ICPC AND THE WAR AGAINST CORRUPTION IN NIGERIA

REFLECTIONS FOR A NEW VISION

EDITED BY
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FOREWORD

Corruption is one of the most profound problems facing most countries of the world, including our dear country Nigeria. As a nation, we have every reason to take the war against corruption very seriously. Corruption breeds and nurtures poverty, unemployment, insecurity, political instability and other negative consequences. Right from inception, the Buhari administration recognized the destructive impact of the phenomenon on our society. We have therefore rightly prioritized its eradication in our agenda for moving the country forward. This is more so as capacity to move to the next level of development is critically impacted by the resources available to the commonwealth. Thus, a corrupt act perpetrated in one office or sector has the potential to inflict devastating consequences on the whole country.

When the Independent Corrupt Practices and Other Related Offences Commission (ICPC) was being set up early in the first tenure of the Fourth Republic, it was very clear that something drastic must be done to tackle the phenomenon, given the severe damage done to the national polity during the preceding years. However, the Commission was immediately confronted by serious challenges to its existence. The constitutionality of the establishment Act was challenged by State Governments who rightly demanded the preservation of State autonomy over crimes. The Supreme Court however confirmed the ICPC Act as an exception, while at the same time affirming the constitutional powers of states over crimes. The decision now stands as foundational judicial endorsement of the powers and mandate of the Commission.

The robust nature of the enabling law of the ICPC provides for a comprehensive approach to fighting corruption: prevention, enforcement, education and public enlightenment. One unique element of the mandate of the Commission is the provision for systems study and review of the operational processes of government ministries, departments and agencies. However, the preventive functions of the Commission have not received the same attention as enforcement activities, in terms of public celebration.

The ICPC has carried out its triple mandate for twenty years. The more recent part of those twenty years has been under this administration. The Commission's experience has, no doubt, yielded important lessons that should guide future action in our collective fight against corruption. It is therefore appropriate to take stock of what has been done and provide a record that stakeholders can access with relative ease. It is gladdening that the majority of the contributors to the book are actual practitioners who have had practical experience of the section they wrote on. The others are academics who have been associated with the work of the ICPC at different periods, thus ensuring that the book is not just about theory, but about what has been done or what can be achieved given what has actually happened.

As the ICPC marches on to the next phase of its existence under its current dynamic leadership, this government will continue to support the work of the Commission and other anti-corruption agencies through the provision of necessary resources and the preservation of their independence.

It is my pleasure to recommend this book for the reading pleasure of all stakeholders in anti-corruption work in Nigeria and beyond.

Professor Yemi Osinbajo, SAN, GCON
Vice-President, Federal Republic of Nigeria
1 September 2020

PREFACE

Sometime in 2017, I had the opportunity of reviewing and contributing to the draft of a short amendment to the legislation establishing the Independent Corrupt Practices and other Related Offences Commission, ICPC. At that time, it could not have occurred to me that about two years later, I would have the honour of leading the institution into a new era.

Since its establishment, a lot of hard and commendable work has been done by previous leaders and the dedicated operatives of the ICPC. However, with the growing sophistication of the methods, and patterns, of corrupt practices, the need to innovate, adapt and adopt relevant anti-corruption interventions has become inevitable. While some of the innovations adaptations and adoptions are necessarily based on existing structures, there are instances where completely new foundations are required.

This book covers the work of the ICPC over the course of the past 20 years. Together, the chapters provide a snapshot of the approaches of the ICPC to the fulfilment of its anticorruption mandate. Each author is closely involved with the aspect of the ICPC's work s/he that is relevant or related to his or her chapter. It was therefore easy for the authors to identify the work done in the past and areas where the Commission has evolved in order to surmount mutating challenges.

The book takes the reader through three main segments. First, the reader gets to know about the establishment of the Commission and the great Nigerians who have had the privilege of being trusted with the leadership of the Commission. Second, the reader is introduced to various anticorruption interventions of the ICPC. The chapters dealing with this segment highlight the totality of the preventive, education/enlightenment and enforcement functions of the ICPC. The third segment highlights the evolving future of the Commission as envisioned by its present Board.

While this book does not contain all the ICPC has done in 20 years, it gives an idea of how the ICPC functions. It also helps to preserve the

institutional memory of the Commission in a format that can be shared with the public at large.

But this book is not just an exercise in self-glorification; it is a critical look at how things have been done, what has been achieved but also what could have been. It is also a resource for scholars and practitioners seeking to appreciate the intellectual dimensions to the war against corruption in the country and even beyond.

It is my pleasure to recommend this book to stakeholders in anti-corruption in Nigeria and beyond.

Professor Bolaji Owasanoye
Chairman, ICPC
31 August 2020

INTRODUCTION:
DOCUMENTING 20 YEARS OF COMBATING CORRUPTION IN NIGERIA

SOLA AKINRINADE

Introduction

The Independent Corrupt Practices and other Related Offences Commission, ICPC, was established by law in year 2000. Year 2020 marks its 20th anniversary. In the 20 years of its existence, both through its successes and its failures, the Commission has helped to address fundamental issues of anti-corruption in relation to institutions and individuals, while also defining the space of anti-corruption work. This book is an attempt to put in an intellectual perspective, the various dimensions of the work of the ICPC over the course of the past 20years. Naturally, the book serves as a public rendition of the account of the Commission's stewardship, although its intent goes far beyond that. It is important for public institutions including anti-corruption agencies to give a public account of their work with a view to providing a roadmap for future initiatives and to aid public enquiry to the purpose of their existence, institutional memory and relate the extent to which the mandate has been successfully interpreted and implemented.

This institutional rendering of account should be contradistinguished from personal memoirs of public office holders. While personal memoirs may be relevant for a first-person perspective of institutional matters, they cannot fully define the existence of the institution that they serve. Leadership is critical to defining the agenda and performance of any institution, no doubt; but leadership experience does not tell the whole story.

Certainly, all the activities, successes, challenges and contexts of the ICPC's anticorruption efforts cannot fit into a single volume. Therefore, this book is not intended to cover every detail of everything relating to the ICPC over the past 20 years. Instead the book is aimed at highlighting a few but critical aspects of the anticorruption work of the Commission. In this wise, most of the contributors have a first-hand experience of the Commission by virtue of being members, employees, academics engaged by the Commission to conduct research, professionals in the justice/law

enforcement and anti-corruption sectors, or members of civil society who have worked with the Commission on anti-corruption projects.

Thematic Areas in Anti-Corruption

There are so many possible themes and subthemes on Corruption and anti-corruption that it is feasible to write whole books on each of these themes. Therefore, in selecting the thematic focus of this book, it was necessary to consider those themes that are directly relevant to the work of the Commission. Eventually, the themes were narrowed down to about twenty which were further conflated into six thematic areas. Accordingly, the book, its themes and chapters are grouped into six parts.

The first part on *The ICPC and Evolution of Anti-Corruption in Nigeria,* traces the trajectory of corruption and anti-corruption in Nigeria. It starts from the Amalgamation and concludes with the establishment of the ICPC. This part of the book deals with the thematic area of 'evolution of anti-corruption in Nigeria'. The chapters on this theme, provide the relevant chronological context for the establishment and current work of the ICPC. The first chapter gives the pre-independence historical context of anti-corruption in Nigeria. The next provides an overview of general and specialised anti-corruption initiatives in the post-independence period, 1960 – 1999, that pre-date the establishment of the ICPC. The third chapter traces the efforts and steps that led to the creation of the Commission. This is followed by a chapter that analyses the specialised powers and competencies of the Commission. This chapter also highlights specialised powers and competencies of other anti-corruption agencies. The fifth chapter examines the role of leadership in the evolution of the Commission from inception to 2020. While the law establishing the Commission is the ground norm guiding its work, the interpretation of the role laid down by particular Chairmen affected how the Commission was perceived and how it functioned at different periods in its evolution.

The second part of the book, on *Root-Cause Elimination Approach to Anti-corruption* examines the activities, steps, techniques and projects that erode the root causes of corruption. This part examines the Commission's activities, steps, techniques and projects that erode the root causes of corruption. This part starts with chapter 6 focusing on the impact of Systems Study and Corruption Risk Assessment in corruption prevention. One distinguishing feature of the ICPC as an

anti-corruption agency is the powers conferred on the Commission to conduct system studies of agencies with a view to determining corruption prone processes inherent in their activities, prescribe responses to tackle such gaps and direct the implementation. The Systems Study approach is complemented by Corruption Risk Assessment, a method that seeks to enhance the capacity of States and their agents to identify corruption prone processes and procedures particularly in public sector organisations and take appropriate steps to mitigate them. Both approaches place premium on prevention as effective complement to enforcement in the war against corruption. This chapter demonstrates the value of this approach to preventing systemic corruption and documents the experiences of the Commission with the approach including its successes and challenges.

Chapter 7, illustrates and confirms the importance of educating and mobilising the populace against corruption. The chapter explores the power of information in attaining the goal of corruption prevention. It underlines the impact of educational and mobilisation activities of the Commission. It further identifies the negative capacity of disinformation as a tool for perpetrating corruption and the Commission's strategies for disseminating targeted information to support its anti-corruption initiatives. If corruption is to be tackled on a long-term sustainable basis, the place of attitudinal change and popular mobilisation against the phenomenon cannot be ignored. Chapter 8 discusses the Commission's experience with Strategic Planning and its impact on providing direction for the work of the Commission. The dynamic nature of the manifestations of corruption requires that anti-corruption agencies should constantly reinvent and retool themselves in order to be a step ahead of the perpetrators. The chapter locates the planning work of the Commission in the context of both the National Anti-Corruption Strategy and the global anti-corruption research template. While the ultimate goal of abating corruption remains constant, the approach needs to respond to the changing dynamics of manifestation. Chapter 9 discusses the role of anti-corruption capacity building for stakeholders in the fight against corruption and the evolution of the capacity building activities of the Commission. Not only does the Commission engage in regular training to enhance the capacity of anti-corruption operatives but it also builds the capacity of other stakeholders in the public and private sectors in order to maximise the vanguard of the war against corruption. This part of the book is rounded with Chapter 10 that

examines the role of quantitative and qualitative research in enhancing anti-corruption policymaking in the country. It discusses the value added by the Commission's research to special and general anti-corruption work.

