it is a well known secret that the President's approval is needed before any top political office can be investigated.[215] Also, it has been observed that the EFCC was used to investigate and prosecute political opponents to weaken them in election years and to cripple opposition parties.[216]

Furthermore, T.O. Oyelami observed that the Act establishing the Commission is in total disregard of the Federal nature of the country considering the fact that criminal law is neither in exclusive nor in concurrent but in the residual list of the Constitution. Since this is not far from the truth, one cannot but agree that the empowerment of the body to operate in all the units of the Federation, somehow, appears ultra-vire of the body. Beyond this however, the crimes impact on the entire nation, notwithstanding negatively. Therefore their criminalisation at the national level seems appropriate.[217]

4.5 THE NIGERIAN POLICE

The establishment, organisation, command, control and management of the Nigeria Police Force are governed by the Police Act and the Constitution of Nigeria, 1999. The Police Act provides that there shall be established for

[215] Ogbu, O.N.Combating Corruption in Nigeria: A Critical Appraisal of the Laws, Institutions and Political Will. *Annual Survey of International and Comparative Law* (2008), Vol. 14, p. 135.
[216] Falola, T and Heaton, *M.M. A History of Nigeria*. Cambridge University Press.(2008) p.241.
[217] http://dspace.unijos.edu.ng/oai/request 10th January, 2014.

Nigeria a Police Force to be known as the Nigeria Police Force.[218]There is also the establishment of a Central or National Police Force, commands in the states, and for the control and command of the Force.[219] The Third Schedule of the Constitution of Nigeria, 1999, established the Nigeria Police Council (with the President as the Chairman and State Governors as members) and the Police Service Commission. [220]

4.5.1 Functions of the police

The functions of the Nigeria Police include prevention of crime, protection of lives and property, enforcing law and maintenance of peace and public order.[221]

Furthermore, the Police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged, and shall carry out such military duties within or outside Nigeria as required of them by, or under the authority of this or any other Act.[222]

[218] Section 3, Police Act, Cap.p19, LFN 2004.
[219] Section 214-216., *Id.*
[220] Section 27-30 Third Schedule, Constitution of the Federal republic of Nigeria, 1999.
[221] Section 4, Police Act, Cap.p19, LFN 2004.
[222] *Id.*

4.5.2 Powers of the Police

The Police Act gives the Police the power to conduct prosecution in the court of law. Any officer may conduct in person all persecutions before any court, whether or not the information or complaint is laid in his name. But this is subject to the power of the Attorney-General of the Federation or the State to institute and undertake, take over and continue and discontinue criminal proceedings against any person before any court of law.[223]

Furthermore, the Police have the power to arrest without warrant of arrest. The cases in which a police can execute such arrest include any person whom he finds committing any felony, misdemeanour or simple offence, or whom he reasonably suspects of having committed or of being about to commit any felony, misdemeanour or breach of the peace.[224]

Moreover, any warrant lawfully issued by a court for apprehension any person charged with any offence may be executed by any police officer at any time notwithstanding that the warrant is not in his possession at the time, but the warrant shall, on demand of the person apprehended, be shown to him as soon as practicable after his arrest.[225]

Furthermore, a senior police officer may by authority under his hand authorise any police officer to enter any house, shop, warehouse, or other premise in

[223] Section 23., *Id.*
[224] Section 24(a)., *Id.*
[225] Section 25., *Id.*

search of stolen property, and search therein and seize and secure any property he may believe to have been stolen, in the same manner as he would be authorised to do if he had a search warrant, and the property seized, if any, corresponded to the property described in such search warrant.[226]

Also, a police officer may detain and search any person whom he reasonably suspects of having in his possession or conveying in any manner anything which he has reason to believe to have been stolen or otherwise unlawfully obtained.[227]

Under various statues, especially the Police Act, Criminal Procedure Act (CPA), and the Criminal Procedure Code (CPC) granted the police wide powers which include, taking measures to prevent crime, to investigate crime, to interrogate suspects, to prosecute suspects, to search properties and persons in order to prevent crimes. They are also empowered to search and seize properties suspected to be stolen or associated with crime, and to take and record for purposes of identification, the measurements, photographs and fingerprint impressions of all persons, detect and apprehend offenders, and collect evidence for prosecution. Also, it has been observed by Humphrey Assisi Asobie that the ICPC will depend hugely on the Nigeria Police to perform its main function.[228]

Consequently Police roles and performance in ensuring security must be seen as the product of interactions among political, economic, legal, institutional and

[226] Section 28(1)., *Id.*
[227] Section 29., *Id*.
[228] http://nials-nigeria.org/PDFs/2012%20STATE%20OF%20THE%20FEDERATION.pdf 18th June, 2014.

personality factors. To summarise, the Nigeria Police is required to fight crime through detection, investigation, apprehension and prosecution of offenders in the court of law and the protection of lives and property through proactive policing.