The third part of the book on *Sanctions and Assets Recovery*, discusses the enforcement functions of the Commission. Resolute and honest deployment of enforcement and sanctions is a critical deterrence tool if the war against corruption is enjoy meaningful credibility. The section analyses various components of prosecution and asset recovery work of the Commission. This part commences with Chapter 11 which presents an overview of field realities and principles encountered by ICPC investigators. It discusses the peculiarities of anti-corruption investigation in the general context of criminal investigations. Chapter 12 examines the meeting points of financial intelligence and the uncovering of the elements of crimes within the remit of the Commission. Chapter 13 discusses the utilitarian value of contemporary technological advances for the ICPC's work on tracing of pecuniary, tangible and intangible proceeds of corruption. Chapter 14 provides an overview of legal and practical techniques for coalescing dispersed proceeds of corruption for the purpose of recovering and returning proceeds of crime which are not held by individual natural persons. It also examines the appropriate steps for separating lawfully acquired wealth from proceeds of corruption. Chapter 15 highlights the significant distinctions between prosecuting crimes in general and crimes prosecuted by the ICPC. The chapter analyses the specific tools that enhance the successful prosecution of corrupt practices. This third part of the book is concluded by Chapter 16 which analyses the techniques for establishing the mental element (*mens rea*) required for establishing the guilt of defendants accused of various crimes of corruption.

The fourth part, on *Assistance, Cooperation and Collaboration*, examines the importance and contributions of support from civil society organisations and development partners to the work of the Commission. Chapter 17 highlights the role of development partners in the anti-corruption work of the Commission and how this role has evolved over the years, reflecting the changing dynamics of leadership interpretation of what role development assistance has to play in the delivery of the Commission's mandate. This is followed by a chapter that examines the place of civil society in the Commission's work. Given the scope of their work and their reach, civil society

organisations are veritable partners of the Commission in delivering various aspects of the Commission's popular education and mobilisation work. This promotes popular ownership of the fight against corruption in the country, a requirement for long-term sustainable prosecution of the war.

The fifth part of the book on *Overcoming Obstacles and Opposition to Anti-Corruption,* discusses the real-life risks and challenges associated with the fight against corruption and the experiences of the Commission in this regard. Chapter 19 on "Shielding Anti-Corruption Personnel from Vulnerabilities", looks at the hard (overt) and soft (subtle) challenges faced by ICPC personnel in the line of duty. As with many engagements of this nature, operatives are exposed to vulnerabilities on regular basis including real life dangers and temptations to compromise. The chapter discusses various experiences and emphasises the importance of shielding operatives from both the hard and soft challenges. The next chapter examines the existing mechanism for protecting witnesses and the various components of anti-corruption prosecution from the counter-offensive of perpetrators.

Part 6 containing Chapter 21, brings the book to a conclusion. This final chapter of the book on "Re-Awakening the Giant", presents a new vision for ICPC at 20. While recognising the extent to which the Commission has added value to the fight against anti-corruption in Nigeria, the chapter acknowledges the limitations that have plagued its work over the years. The perspective of a sleeping giant is set against the underutilised provisions of the powers of the Commission to make significant impact in the war against corruption in the country. The chapter provides a point of convergence for all the preceding chapters by highlighting the existing contexts and circumstances of the Commission's anti-corruption work. In identifying gaps in the anti-corruption work of the Commission so far, the chapter provides a roadmap for a more aggressive engagement with its mandate. It highlights the approaches the Commission will adopt for closing existing gaps deploying existing building blocks while innovating in the context of contemporary dynamics.

Why Document the Past, Present and Projected Future?

Nigeria's struggles with corruption and its consequences has a long history. Studies including the first chapter of this book have shown that corruption is not exactly a colonial import into the country but a

phenomenon that has manifested in different forms in various societies and predating colonialism. However, the modern phase has been more virulent with every government since independence having to render account to the people of its efforts to deal with the phenomenon. With its multiple agencies set up to deal with various aspects of corruption, Nigeria has one of the largest collection of anti-corruption agencies in the world. However, the various indices continue to affirm the continuing challenge that corruption poses to the long term development of the country. It is thus, important for anti-corruption agencies to render account on regular basis of their stewardship and of their *raison d'etre*.

Accountability is key to the success of every anti-corruption institution. An institution such as the Independent Corrupt Practices and Other Related Offences Commission is not only accountable to the anticorruption laws and mores of the country but also accountable to the citizens at large. The manifest consequences of corruption on the lives of the people and the lived experiences of the citizens make the people legitimate stakeholders to whom account should be rendered. Documenting the past and present activities helps the Commission to self-evaluate and reappraise its work, and how faithful it has been to its mandate. At another level, it also amounts to a voluntary submission of the anti-corruption work of the Commission, to public scrutiny.

Likewise, the documentation of the projected future actions and approaches of the Commission, serves to let the citizens know what to expect from the Commission. More importantly, a clearly defined vision of the future operates as a compass for personnel of the Commission at all levels. This is a veritable instrument for accountability as the Commission holds itself to a defined agenda within the context of its enabling laws and extant mores.

In conclusion, this work is not an attempt at self-glorification or excusing inadequacies. By documenting its past, present and projected future, the Commission shows an example in accountability. The chapters of this book will meet the needs of anyone that seeks to have an institution-wide overview of what the ICPC has been doing for the past 20 years, and what the Commission will do next.

CHAPTER 1

ANTI-CORRUPTION IN NIGERIA, 1914-1960

OLUWASINA ABIDEMI BABASOLA

Introduction

> *As early as the 1920s, corruption had emerged as a problem in Nigeria and was simultaneously recognisable as a phenomenon that might be generalised around the world and enmeshed in local meanings and relationships.*[1]

The above remarks lend credence to the history and challenge of corruption in Nigeria. Corruption and other social vices, like all human problems, have a history. The phenomenon of corruption predated the colonial era in Nigeria. Before the advent of the colonial government in Africa and by extension in Nigeria, cases of corruption were reported by the indigenes. As far back as 1920, the first properly documented Four One Nine (419) letter in the history of Nigeria was reported and written by one P. Crenstil, a self-acclaimed Professor of Wonders.[2] Crenstil, was not a Nigerian but rather a Ghanaian.[3]

In order to trace the political and cultural origin of corruption in Nigeria, this chapter starts with a description of the country's government from 1914 (the year of amalgamation) to 1960-the year Nigeria got her political Independence from Britain. The chapter takes as its starting point, the year 1914 when Nigerians were not allowed to participate in their own affairs through elected representatives. Thereafter this study interrogates the various stages of Nigeria's constitutional journey until 1960 when the country got independence and its impact on level of corruption. This chapter also analyses the merits and demerits of Indirect Rule on the level of venality in Nigerian societies. Modernisation and its twin sister, globalisation, will also be briefly examined.

Contextual Framework

The concept of corruption is difficult to define but for the purpose of this chapter, corruption is broadly defined as an abuse of power for private gain.[4] Scholars define the concept based on their specialisation and sometimes, socio-cultural perspectives. For instance, the invasion and eventual partitioning of the African continent in 1884 by the West Europeans can be described as corruption. Adegbite notes that corruption is a conscious and well planned act by a person or group of persons to appropriate by unlawful means the wealth of another person of group of persons.[5] Going by this definition, colonialism is corruption.

It should be noted from the outset that colonial government and the leaders of the various ethnic groups had different understanding of what constitutes corruption in the early stage of Nigeria's development. Despite all the talk about colonialist exploitation, what is certain is that what was "taken out" far outweighed what was "put into" the colonies.[6] It can be easily inferred that corruption is one of the legacies of colonialism in Africa.[7] What is Anti-corruption? Anti-corruption is defined as all measures and mechanisms for controlling corruption.[8] These measures and mechanisms include the establishment of anti-corruption agencies such as Independent Corrupt Practices and Other Related Offences Commission (ICPC), Economic and Financial Crimes Commission (EFCC), Code of Conduct Bureau and other ad-hoc committees to curb corruption in Nigeria. Most of the anti-corruption initiatives revolve around enforcement, prevention and public education and mobilisation of the citizens against corruption.

In preparing this chapter, I relied heavily on archival materials and contemporary publications detailing the history of Nigeria under colonial rule. Furthermore, the internet provided a veritable source of material that helped in compiling requisite facts for this chapter. This chapter will provide explanatory account of pockets of corruption and other abuse of office recorded in pre-colonial era in the North and South regions of the country.

Analysis of incidence of Pre-Independence Corruption in Nigeria

As part of efforts to ensure the smooth administration of all the territories in the new colony, Lord Lugard introduced Indirect Rule. What is Indirect Rule? Indirect Rule is a system of administration where the colonial authority confirms the tenure of existing

indigenous rulers, subject to direction from a British official who would ensure that the native rulers governed justly and discarded all previous "evil practices" such as slavery and cruel forms of sacrifice. In places where there were no such rulers, the colonial rulers would appoint them.[9] Under the new system, native rulers were forbidden to sign agreements with representatives of foreign powers. Lord Lugard retained the pre-colonial political structures simply because native chiefs could assist in the collection of tax. The Lugard government also engaged in a systemic reorganisation of territorial administration to ensure smooth running of the government.[10]

A critical analysis of the system indicates that Indirect Rule was very useful in the North, which was ruled by Muslim aristocrats but was less successful in the South of Nigeria, which had a fair well-developed system of administration helped by the Christian missionaries who had been in the area decades before the introduction of Indirect Rule. There existed, to some extent, pockets of educated indigenous people in the South trained by the missionaries, who were already attuned to modern method of administration.[11]

One major fall-out of the Indirect Rule is that the new appointees started behaving like the Europeans as they became intoxicated with power.[12] For instance, a former shrine priest had his own police, court messengers and prison warders and yet the new District Commissioner saw nothing wrong it.[13] A simple explanation is that the shrine priest continues his traditional authority in a new guise, claiming to be representing the colonial government and abusing his new found authority. Ellis describes the priest as "a charlatan or a confidence trickster". He notes further that these styles flourish in Nigeria as people learned to manipulate the symbols of colonial authority.[14] The destruction of the traditional values, some scholars believe, was partly responsible for the high incidence of corruption in Nigeria, to a large extent, almost sixty years after Independence.