However, the Nigeria Police has a wide scope of powers to fight corruption in public institutions, but unfortunately there is hardly any report or observation that does not suggest the Nigeria Police is corrupt.

The Police Act provides that the Nigeria Police Council shall advise the President on the appointment of the Inspector-General of Police. This unfortunately virtuously makes the Inspector-General of Police a puppet of the President, which will lead to abuse of power. However, it has been observed by Femi Falana that since 1999, the power of the Council has been usurped by the sole power of the President in office. They have all appointed the Inspector General of Police without consulting the Police Council as stated by the Constitution. Therefore the appointment of an Inspector General of Police solely by the president is illegal.[229]

During colonial rule, the Police were used to coerce, harass, intimidate, and violate the human rights of Nigerian opposition groups with utter impunity.[230] These historical realities are still part of the memory reservoir in Nigerian Police history that the local Police were used as instruments of oppression and

[229] http://allafrica.com/stories/201311250107.html 22nd June, 2014.
[230] Wisler, D. and Onwudiwe, I.D. *Community Policing: International Patterns and Comparative Perspectives*. CRC Press. (2009) p.84.

mischief. During this era, citizens resented and feared their local Police, leading to poor Police relations with members of the community.[231]

The police are members of an institution that the Nigerian masses grudgingly accept as an important part of their society, but it became an institution that overtime, has built up such a negative image that repulses the people of Nigeria.[232]

However, the Police have not lived up expectations as far as their duties to the citizenry are concerned. This is demonstrated by the high crime rate. Police operatives have become very corrupt and exhort money from members of the public while discharging their duties. The employment of brutal and excessive force against members of the public has led to many extra judicial killings, which has caused attitude of non-co-operation among the public with the Police.[233]

Unfortunately, recent survey show that the Nigeria Police are among the most corrupt federal agencies in the country.[234] Also, Transparency International Global Corruption Barometer (GCB) rated the Nigeria Police Force as one of the most corrupt institutions in the country.

Furthermore, the Nigeria police, especially the rank and file, are the least paid among corresponding security agencies in Nigeria, a failing that fuel corruption.

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[231] *Id*., p.85.

[232] Ugwuegbu, D.C. *Social Psychology and Social Change in Nigeria: A Systematic Evaluation of Government Social Policies and Programs*. iUniverse. (2011) p.229.

[233] Adelugba, D. and Ujomu, P.O. *Rethinking Security in Nigeria: Conceptual Issues in the Quest for Social Order and National Integration*. African Books Collective. (2008) p.111.

[234] http://www.informationng.com/2013/10/police-efcc-icpc-most-corrupt-government-agencies-in-nigeria-survey.html 21st June, 2014.

Analysts believe the dismal reward package contributes directly to the alarming rate of corruption in the force and the rampant attack on civilians by personnel.[235]

Also, other factors that contribute to corruption in the Nigeria Police as observed by CLEEN Foundation include, lack of proper resource management, incompetent personnel, mismanaged resources allocated , poor crime and operational information management, Inadequate funding and poor remuneration, Inadequate arms and ammunitions, lack of proper logistics, telecommunication gadget and transportation facilities.[236]

4.6 PUBLIC COMPLAINTS COMMISSION

In Nigeria the Public Complaints Commission was introduced due to the international Ombudsman concept. An ombudsman is someone usually appointed by the government or parliament, but with a significant degree of independence, who is charged with representing the interests of the public by investigating and addressing complaints of maladministration or violation of rights. The modern use of the term began in Sweden, with the Swedish Parliamentary Ombudsman instituted by the instrument of government of 1809

[235] http://www.premiumtimesng.com/news/159124-exclusive-inside-nigeria-police-shocking-work-conditions-officers-left-homeless-paid-peanuts.html 21st June, 2014.
[236] http://www.cleen.org/policing.%20driver%20of%20change.pdf 24th June, 2014.

to safeguard the rights of citizens by establishing a supervisory agency independent of the executive branch.[237]

The Public Complaints Commission was established following the recommendation of the report of the Public Service Review Panel which was setup by the General Yakubu Gawon led federal military government to look into the conditions of service of all public workers in the federation.