Fundamentally too, Indirect Rule in Nigeria contributed to the culture of impunity as the first set of native rulers were less accountable to their subjects while all the checks and balances associated with the old traditional system were completely jettisoned. There were reported cases of people masquerading as local official of the colonial government in order to enrich themselves, setting up offices and courts for personal benefits.[15]

Before the colonial administration started in Nigeria, the three major ethnic groups were already accustomed to certain practices pertaining to handling of public funds. The colonial government could not work with the existing structure of administration in handling public funds due to the lack of transparency in the system. For instance, "in the North there existed a "spoil system" whereby "an incoming Emir turned all the relatives and supporters of his predecessor out of office and replaced them with his own,"[16] all in an attempt to cover their track. In Igboland, a wealthy person is expected to present gifts to shrines and distribute money among village elders for the person to be given chieftaincy title. Consequently, merit and honesty were jettisoned in the process of appointing chiefs. Those who paid money to secure a chieftaincy title will definitely look for an avenue to recoup their expense and gradually, traditional values started to decay. Similarly, in Yorubaland, officials were used to keeping a percentage of tax revenue collected for their personal use.[17]

Similarly, this kind of behaviour also existed among the tax collector in Sokoto Emirate.[18] As a result of these practices, the colonial government introduced a series of administrative procedure to change the system in line with what was obtainable in the United Kingdom. Although, the natives believed that the colonial rule encouraged the culture of corruption among them, Stephen Ellis noted that British officials generally showed a high level of probity despite occasional incidents of theft or fraud."[19] However, Adekunle Lawal notes that some colonial officers were implicated in the embezzlement of public funds. Providing specifics, he opines that between 1901 and 1902, three British officers in the colonial office namely, Captain Gonstedt, Major Hull and Captain MacLachlan, were accused of embezzling, three pounds, 28 pounds and 250 pounds respectively.[20] One positive aspect of Indirect Rule is that it elevated tradition to being a central principle of government.[21]

Corruption in the Pre-Independence Years, 1914-1960

It will amount to self-glorification to assert that pre-colonial African societies were free of corruption. Corruption "as abuse of office for private gain", commonly known today in academia and political circles, hardly feature in discussions and debates among scholars and commentators in pre-amalgamated Nigerian societies. Venality was the preferred term used to describe any unacceptable conduct of

those in public life in the early nineteenth century. Moreover, during this period, corruption was not a crucial issue as its impact and scope were not thought to have any deleterious impact on economic and social development as contemporary research has shown. The enactment of the Native Authority Ordinance of 1916,[22] saw the Emirs, Obas, and Chiefs as the sole authorities of their various native areas. It was during this period that traditional rulers indulged in cronyism by appointing their children, relations and friends in administrative positions.[23] Indeed, Aluko notes that "nepotism, fraud, embezzlement, indiscipline, and corruption, which were non-existent in a legal sense in pre-colonial" era were used to describe the native authorities.[24]

This section will spell out few cases of corruption and other forms of abuse of office that dotted the landscape of the three major ethnic groups in Nigeria during colonial administration. The scope of corruption in the pre-independence era was such that the colonial officials spent much of their time on getting native authorities to imbibe the principles of Indirect Rule and not how to reduce corruption. In spite of this, scores of unethical conduct were recorded during those "good old days" at it were.

Corruption in the Pre-Independence Era, 1922-1960: Northern Perspective

As early as January 1851, Emir Bello of Katsina was reported to have forced Dr Heinrich Barth, a young German on an exploratory mission for the British government, to give him some gifts.[25] During his visit to the Emir, Dr. Barth made a present of caps, razors, cloves, frankincense, a piece of calico, some soap, and a packet of needle to him. The Emir was not satisfied with these gifts and Dr. Barth felt trapped, owing to his inability to meet up the demands of the traditional ruler. Series of meetings were held between the Emir and Dr. Barth's friends. At the end of one of such meetings, Dr. Barth lamented:

> "*He was greeted with a demand for 100,000 cowries (Barth calculated this was equivalent to 8 UK pounds, more than he had with him), which the Emir justified as adequate reciprocity for the gifts of foodstuffs Barth had received from him". Ultimately, instead of money, the Emir received a caftan and a carpet, along with various medical goods: " a few powders of quinine, of tartar-*

> *emetic, and of acetate of lead, and … a small bottle with a few drops of laudanum."*[26]

Although exchange of gifts is historical recognized between royalties or diplomats. it was a classic example of corruption because the then Emir of Katsina demanded for the gifts and Dr. Barth did not freely presented as a gift to the former. Exchange of gifts is a norm not enforceable as extortion but in this case elements of coercion were present in the exchange.

> *Also, "in early 1921, the Emir of Zaria, Aliyu dan Sidi, was removed from office because of charges of corruption and misuse of his authority. The colonial government concluded he had diverted food items intended for prisoners, selling it for his own profit."*[27]

He was alleged to have allowed prisoners to die from neglect, and that he retained a thief in his personal retinue."[28] While Emir Bello retained his position after collecting bribe from Barth, Emir of Zaria was not lucky, as he lost his position. The two cases illustrated above demonstrate the mixed nature of the colonial administration to issues of corruption. It was not only Emir Aliyu that lost his position as a result of corruption, Chief Alkali of Zaria as well as the powerful Galadima of Zaria were also removed based on alleged malpractices. Scores of district and village heads were also implicated in embezzlement and misuse of their offices.

Moreover, it appears that bribery is not a new phenomenon in Nigeria. A top missionary in Zaria, Dr. Matthew Miller, claimed that Emir Aliyu sent a messenger to him with the gift of a turkey and requested that Miller should intervene with British authorities and recommend Aliyu's appointment to the throne. Miller described this request as "greatly outraging native etiquette" and declined to offer assistance.[29] The passage of the Land and Native Rights Ordinance of 1910, which placed land tenure in most of the protectorate under the control of local Emirs was said to have resulted into further abuse of office by the Emir. Several complaints were sent to British authorities and in reaction to the volumes of petitions against Emir Aliyu, the Governor-General of Nigeria, Sir Hugh Clifford, ordered the acting secretary for the North to investigate the charges against Emir Aliyu.

All previous complaints against the Emir and his subordinates were ignored because Emir Aliyu was in the good book of the colonial authorities. The yardstick used for the eventual removal of Aliyu as the Emir of Zaria by the colonial masters 'was not applied consistently or universally', as witnessed in the case of Emir Bello who practically trapped Dr. Barth in his domain until he parted with some items. Emir Aliyu had the misfortune of Dr Miller's proximity and his hostility. Miller produced an eighteen-page dossier on Aliyu's alleged infractions and piled pressure on the British authorities to depose Aliyu.[30] It can be inferred that as far back as the early 1920s, corruption had been used as justification to depose native traditional rulers in Nigeria. Some modern day advocates and social critics describe this as selective prosecution of corrupt offenders in the country.

Corruption in the Pre-Independence Era, 1922-1960: Southern Perspective

The southern parts of the country also had their share of unethical behaviour in the early years of the pre-independence period. While the unethical conduct that was common in the North was the conversion of taxes collected by local government into personal use and other sundry violation of human rights, clear cases of fraud were becoming norm in the Southern parts of the country. For instance, on 18 December 1920, a certain Mr Crenstil, a former employee of the Marine Department of the colonial government in Lagos claimed to be Professor Crenstil. He wrote what is to be first known *4-1-9* type letter in the history of Nigeria. Crenstil wrote a number of letters to people offering to provide magical services on payment of a fee. In December 1921, he was arrested by the police with a three-count charge under various sections of the criminal code, including Section 419. Crenstil was acquitted by the presiding magistrate. He later claimed that he was freed of the charges owing to his "juju powers."[31] Furthermore, cases of money-doublers perpetrated by the "Black Boys" and the "Ajasco Boys" were also prosecuted under the colonial law code.[32]

Several cases of what can be described as obtaining money under false pretext were prosecuted during the colonial era. However, due to space constraint, three cases will suffice: Prince Modupe, also known as Modupe Paris and David Modupe, who also claimed to be the "Crown Prince of Nigeria", was operating between Los Angeles

and United Kingdom. He was described as a confident professional trickster. His activities were documented between 1935 and 1947.

The third case was an Igbo man, Prince Orizu. He was well known in the United States of America and Australia. His style of operation even attracted newspapers coverage. Prince Orizu, also known as Dr. Abyssinia Akweke Nwafor Orizu, was convicted by a Magistrate Court in Nigeria in September 1953 on seven counts charge of fraud and theft of funds on the pretext of funding scholarships in the United States. Orizu was alleged to have collected over $32,000.00, three years to his conviction. After his conviction, he later joined the National Council of Nigeria and Cameroons (NCNC). Orizu was a member of the Eastern Regional Government established under Nigeria's 1951 constitution and later became Nigeria's first Senate President after Independence. Orizu's conviction for fraud was later described as a miscarriage of justice by his political associates.[33] The major cases cited depict a mixture of politics and fraud in Nigeria.

A clear analysis of the three cases above indicates that deception and fraud are not new phenomena in Nigeria. It must however be noted that there was no known case of fraud and deception of international dimension from Northern Nigeria before Independence. It was only found in the Southern part of the country. High level of education and the new political structure introduced by colonial rule, seemed to have influenced the recorded level of deception and fraud in the early 1960s in southern Nigeria.

Constitutional Development and Corruption: Any Link?

On assuming office in 1919, Sir Hugh Clifford, the governor, faced with protest by then West African congress, led by Caseley Hayford, demanding for constitutions in West African states enacted the Clifford constitution of 1922. It introduced the first electoral system in Nigeria. The first election was conducted into the legislative council with four slots: 3 for Lagos and 1 for Calabar. It also introduced a legislative council which replaced the Nigerian council. This Constitution was heavily criticised by the Nationalists, thus giving birth to Richards Constitution of 1944. Richards Constitution introduced a slight improvement on the participation of Nigerians in their affairs. However, by this time, Nigerians were vehemently agitating for more participatory role in governance. Unfortunately, the constitution provided for mere advisory role for the regional assemblies.

The 1944 constitution was later replaced by Macpherson constitution of 1951. There was wide consultation with Nigerians, even to the village levels. Despite the improvements in the Macpherson constitution, it was condemned by Nigerians. This led to the agitations that Nigeria should be given independence in 1956. The Northerners, argue that they were not ready for independence, and opposed the move for independence. The North threatened to secede.[34] The Macpherson constitution of 1951 allowed Nigerians limited powers at regional level while the British continued to retain control at the centre.[35] With the limited powers at regional level, Nigerians formed political parties based on the ethnic and cultural backgrounds. In the South-West was the Action Group, (AG), the North came up with Northern People's Congress (NPC), and Nnamdi Azikiwe from the East formed the National Council of Nigeria and Cameroons (NCNC).[36]

Thereafter, the then colonial secretary, Oliver Lyttleton, called the leaders for a conference in London. Issues relating to Nigerians participating in their own affairs and how to increase the number of seats for the Nigerian citizens in governance were discussed during the conference and committees were set up. The constitutional conferences of 1953 and 1954 that were held in London and Lagos respectively gave birth to the Lyttleton Constitution. The Constitution fully introduced a federal system, with North, East, West and Southern Cameroons, while the Federal capital territory was in Lagos. On 1st October 1960, Nigeria became independent.

As Nigerians assumed positions of authority at the political and civil service levels, cases of corruption attained a new height. Stephen Ellis quoted Amadi, "In its early days, the Civil Service was almost immune from '*awuf*' *(meaning free).* British officials…who manned the key posts saw to it that *awuf* was reduced to the barest minimum. As the British officials were gradually replaced by Nigerians, the incidence of *awuf* increased."[37] Indeed, as early as 1950, a Northern politician, Abubakar Tafawa Balewa, had caused a sensation on the involvement of civil servants in what he described as "the twin curses of bribery and corruption which pervade every rank and department of government."[38] This unethical conduct was not limited to the civil servants, the political class further ingrained corruption and bribery into the fibre of the nation. The above analysis showed clearly that the advent of constitutional democracy seems to democratise

corruption among all cadres of the Nigerian society. The advent of constitutional government was meant to open up the political space for democratic opportunities and development. But in reality, the opportunities associated with such openings had negative impact on the political development of the country. This may not be unconnected with the high incidence of graft that characterized the period under review. The competing nationalists were using the resources at their disposal to build political alliance rather than investing the funds on development.[39]

Traditional Anti-Corruption Measures

Even though most pre-colonial African communities may have been centralised or decentralised and with unwritten laws, heavy emphasis was placed on accountability and good governance across several of the pre-colonial Nigerian societies, thus most anti-social behavior was a product of the British colonial government who passed on certain anti-social behavior aligned corruption.[40] Honesty was the watchword in Yorubaland in the pre-colonial era. Aluko notes that in pre-colonial era, citizens usually displayed their wares and other farm produce for sale on the roadside without being in attendance. The price would be placed on each item to guide prospective buyers.[41] Buyers, he noted, would get to the spot, collect what they wanted to purchase and drop the correct amount (then in cowries) for the different items.[42] This is a clear indication of the degree of honesty and personal integrity of the citizens at the period.

It should be noted that among the Yoruba of South Western Nigeria, the institution of Oyomesi, the body of kingmakers, acted as a check against the abuse of power by the Alaafin, the Oba (King) of Oyo. The Alaafin was constrained to rule with caution and respect for his subjects. When proven to have engaged in acts that undermined the interests of his subjects, such as gross miscarriage of justice for personal gain, the Oyomesi would, "present him with an empty calabash or a parrot's eggs as a sign that he must commit suicide" since he could not be deposed, according to tradition.[43]

In the same vein, Olurode opined that some proverbs and fables from the African value system provided a good framework for distinguishing between moral and immoral conducts, legal or illegal acts, in the pre-colonial era. Some Yoruba proverbs such as: "*Ise ni ogun ise*"-Hard work is the only antidote to poverty, "*Oruko rere san ju wura ati fadaka lo*"-A good name is better than silver and gold, "*Bi*

iro ba lo ni ogun odun, ojokan l'ooto o ba"-No matter how long a lie may exist, truth will prevail one day, "*Bi eniyan bajale l'ogun odun seyin, to ba da aso aran bora, aso ole loda bora*"- If one adorns a colourful dress 20 years after having committed a theft, it remains a stolen dress. Some of the proverbs may not condemn outright, but they certainly do not approve of corruption.[44] Furthermore, Igbo people also have their own proverbs on unethical conducts include: *ihe akutara n'akuku ite na-ala n'akuku onu*-whatever is acquired by dubious means cannot satisfy, *ihe omo ka mma, oburugodi na onweghi onye na eme ya*- good thing is the best even if nobody is doing it*, Ome mma mere onwe ya, omen jo mere onwe ya*- he who does good reaps good and he who does evil reaps evil*.* The Hausa-Fulani culture also frowns at unethical conducts among themselves with such proverbs: *Gki da gaskiya wuka bazata Gudas hi ba*-stomach full of truth cannot be cut open by a knife, *idan baki yau dole ido yayi kunya*-the mouth that eats what's forbidden will definitely subject the eyes to humiliation and *Hanun da ya karba wata rana sai ya koka*-the hand that collects one day must complain*.*

It is the contention of this study that Chinua Achebe's works, such as *No Longer at Ease,*[45] *Things Fall Apart,*[46] and *The Anthills of Savannah*[47] as well as Olagoke's work, *The Incorruptible Judge,*[48] all explain in detail how the problem of corruption crept into the African culture and the attempts by the people to resist the new culture imposed on Africans. Indeed, Achebe described the pre-colonial era as "Era of Purity."[49] This is sharp contrast to few cases cited earlier in this chapter. What is evident is that the traditional anti-graft tendency is highly organized and prevents the innocent from being unjustly sanctioned while offenders are identified, tried and severely punished without any fear or favour.[50]

Some scholars are of the view that modernisation and globalisation destroyed the era of purity in Africa, Nigeria inclusive. Hasty argued that the contact of Africans with people all over the globe has contributed to the incidence of corruption.[51] Olurode opined that Africa's encounter with the West was responsible for the blurring of the threshold between ethical and unethical behaviour.[52] Lawal asserted that the white man concocted and used corruption to foster materialism, using it as a subterfuge to disintegrate the traditional social structures that existed in pre-colonial African society.[53]

As explained in previous sections of this chapter, corruption was part and parcel of pre-colonial communities in Africa, even before the arrival of the colonial masters. It is, however, the view of this researcher that the check and balance systems put in place in pre-colonial African societies might have been modified to meet the challenges of the modern state had the colonial masters not intervened in the evolution of the black race. The checks and balances were discarded by the new administrators as not useful.[54] Moreover, ethnic leaders who are supposed to protect the existing values rubbished the checks and balances and embraced the rules introduced by the British rules.

It is clear from the narrative so far in this chapter that the colonial era provided a fertile ground for corruption in Nigeria. For instance, Osoba asserted that the colonial rule, which ended after the Second World War in 1945, was essentially the unrestrained autocratic and authoritarian rule which allowed the perpetration of corruption by some British colonial officials, aided and abetted by their compatriots among the European Christian missions.[55] It is the contention of this author that this claim is not supported by any empirical evidence.

Similarly, Okonkwo noted that, as early as 1947, Commissions of Inquiry were established in Nigeria to investigate cases of corruption. He asserted that the purpose of the inquiries was to expose wrongdoings and punish the culprits. The colonial government report of 1947 indicated that "The African's background and outlook on public morality is very different from the present day Briton's. The African in the public service seeks to further his own financial interest."[56] These financial interests, believed to be infractions levelled against three prominent Nigerian leaders, may have informed the position of the colonial masters.