The institution legally came into existence via Decree no. 31 of 16th October, 1975 and was amended by Decree no.21 of 1979. It was later entrench in the Constitution of Nigeria, 1979 and is now encapsulated as an Act of the National Assembly.[238]

The Commission was established and charged with the responsibility of investigating complaints brought by citizens against civil servants and politicians, as well as against private agencies. Part of the motivation for setting up this constitutional body was to provide citizens with a framework through which they could improve governance in the country by making certain, for example, that civil servants who engage in illegal, unfair, or irregular practices were investigated and if necessary, brought to justice.[239]

However, it should be noted that the Commission was evidently not primarily designed as an anti-corruption body. As rightly observed by Professor

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[237] "Sweden." *Microsoft® Encarta® 2009* [DVD]. Redmond, WA: Microsoft Corporation, 2008. 2nd October, 2015.

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[238] Public Complaints Commission Act, Cap.p37, LFN 2004.

[239] Mbaku, J. *Corruption in Africa: Causes, Consequences, and Cleanups*. Lexiton Books, (2010) p.44.

Nwabueze, that the Commission was designed to check the pervasive incidence of administrative arbitrariness and injustice, and not to necessarily deal with corruption.[240] Expectedly, the proportion of cases handled by the commission on corruption and abuse of office, have been minimal.[241]

Furthermore, some of the organisation's mandate includes investigating and conducting research in ministries, department and agencies (MDA's), companies and officials of these bodies, to investigate administrative procedures of any court of law in Nigeria. To act as a whistle blower by reporting crimes discovered in the process of investigation to appropriate law enforcement agencies and to prosecute offenders for offences created under the Act with the Attorney General's fiat.

Moreover, the Public Complaints Commission Act states that a Commissioner shall have powers to investigate either on his own initiate or following complaints lodged before him by any other person, any administrative action taken:

> a) Any department or Ministry of the Federal or any State Government.
>
> b) Any department of any local government authority (however designated) set up in any state in the Federation.
>
> c) Any statutory Corporation or Public Institution set up by any Government in Nigeria.
>
> d) Any Company incorporated under or pursuance to the Companies and Allied Matters Act whether owned by any

[240] Nwabueze, B.O. *Military Rule and Constitutionalism*. Spectrum, (1992) p.161.
[241] *Id*., p.168.

Government aforesaid or by private individuals in Nigeria or otherwise howsoever; or

e) Any officer or servant of any of the aforementioned bodies.[242]

This means that the Commissioner is empowered to initiate investigation on any alleged administrative decision of any government Ministry, Department or Agency whether at the Federal, State or Local Government level without any formal complaint from anybody.

However, it has been observed by the Commissioner Public Complaints Commission of Osun State, that since its establishment in 1975, it had been inactive, which he said became more pronounced from 1999-2012, when it service was most needed.[243]

However, one of the major problems facing the Nigerian Ombudsman institution today is in the area of training. It is important to note that the organisation is a self accounting institution, entitled to make its own proposals and defend these.[244]

Most noteworthy of all is the stipulation that a Commissioner shall not be subject to the direction and control of any other person or authority in the

[242] Section 5(2)(a)-(d), Public Complaints Commission Act, Cap.p37, LFN 2004.
[243] http://www.punchng.com/news/complaints-commission-backs-fight-against-corruption-injustice/ 3rd December, 2013.
[244] Hossain, k. *Human Rights Commission and Ombudsman Offices: National Experiences throughout the World*. Martinus Nijhoff Publishers, (2000) p.563.

discharge of his duties. Also, no fees are charged for the commission's services.[245]

Moreover, it is a fact that for the Ombudsman to be effective the general public must know of its existence and functions. Again media report remains the ultimate weapon in the armoury of the Nigerian Ombudsman, as maintained in many countries.[246] However, is sad to note that after many years of establishment of the Public Complaints Commission, a significant percentage of Nigerians are yet to be acquainted with its functions, due largely to the increasing rate of privatisation and commercialisation of the print media.[247]