Several cases of wrongdoings were reported in the three regions. In 1956, for example, the Foster-Sutton Tribunal indicted the Premier of the Eastern Region, Nnamdi Azikiwe, for corrupt acts in his involvement in the affairs of the African Continental Bank (ACB), while still serving as a government official, which is contrary to the Code of Conduct for public officials. The tribunal, in its reports, felt that Zik did not sever his connections to the bank when he became a Minister, and he used his influence to further the interests of the Bank.[57]

In the words of a colonial government official, "Were a UK minister to be involved in a series of transactions, the result of which was that public funds were used to support an otherwise shaky institution in which he was directly interested, he would be forced to leave public life." However, Zik did not resign; instead, he called for general elections in the region, which his party later won. Okonkwo argued that the colonial government did not prosecute Zik for his failure to observe the code of conduct for government officials because they believed the NCNC was the only party to embrace national unity. "Without Zik, the NCNC would collapse."[58]

A similar but different corrupt act was reported in the Western Region: Obafemi Awolowo, the first Premier, and Ayo Rosiji, E. O Okunowo and Abiodun Akerele, who were three members of his party, the Action Group, were found guilty of corruption by the G.B.A. Coker Commission of Inquiry of 1962. The Coker Commission, in its reports concluded that "We came across evidence of reckless and, indeed, atrocities and criminal mismanagement and diversion of public funds. We are satisfied that Chief Awolowo knows everything about the diversion of large sums of money…into the coffers of the Action Group". The report stated that Awolowo, "without a doubt, has failed to adhere to the standards of conduct which are required for persons holding such a post."[59] The report of the commission was later described as a "spiteful document" because Chief Ladoke Akinola, who had been premier of the region for more than two years, who was implicated severally in the investigation, was exonerated by the commission.[60]

Moreover, the Northern region was also not spared of the incidence of corruption during the colonial era. The then Sardauna of Sokoto, Sir Ahmadu Bello, was accused, in 1943, by his own cousin, Alhaji Abubakar Siddique, of misappropriation of tax revenue as District Head of Gusau. It was during this period that the Northern Government enacted the "Customary Presents Order", a law to tackle allegations of corruption levelled against some of the native chiefs in Borno, which was reported to have been perpetrated in collaboration with the British officials in the district.[61] Indeed, on 26th February, 1962, the Emir of Gwandu moved a motion in the Northern House of Chiefs:

> *That this House, agreeing that bribery and corruption are widely prevalent in all walks of life, recommends that*

> *Native Authorities should make every effort to trace and punish offenders with strict impartiality and to educate public opinion against bribery and corruption.*[62]

Of course, it was not only Africans that were indicted for corruption related offences during the colonial era. Lawal asserted that some colonial officers were implicated in the embezzlement of public funds.[63] Between 1901 and 1902, three British officers in the colonial office namely, Captain Gonstedt, Major Hull and Captain MacLachlan, were accused of embezzling three pounds, 28 pounds and 250 pounds respectively. Lawal further explained that "between 1905 and 1906, a total sum of 942 British pounds was recovered from officers who were accused of various forms of financial fraud, while queries involving 640 pounds were yet to be replied…. Up to the 1940s, the colonial office still received serious reports of financial fraud in the colonial administration system". Despite the fact that the first set of acts of corruption was uncovered in 1947, nobody was charged to Court for alleged corruption until 1966. The only case that was sent to the Court in Nigeria during this period (1947-1966) was, "the State versus Odofin Bello."[64]

Adducing reasons why the British officers did not include the tackling of corruption as part of the de-colonisation process, the Governor of the Eastern Region, Sir Clement John Pleass asserted that "the aim of the colonial government was not to establish a standard of honesty in public life. Only time and education can do that. Eventually, sufficiently honest and enlightened people will be thrown up to rebuild the prosperity and good governance of the region."[65]

Conclusion

Although Nigeria had an unpleasant colonial experience, as corruption and other social vices were believed to have been introduced to the Nigerian societies by the colonial authorities, this chapter reveals that pre-colonial Nigerian societies were not free of corruption but its impact and scope were not harmful on economic and social development of Nigerian communities. It must be noted that in-spite of the enactment of the 1 June 1916 Criminal Code in the nation's status book, very little effort was made to fight corruption during the period under review. The coup of 1975, among other things, was the first attempt to end corruption in the public service. General Murtala Mohammed began by declaring his assets and asking all government officials to follow suit. He instituted a series of probes

of past leaders. The Federal Assets Investigation Panel of 1975 found ten of the twelve state military governors in the Gowon regime guilty of corruption.[66]

Second, the monetization of traditional institutions whereby politicians determine who is the traditional chiefs or not completely destroyed the cultural and moral values of the pre-colonial Nigerian societies and in the process, existing checks and balances were rendered ineffective, thus failed to curb the infractions of those in positions of authority in the country. The advent of constitutional systems of government and globalisation appears to have worsened the challenge of corruption in colonial era and since then, corruption has remained a dominant political narrative among the military and civilian leaders as a legitimate means of gaining and sustaining power in the country.

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CHAPTER 2

ANTI-CORRUPTION IN NIGERIA: 1960-1999

DAVID U. ENWEREMADU

Introduction

The establishment of Nigeria's Fourth Republic on May 29, 1999, was accompanied by an unprecedented public interest in the fight against corruption. This scenario had been made possible by the combined effects of a changing posture by the international community favouring a more effective fight against corruption in developing countries, as well as growing citizen awareness about the negative effect of corruption for development. Both factors led the Nigerian government to put in place series of reform measures aimed at improving public transparency and accountability.[1] Yet corruption and anti-corruption, have been part and parcel of Nigeria's turbulent history since independence in 1960. Indeed, these issues have been at the heart of public policy and discourse since the country emerged from British colonial rule in 1960. Almost all the governments that ruled Nigeria had condemned this vice, with or without any pressure from outside, and even went ahead to enunciate several measures to combat it, including administrative purges of corrupt public servants, seizure of illicitly acquired assets, establishment of panel of inquiries, investigation and judicial trials,[2] passage of new anticorruption laws/legislations,, including laws requiring open declaration of assets and non-maintenance of overseas bank accounts,[3] and elaborate public enlightenment programmes aimed at encouraging the citizens to shun corruption.

The question then arises, why did these past efforts not stop corruption from proliferating up to the year 1999, when democracy was re-established under the banner of the Fourth Republic? And in what ways have they influenced the adoption of contemporary anti-corruption strategies, for instance, the establishments of specialized anti-corruption agencies like the ICPC? This contribution, which adopts a historical approach and relies essentially on secondary data (documentary analysis), presents an overview of general and

specialized anti-corruption interventions in Nigeria during the period 1960 to 1999, proceeding through a regime-by-regime analysis. This is done with a view to highlighting the motivations, nature and scope of these efforts. The chapter further reveals the impact and limits inherent in these interventions, reasons why corruption continues to pose significant challenge to national development even till today. The chapter is broadly divided into six sections, including the introductory section which is the first. Sections two, three, four and five describe anti-corruption efforts under the various regimes or administrations (First Republic, 1960-1966; The First Military Interregnum, 1966-1979; The Second Republic, 1979-1983 and the Second Military Interregnum, 1983-1999. In each of these sections we will also highlight the scope of anti-corruption intervention, their impact and limitations. Section six presents the concluding remarks.

First Republic, 1960-1966

The period 1960-1966, otherwise known as the First Republic, saw a rising concern with corruption, especially among the bureaucratic and political elites. This can be seen as a form of continuity with the past, i.e., immediate pre-independence years, when corruption had become rife with Nigerians working in the British colonial public service.[4]

Grand corruption, or 'corruption in high places', involving the political elites was therefore the first major form of corruption that raised concerns. This occurred, as leading politicians and their political parties diverted state funds to finance political activities and, to a lesser extent, some private consumption. During this period (1960-1966), award of contracts for public projects, licences and credits were systematically used to enrich the leading political parties and their leaders, at both national and regional levels[5]. Corrupt practices here were basically aimed at winning and retaining power, which was, for most of these local actors, a new and difficult challenge[6].

The emergence of the well-known concept of "10%", which represented the sum usually received by top officials who were in charge of awarding public contracts, was an evidence of the grand corruption that became pronounced during this period. Another evidence came out of the scandals that rocked the Action Group (AG), the governing political party in the Western Region, whose

leadership was indicted for diverting public funds in its bid to win the 1959 elections by a probe in 1962.Although widely seen by many people as a witch-hunting exercise against the AG leaders, the Coker Commission of Inquiry of 1962 found that the leading politicians in the party had created some private companies for the sole purpose of receiving public funds coming from institutions owned by the Western Region, such as the *National Bank*, Western *Regional Development Corporation* and the *Western Regional Marketing Board*, to mention just a few[7].These diverted funds helped the AG to finance its electoral campaigns. It was estimated that between 1958 and 1960, around 6.5 million pounds had passed from the coffers of these public institutions into the accounts of the AG.[8]

The First Republic was also characterised by nepotism, or what Brownsberger describes as *parochial corruption,* practices which are inscribed in the culture of social exchange[9]. The multi-ethnic nature of the new state created by the British had given rise to ethnic parties, and with it, came intense competition for power among the three leading ethnicities (Hausa, Yoruba and Igbo), which also came to dominate government at both national and regional levels. The result was that each of the three dominant political parties (NPC, NCNC and the AG), controlled by these ethnic groups, pushed for the domination of the machinery of government by members of these groups. Under such arrangements, the idea of a meritocratic public service, as was the case under British colonial civil service, was far-fetched. Appointments and promotions in the services, especially at the national level, were simply awarded to tribesmen, or co-religionists.[10]

A third form of corruption that became common during this era was electoral fraud, or 'rigging', where the contending actors employed a combination of violence or voter intimidation and manipulation of the electoral process to gain electoral advantage and perpetuate themselves in power. These allowed some of them to announce themselves winners of elections held in areas where they were clearly not popular.[11]

Although corruption was largely limited to political elites and a few state institutions during the years, 1960-1966, it was grievous enough to cause widespread internal discontent. Yet, the Federal Government headed by Prime Minister Abubakar Tafawa Balewa of the Northern People's Congress (NPC), never took any concrete

measures to check corruption, apart from setting up the Coker Commission, which itself was widely viewed as a political move to castrate the AG, which was the official opposition party at the federal level. For instance, no similar Commission was established at the centre, or in the other two regions controlled by the Northern People's Congress (NPC) and the NCNC, both of which formed the coalition government at the centre. This poor disposition to anti-corruption, among other factors, will latter encourage the military to intervene and terminate the First Republic on January 15, 1966[12].

The First Military Interregnum, 1966-1979;

Once the military took over power in January 1966, they accused the fallen civilian politicians of corruption and tribalism, and took some punitive measures against some of them. These came in form of dismissal from office and setting up of investigative panels. Upon seizing power on January 15, 1966. General J.T.Y. Aguiyi-Ironsi, head of Nigeria's first military government, announced that "the federal military government will stamp out corruption and dishonesty in our public life with ruthless efficiency and restore integrity and self-respect in our public affairs."[13] During his short stint in office (January 15 – July 29, 1966), General Ironsi put in place several initiatives destined to expose the corruption of the erstwhile civilian leaders: administrative reforms of government institutions; investigations into the management of selected federal institutions such as the *Electricity Corporation of Nigeria*, *Nigerian Railway Corporation*, *Lagos City Council* and *Nigerian Ports Authority*. He also inaugurated some s*tudy groups* to study certain aspects of public life and advise the government.[14]

Even after Ironsi's death in July 1966, following another coup, some of his initiatives were continued. In 1967, for instance, one of such panels investigated and indicted the Premier of the Mid-West Region, Dennis Osadebey, and 15 other senior officials for diverting public funds. Mr Osadebey alone had diverted £72,198**,** between August 12 1963 and January 15 1966. This probes showed that, for the first republic civilian leaders, possession of public offices is nothing but an avenue for the massive diversion of public resources to satisfy individual and group political ambition and private economic need.[15]

These early attempts by the military to curb corruption displayed two very important limitations. The first limitation of these measures was laid bare by Yahaya, who wrote that:

> *Reform programmes which included the removal of the old politicians as chairmen and board members of statutory corporations were set into motion. Their places were taken over by civil servants who consequently took over even as chairmen of these corporations. Overall the reform programme of the regime was aimed at eliminating corruption and dishonesty in public life and so politicians were excluded from participating in government and public institutions were probed. The corruption and maladministration of these institutions were exposed but no conscious attempt to undertake major structural and operational reorganisation of the service was undertaken*.[16]

Secondly, corruption, although very widespread during the last phase of the First Republic, was incomparable with what later took place under the military, and even successor civil administration of 1979-1983. In other words, the military administrations and later civilian regime which took over from the Balewa government (1960-1966) were both marked by an even higher levels of petty and grand corruption.

The collapse of the First Republic, on January 15 1966, sparked off a chain of political crisis which led to a civil war (1967-1970). The war, according to Osoba, provided an opportunity for the solders to devise several corrupt means to loot public resources, which had become increasingly scarce due to the exigencies of war, through:

> *Misappropriation of salaries and allowances of soldiers killed in action for several months by their commanders; the gross inflation of military procurement contracts; the payment of inflated contract fees several times for the same goods or services, or none at all; the looting of public and private properties in occupied territories by both the Nigeria and Biafran armies…Including the looting of millions of pounds sterling from the Central Bank, Benin, in 1968, a crime which both armies blamed on each other*.[17]

The end of the Nigerian civil war in January 1970 coincided with massive export of petroleum, and with it, multiplication of opportunities for diverse corrupt practices, including several new types of corruption. Indeed, massive expansion of petroleum exports

under the regime of General Yakubu Gowon (1966-1975) facilitated the reconstruction of a country destroyed by a bloody war. But at the same time also it gave rise to the emergence of more brazing forms of corruption and criminality. The awards of public contracts and granting of import licencing permits of all sort, public auctions and procurements, as well as the management of public institutions generally became characterised by massive corruption, as evidenced in the direct transfer of staggering sums from public treasury into private accounts of members of the ruling military class and their civilian cronies[18]. But such unrestrained behaviour however could have only one consequence: legitimization of petty corruption among the lower cadres of public officials and the general public through a process of imitation. From then onwards, one could easily observe a generalisation of bribery in the public services, frequent recourse to extortion by police officers and the customs, as well as various kinds of malpractices in tax collection. The government of Gowon took no concrete step to address these challenges, aside his *Nine Point Programme* which included a mention of anti-corruption fight. This programme was only a rhetoric as no significant steps were taken in the direction of anti-corruption.

Following the overthrow of General Gowon on 29 July 1975, several investigations (Assets Investigation Panels) were launched at both the national, as well as the level of the then 12 federating states, which confirmed that a system of generalized corruption had been installed under Gowon[19]. Many senior officials, including 10 state governors, out of 12, ministers, permanent secretaries of ministries, departments and Agencies; Chairman and members of boards of public corporations, and even thousands of lower level officials were indicted for corruption or abuse of office, and dismissed from service, in what was termed the 'great purge'[20]. At the same time, huge sums of money and illicitly acquired properties were seized by the 'reform minded' Murtala Mohammed administration. Thus if petty and grand corruptions were common during the First Republic, the military years (1966-75), was characterized by large scale looting of state assets.

But despite these aggressive anti-corruption posture adopted by Mohammed, accusations of corruption persisted until 1979, when civilian rule was reinstated[21]. This was explained by two reasons. First of all, Nigerian military officials found it difficult to resist the temptation that came with a new found massive oil wealth. Secondly,

the reformist Murtala Mohammed himself was assassinated six months after coming to power and his aggressive fight against corruption was abandoned by his successor, General Olusegun Obasanjo, before they could be institutionalised. This applied especially to his Corrupt Practices Decree No. 38 of 1975, which established the *Corrupt Practice Investigation Bureau (CPIB)*, Nigeria's first specialized anti-graft agency. The death of this otherwise promising agency created a major loophole in Nigeria's anti-corruption architecture that was only corrected in 2000 with the birth of ICPC.

Thirdly, Nigeria's new form of corruption, which Andreski called a '*institutionalised robbery*'[22], is also said to be largely explained by the absence of political accountability typical of authoritarian military regimes. Osoba explained this point more clearly:

> *The government of the First Republic had to observe a minimum level of formal accountability to their elected legislatures, their larger public and electorate, if they hoped even to be able to rig the next election, as they usually did, with a modicum of credibility. This meant that they had to pay formal attention at least to the institutional arrangements for ensuring accountability… By freeing the rulers from these restraints imposed on them under the principle of accountability, military rule transformed itself… and subsequently into a kleptocracy. [23]*

This third argument is however challenged by the unprecedented level of corruption, experienced between 1979-1983, under a supposedly civilian democratic regime.

The Second Republic, 1979-1983

If the First Republic was less corrupt than succeeding military regimes, the scale of grand corruption observed during the Second Republic (1979-83), despite all the institutions of democratic control (elected legislatures, opposition parties, etc.), disproved the idea that civilian regimes are more virtuous.[24] Indeed, during the second Republic, the redistribution of political patronages, now called 'National Cake', to members and supporters of the ruling party at the national level and in the various states, become more or less the official policy of the federal government headed by the *National Party of Nigeria*, NPN.[25] For example, at the level of the executive arm of government, appointment of party loyalists to public positions,

inflation of the price of public contracts after payment of kick-backs by contractors and private businessmen, massive frauds in the award of import licence or import of essential commodities at inflated rate by the government (notable example being the *Presidential Task Force on Rice*), diversion of public assets and transfer of public funds into private bank accounts within and outside the country, etc., were widely considered legitimate means of self-enrichment and important sources of financing political parties.[26]

In the legislatures, both the national parliament, as well as in the state assemblies, lawmakers regularly received payments, usually outrageous sums, and public contracts in exchange for supporting bills sent by the executive. The same lawmakers also orchestrated their own fraud and grand corruption, involving diversion of funds through other means. For example, through inflation of salaries and allowances to legislative aides and *constituency offices*, some of which never existed. These, of course, excluded other unreasonable benefits they granted to themselves: luxurious cars, expensive foreign trips, among many others.[27]

During this era, Nigeria was also challenged by the continuous rise of all sorts of petty and bureaucratic corruption: extortions, destructions and alterations of petitions and report of investigations by the police[28]; collusion between businessmen and custom officers to avoid payment of duties and taxes or to facilitate the importation of contrabands, usually through the falsification of documents[29]; demand of petty gratifications by low-level officials to render social services, in such areas as telephone, electricity, water, among others ; falsification of accounts and official documents in the public services to defraud the government, leading also to massive loss of public resources, as seen in the phenomenon of *ghost worker.*[30]

To further underscore the scale of grand corruption and its effect on the economy, which will later experience a dramatic decline following a slump in the price of petrol in the international market, within a space of four years, national debt went from $6.8 billion in October 1979 to $15 billion by the end of 1983, when the civilian regime headed by Shehu Shagari was evicted from power following the return of the military to power. Described as the most corrupt in the history of Nigeria, by the *Political Bureau,* a committee that was established in 1986 by the Babangida military government to advise on a future constitutional framework for Nigeria[31]. The rise in the

number of nouveaux riches, evidenced in the frequent acquisition of private jets, overseas properties, luxurious automobiles, among others, were unprecedented in this era. But so also was rising poverty among the middle and lower classes. The rise of poverty coincided with growing incapacity of several public institutions, especially the state governments, to pay their workers. President Shagari frequent expressed his worries about the rising cases of corruption but took no concrete step to curb it. Despite launching what he called an 'Ethical Revolution' and the 'Cost Monitoring Unit', ostensibly to check the widespread inflation of the costs of public projects, no official under the Shagari government was ever charged for corruption or abuse of office. In the end, popular frustrations towards the regime, accentuated by the intensification of the economic crisis and massive corruption, provided justification for a coup d'état which brought General Muhammadu Buhari to power on December 31, 1983.