Unfortunately, the members of the public whom the Commission is suppose to serve know little or nothing about the existence of the Commission.[248]

However, it has been observed by the Commissioner of the Public Complaints Commission, Abuja that from January to June, 2013, the Public Complaints Commission has received a total of 530 cases and 358 of those cases have been successfully resolved and closed in FCT, Abuja.[249]

4.7 CONCLUSION

[245] *Id*., p.565.
[246] *Id.*
[247] *Id.*
[248] http://elombah.com/index.php/articles-mainmenu/16644-historical-background-of-the-public-complaints-commission-in-nigeria 22nd January, 2014.
[249] *Id.*

It is unfortunate to observe from the above chapter that the institutional mechanisms have not only failed to fight corruption, but have exacerbated the level of corruption. This conclusion is the result of factors such as insufficient mandate to tackle corruption, lack of adequate resources, mismanagement of limited resources and lack of focus on the real issues that cause corruption. In addition, there is the appalling issue of members of the institution of being one the most corrupt members of society. Finally, the leaders of the country who are supposed to lead by example have failed miserably in both efforts and as role models in tackling corruption.

CHAPTHER FIVE

SUMMARY AND CONCLUSION

5.1 SUMMARY

It is clear from the above that corruption in the public sector in Nigeria is not something new and it has become so entrenched in the public sector that it is hard to find someone that has not being involved one way or the other. It is most unfortunate that the effects of corruption are felt most by those who are less involved in the activity, and the effects increase at an alarming rate each day. It is unfortunate that perennial issue such as bureaucracy, lack of resources and proper training are still factors to prevent the fight against corruption.

Nigeria being a member of the international community tends to things in the first instance that appear that it is committed to playing its role in fighting corruption, at least on paper it is, but unfortunately the opposite tends to be the reality. No wonder Nigeria for the last decades tends to be always among the most corrupt nations in the world according to Transparency International.[250] But those in charge especially those at the top of society tend to be the worst offenders, leading by example with impunity and no shame. What do they expect from the future generation? That is why it appears, if not a fore gone conclusion that the future seems bleak for the country with so much abundant resources; a country that recently surpass South Africa as the biggest economy in Africa.[251] But it may be asked where has all that wealth gone to? The answer is that it has not much or any impact on the lives of most of the people of the country, but had rather stayed with those most opportune to have ostentatious

[250] http://www.transparency.org/country#NGA accessed on 12th July, 2014

[251] http://www.economist.com/news/leaders/21600685-nigerias-suddenly-supersized-economy-indeed-wonder-so-are-its-still-huge 12 April, 2015.

lifestyles while the rest suffer extreme poverty and lack security. However, the challenges encountered during the research are lack of funding and accessibility to the institutions for curbing corruption.

However, the research concludes that with the introduction of multi legal and diverse institutions there are improvements in combating corruption. But unfortunately the impact of corruption is so devastating that make the improvements insignificant. Therefore, the tools to tackle corruption are ineffective and there are limitations in the legal regime to combat corruption in the public service.

5.2 FINDINGS

Based on the above discussion, the researcher made the following findings:

I. There is major disconnection between the legal regime for combating corrupt practices in the public service and the people it is suppose to serve.

II. Section 308 of the Constitution of the Federal Republic of Nigeria, 1999 provides immunity to some members of the public service.

III. Internal checks to prevent corrupt practices and motivate workers in the public service have failed.

However, the solution to the above is to provide legal regime that take into account the religious and customs of the people of the country. It could be observed that in countries that have low rate of corruption, enact laws that suit them or style them in such a way that suits them. Based on the above findings the researcher made the following recommendations:

1. The government should deal with the issue of accessibility. What the researcher means by accessibility is for everyone to have access to those in power, especially those at behest of authority. Those in power cannot discern the needs of the people without accessibility, not to talk about addressing such issues.
2. The immunity clause under section 308 of the Constitution of the Federal Republic of Nigeria, 1999 should be repealed because it precludes proceedings against some members of the public service.
3. There should be better system to check those is authority, because it appears that virtually every person in employment in the public service behaves as he/she pleases to the detriment of society. Here the government could employ spies to check on workers in the public service. This form of supervision would be a motivating factor in motivating individuals to be honest in their work.

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