The explanation of such high levels of corruption under a democratic regime with all sorts of constitutional and institutional controls have often stressed the availability of massive oil wealth, thanks to the increase in oil prices occasioned by the mini-boom of the 1980-1981 years (as was the case during the immediate past military era - 1967-1979), as well as the decentralized nature of political structures and systems in place (multipartism, reinforced by a presidential and federal system comprising of 19 states) which were said to be conducive to the rise of corruption[32]. If a distributive federal system was a major obstacle to a reign of public accountability[33], the nature of the electoral system was even more pernicious. To a large extent, it generated a monetization of the polity. As Osoba explained it:

> *The constitutional provisions governing the formation and registration of political parties, and election to public offices on the platform of the registered parties were such that nobody could hope to be elected to any public office without a huge financial outlay, which was often several times larger than the total legitimate remuneration which a successful candidate could reasonably expect to earn in his or her four year-tenure in office. Since most members of the Nigerian Political elite were not known to be motivated by anything but the crudest business considerations of how to maximise their profit from holding public offices, it became a matter of urgent necessity for them*

> *rapidly to recoup the capital outlay on their elections and show substantial profit on their investment.*[34]

But yet another explanation, which is perhaps more central, was the persistence of a political culture which encourages the conception of the state as an instrument of private accumulation or what Graf[35] described as a "*chop oriented party system"* and what Richard Joseph characterises as "*prebendalism,"*[36] all having bearing to the concept of neo-patrimonialism. Democratic transition without deep and fundamental reform undertaken by the military couldn't end, especially at the national level, a neo-patrimonial system, now defined by a utilisation of a 'national clientelist strategy', as opposed to a regional one which we saw during the First Republic. The NPN politicians obviously wanted to avoid the mistake of the First Republic politicians, who had based their clientelist strategy on a regional focus, by attempting to expand their patronage to the entire nation, bearing in mind that the first republic collapse largely as a result of competition among elites of the major ethno-regional groups over scarce state resources. In this context, the party had favoured an inclusive approach based on the incorporation within the same party of all *political notables* from the different ethnic communities, a strategy which was also in line with constitutional provision (Section 203 (b)) of federal character[37]. This strategy was expected to guarantee an effective, stable and peaceful political atmosphere for redistribution of the benefits of power. The present of abundant resources from petroleum exports was expected to facilitate this phenomenon.

The Second Military Interregnum, 1983-1999

In his maiden address to the nation, General Muhammadu Buhari explained why the Military had decided to terminate Nigeria's Second Republic:

> *"While corruption and indiscipline had been associated with our state of underdevelopment, these twin evils… have attained unprecedented height over the past four years. The corrupt, inept and insensitive leadership in the last four years has been the source of immorality and impropriety in our society… The last general elections could be anything but free and fair… There is ample evidence that rigging and thuggery were related to the resources available to the parties …[why] the military have*

> *dutifully intervened to save this nation from imminent collapse."*[38]

Soon after coming to power, the Buhari-Idiagbon military government launched a *War Against Indiscipline (WAI)*, which involved series of drastic, sometimes draconian measures directed at fighting corruption in the polity and instilling order and discipline among the citizens, including highly placed government officials.[39] This included the enactment of some decrees, such as the *Recovery of Public Property Decree 1984*, which enabled the regime to seize assets, including cash and landed properties, suspected to have been corruptly acquired, and the establishment of several ad-hoc courts and commissions of inquiries which tried several of the leading politicians of the Second Republic. The implementation of these measures were, however, widely criticised for ignoring due processes of law, such as the presumption of innocence until found guilty, rights to legal representations, fair hearings and respect for fundamental human rights. Accused persons were often arrested and detained for several months without trial, and other times, trials were characterized by secrecy. Similarly, several accused persons bagged jail terms running into hundreds of years, and even when the tribunals found some individuals not-guilty they were kept in prison without explanation.

The descent to tyranny under the Buhari-Idiagbon administration raised concerns, even among those who initially supported the anti-corruption drive of the government. As days went by, many critics of the regime, including some vocal individuals, especially journalists and political figures, who spoke against this systematic violation of human rights and rule of law were harassed, or arrested and detained by the military government. While many Nigerians wanted to see a drastic decline in corrupt practices, very few were ready to have it at the expense of human rights and due process. This atmosphere of discontent created a fertile ground for a palace-coup, which occurred on August 27, 1985, 18 months after Buhari came to power. This coup then ushered in a succession of military dictators, some with integrity challenges, beginning with General Ibrahim B. Babangida (1985-1993), which remained in power until May 29, 1999 when democracy was restored. General Babangida was followed by an interim civilian Head of State (Ernest Shonekan (August-November, 1993), which later gave way to Generals Sani Abacha (1993-1998) and Abdusalami Abubakar (1998-1999).

The years 1985-1999 saw a re-emergence and spread of petty and grand corruption, perpetrated by public officials, after a temporal lull. That lull could be attributed to the aggressive, but unsuccessful efforts of General Buhari to reconstruct a hegemony that had been endangered by the criminal activities of its civilian wing. This fact supports the hypothesis which states that neo-patrimonialism can co-exist with any type of regime in sub-Saharan Africa.[40] The military government of Ibrahim Babangida is perhaps the best illustration of this fact. As we have seen, during his 18 months' sojourn in power, the Muhammadu Buhari military regime took some aggressive measures against corruption and the ruling elites which it had just replaced. But unfortunately his initiatives were all abandoned after the overthrow of that government on August 27, 1985.

The Babangida regime which followed was marked by, not only a move towards personalisation of power, but also by the construction of new and formidable clientelist networks, that embraced all sections of the Nigerian elite, including top military officers, civil servants, intellectuals, businessmen and women, traditional and religious authorities, selected essentially on an individual bases.[41] To accommodate such a diverse group, General Babangida needed to create several new public institutions (ministries, commissions, agencies, public enterprises, committees, among others), and administrative units (states and local governments,[42] each with its own carved-out functions and sometimes unlimited budget. Thus, between 1985 and 1993, petty and grand corruption were deliberately tolerated, or even encouraged, as a necessary tool to facilitate President Babaginda's *personal rulership project*. At the end, this resulted in the elevation of corruption to a cardinal principle of the state. For this regime, corruption, occasionally reinforced by coercion, was nothing but an instrument for the exercise and consolidation of power.

While majority of the forms of grand and petty corruption observed during the preceding regimes continued, new forms of corrupt practices also emerged. One of the new types of grand corruption was, for example, the indiscriminate production of the local currency (the Naira), facilitated by the absolute control of the Central Bank by General Babangida, a practice which enabled the military government to buy political support and maintain its vast clientelist networks.[43] This decision however had several negative

consequences on the economy. First, between 1985 and 1993, the amount of money in circulation increased from 11.8 billion naira to 100.5 billion naira, resulting in a massive inflation and devaluation of the Naira.[44] The control of the Central Bank also resulted in a frequent disappearance of public funds from the coffers of the state, the most celebrated example being the famous $12.4 billion, earned between 1988 and 1993 by the federation, as a result of the dramatic increase in the price of petrol and which was kept in a special account with the Central Bank.[45] According to an official inquiry commissioned by one of Babangida's successors, General Sani Abacha (Pius Okigbo's *Report* of 1994), which was never published, this money, which represented 20 per cent of total earnings from petroleum exports, was wasted on some dubious and unverifiable projects by the Babangida government. Some of the projects in question included construction of new capital at Abuja, peace keeping mission in Liberia, among others.[46] The key issue was that the monies were spent with little control and accountabilities.

Outside the public service, fraud and criminalities also flourished during the Babangida years. In this regard, one must mention the rising cases of trade in contraband goods, including drug trafficking, and export of stolen crude oil (*oil bunkering*), sometimes with the complicity of highly places public officials. Indeed, by the end of the 80s, Nigeria had already emerged as leading actor in global trafficking of heroin from South Asia and cocaine from Latin America. It was widely rumoured that some highly placed public officials, including Babangida himself, were implicated in this illicit trade, whose proceeds were largely laundered through the local banking system. As for the stealing and illegal export of crude, as Lewis noted, this was also the domain of top military and civilian officials.[47]

Other new forms of grand corruption observed during this era included the multiples malfeasance and fraud perpetrated under the cover of the Structural Adjustment Programme (SAP), such as the sale of choice public enterprises to top members of the regime, their family or clientelist networks (including sometimes their foreign friends) at very low prices, and direct transfer of public assets (lands and buildings) to these same individuals and their allies. Indeed, according to Lewis the Structural Adjustment Programme:

> *… furnished state officials with a measure of control over emerging markets, providing new opportunities for corruption,*

> *and offering a safety valve for hard-pressed economic elites… The privatisation process also created a wide circle of beneficiaries, as well-connected insiders could take advantage of both equity sales and the divestiture of assets from liquidated companies…Licensing and regulatory procedures were thoroughly politicised, and access to foreign exchange was controlled by the Central Bank. Consequently, financial services offered recompense for groups deprived of rent-seeking outlets in the trading sector… [as] the regime steered opportunities to allies and cronies.*[48]

Giving this level of corruption, and his personal implication in the act, it should not be surprising that General Babangida never undertook any serious anti-corruption project while in office. Indeed, at the start of his regime, many of the civilian politicians arrested and detained for corruption by his immediate predecessor were promptly released and their cases gradually reviewed and abandoned. Their assets which were confiscated were equally returned to them. This was made possible by the enactment of the *Recovery of Public Property (Special Military Tribunal Act Cap. 389), Laws of the Federation of Nigeria 1990*. Also relevant here, were: *Forfeiture of Assets (Release of certain forfeited properties etc.) Decree No. 39 of 1992; Forfeiture of Assets (Release of certain forfeited properties etc.) Decree No. 70 of 1992; Forfeiture of Assets (Release of certain forfeited properties etc.) Decree No. 24 of 1993*; and *Forfeiture of Assets (Release of certain forfeited properties etc.) Decree No. 54 of 1993.* Some confiscated assets were also released by General Abacha who succeeded Babangida, via the *Forfeiture of Assets (Release of certain forfeited properties etc.) Decree No. 118 of 1993.*

General Babangida's own anti-corruption programmes, notably the Mass Mobilization for Social Justice, Self-Reliance and Economic Recovery (MAMSER), which sought to re-orientate citizens against corruption and other social vices; the *Code of Conduct Bureau and Tribunal Act, Cap.56 Laws of the Federation of Nigeria (1990)*, which was an attempt to institutionalize existing constitutional codes regulating the conduct of public officers, as well as the report of the National Committee on Corruption and Other Economic Crimes in Nigeria which was inaugurated in 1989 to study why corruption and economic crimes were proliferating in Nigeria and recommend measures to address the problem,[49] were never faithfully implemented. By tolerating corruption the way he did, Babangida

prepared a ground for a more predatory form of corruption under his successors.

General Babangida eventually left office on August 27, 1993, amidst political chaos brought by his decision to annul the results of the Presidential Election which took place in June of the same year. However, systemic corruption persisted until the end of military rule in May 1999, particularly under General Sani Abacha, whose predatory rule was marked by an even higher level of coercion and personalisation of power. While the clientele network of Babangida was considerable, Abacha simply reduced the scope of the state's resource redistribution in favour of himself and a very narrow circle of cronies, relations and supporters. To compensate for the loss of support from a large number of political elites which resulted, the regime resorted to greater use of coercion to intimidate its critics and political opposition, which then facilitated the most brazen diversion of public funds ever perpetrated by a single individual in the history of Nigeria. Following investigations launched, after his unexpected death in June 1999, by his successors (Abubakar – June 1998-May 29,1999; and Obasanjo – May 29, 1999-May 29, 2007), it was established that Abacha and his family members alone were responsible for the transfer of at least $5 billion from state coffers into private bank accounts in Nigeria and overseas.[50]

While this looting of public treasury was going on, Abacha was also launching, rather hypocritically, his own anti-corruption initiatives, under the title of *War Against Corruption and Indiscipline* (WACI). In one of his earliest addresses to the media, he announced that: "the enthronement of probity in governance shall be one of [our administration's] cardinal missions."[51] In another forum, his Deputy, Lt. General Oladipo Diya, said: "We had pledged at the inception of this administration that we will be responsible and any allegations of misconduct as regards public funds from the date of our inception…will be thoroughly investigated. Any officer, regardless of his rank, who is found to have in any way misapplied public funds, will be dealt with."[52]

Abacha did actually take some few concrete steps to demonstrate his anti-corruption credentials. For example, in January 1994, five senior military officers who served temporarily as military governors in the early phases of his administration in November 1993, were court martialled, having been indicted for corruption and abuse of office

during an official investigation.[53] He equally established several probe panels, or commissions of inquiry, to probe into the affairs of certain key institutions, like the Central Bank of Nigeria (CBN), Nigerian Ports Authority (NPA), and the Judiciary,[54] claiming that "*The probing of some of these institutions is not a flash in the pan, but a deliberate process of purging the public sector of corruption.*"[55]

Apart from serving to mask his regime's own intention to loot the state treasury, Abacha's anti-corruption project was also defective to the extent that it was largely directed at curbing fraud and corruption in the private sector which had risen dramatically in the 1990s, partly to mimic what was going on in public offices. Until the establishment of the Economic and Financial Crimes Commission (EFCC) in April 2003, to fight against frauds and financial crimes in all sectors, Nigeria did not have a dedicated institutional mechanism for dealing with corruption in the private sector.[56] This is not to say that the scope of fraud and corruption in the private sector was less serious, compared to the public sector. Even though some scholars[57] have asserted that corruption takes place principally through the state apparatuses because it is through the state that most of the surplus appropriation and distribution takes place in the African society. The level of criminality seen in the private sector in the 90s still demanded for some drastic measures, to clean the sector.

The rise of financial frauds in the banking sector illustrated this point. During the 90s, bank directors and managers, many of them prominent politicians, used their positions in the banks to secure massive loans, and other benefits to themselves and their cronies in violations of extant regulations. In some cases, they simply diverted huge sums belonging to their banks, resulting in general financial distress of the system, collapse of many banks and worsening of the prevailing economic crisis[58]. In 1995, a World Bank study had estimated that around 60 Nigerian commercial banks, half of the total, were in distress, having become incapables of meeting their financial obligations because of massive frauds. In response to the challenge, Abacha adopted a law known as *Failed Banks (Recovery of Debts and Financial Malpractices in Banks) Decree* 1994. The law aimed to ensure the recovery of huge sums illegally granted as loans to some individuals and institutions by the bank directors/managers, including funds diverted by the bank officials themselves; and to punish all those found culpable.

Table 2.1: Sums Involved in Bank Fraud in Nigeria (1989-1999)

Year	*Commercial banks* (in millions of Naira)	%of total	*Merchants Banks* (in millions of Naira)	% of total	Total (in millions of Naira)
1989	98.2	93.6	6.7	6.4	104.9
1990	788.9	98.1	15.4	1.9	804.2
1991	360.2	92.7	28.3	7.3	388.5
1992	351.9	85.5	59.8	14.5	411.7
1993	1.377.2	97.0	41.9	3.0	1.419.1
1994	2.655.7	78.1	743.7	21.9	3.399.4
1995	1.006.3	99.5	5.1	0.5	1.011.4
1996	1.542.9	96.4	57.8	3.6	1.600.7
1997	3.590.3	95.0	187.6	5.0	3.777.9
1998	3.129.2	7.9	67.4	2.1	3.196.5
1999	6.367.7	86.0	1 .036.6	14.0	7.404.3

Source: Nigerian Deposit Insurance Corporation, Annual Reports and Statement of Accounts (1989-2000), cited in Ilorah, P. (2004), Corrupt Practices: A Nigerian Perspective, Abuja, Sungold Concepts Ltd: p22.

Table 2.2: Financial Losses Attributed to Bank Frauds in Nigeria (1989-1999)

Year	*Commercial Banks* (in millions of Naira)	*Merchant Banks* (in millions of Naira)	Total * (in millions of Naira)
1989	15.3	0.0	15.3
1990	22.4	0.0	22.4
1991	22.5	1.2	26.7
1992	64.8	8.3	73.1
1993	241.0	5.4	246.4
1994	883.6	67.1	950.7
1995	226.4	2.9	229.2
1996	371.1	4.2	375.3
1997	224.5	2.9	227.4
1998	673.5	18.8	692.3
1999	2.713.4	16.7	2.730.1

Source: Nigerian Deposit Insurance Corporation, Annual Reports and Statement of Accounts (1989-2000), cited in Peter Ilorah, Corrupt Practices: A Nigerian Perspective, Abuja, Sungold Concepts Ltd., 2004. p. 23.

**These are only cases known to bank authorities, as most cases of frauds remain undetected. The figures are presented to show the dramatic rise of the phenomenon understudy.*

Indeed, several individuals suspected to have participated in bank frauds were eventually arrested and arraigned before the special tribunals established for that purpose in 1994. Many of these individuals were found guilty of the offences and slammed with long jail terms. Others were ordered to reimburse various amounts, representing the sums collected from the coffers of the distressed banks, while several properties and assets traced to them were seized[59]. Unfortunately, these measures did not lead to a full halt of the menace. In 1997, the Central Bank of Nigeria (*CBN*) was forced to sack 178 bank directors and 75 chairmen for their roles in similar offences[60]. These forms of crime only started to ameliorate significantly with the establishment of the EFCC by the Obasanjo civilian administration in 2003.

General Abdusalami Abubakar (June 1998-May 1999), who took over power after the death of Abacha, also launched his own anti-corruption campaign immediately upon assuming power. As usual with Nigerian military dictators, the initiative was largely an instrument to procure domestic and international legitimacy and consolidate power, at a time of great political instability and tension.[61] In this regard, massive investigations were launched, including the *Special Investigation Panel, SPI,* targeting the late Abacha and his cronies. Under the cover of SPI and the *Forfeiture of Assets, etc. (Certain Persons) Decree N° 53 of 1999*, hundreds of assets, including landed properties, local and foreign bank accounts, mostly acquired with funds stolen from public coffers between 1993 and 1998, were identified and some confiscated by the Abubakar administration.[62]

But consistent with our general hypothesis that anti-corruption projects in Nigeria during the years 1960-1999 were more or less a facade for masking governing elites' political and economic goals (i.e. procuring regime legitimacy and looting public treasury), under General Abubakar (June 1998-May 1999), Abacha's successor, the ruling military class perfected schemes to award public contracts to themselves and their cronies. These practices were more pronounced in the petroleum sector. It was later revealed, for instance, that the government had, without any consideration for transparency and

accountability, issued import licenses to 11 firms (mostly controlled by senior members of the regime), none of which had any previous experience in the petroleum sector. These licences were eventually cancelled by the Obasanjo administration (May 1999-May 2007) which succeeded the Abubakar regime.[63]

Following public uproar which characterized the award of the oil licences, and many other heavily tainted awards, a commission of inquiry was put in place by the Obasanjo administration immediately on assumption of office. This Commission revealed several other massive frauds involved in the management of the Nigerian National Petroleum Corporation (NNPC),[64] leading to the sack of over 50 senior officials in the Corporation for 'monumental corruption and brazen disregard for general operating rules.'[65] In its final report, the commission indicted several key members of the Abubakar regime (including Abubakar himself, his deputy, ministers and top military chiefs, etc.) for what it called 'flagrant award of contracts and indiscriminate allocation of foreign exchange'. Their actions, it noted, had led to a depletion of Nigeria's external reserves, which contained about $8 billion at the time Abacha died in June 1998). More than half of the reserves had been expended on white elephant projects most of which were done at inflated rate.[66]

Giving this economic and political atmosphere, polluted by grand corruption of military elites and their civilian allies over the 80s and 90s, petty corruption, like extortion and bribery, now to be widely known as *settlement* (among law enforcement agents) or *sorting* (in educational institutions) among low level officials simply became legitimate operating mode. Everyone can now demand to be settled, or to get his « *settlement* », before rendering official services. In other words, whether one performs or refuses to perform his or her legitimate duty, now depended on whether he or she will be 'settled'. Effectively, it will appear that by the end of military rule in May 1999, the military had effectively institutionalized what one may describe as a «culture of grand and petty corruption » in Nigeria. Tackling this level of endemic and systemic corruption, therefore, required that Nigeria should create a more comprehensive, permanent and effective policy and institutional framework for fighting corruption and economic crimes.

Concluding Remarks

As have been amply demonstrated here, corruption has been a major challenge for successive governments and regimes in Nigeria since independence in 1960. Its extent and reach explain, without doubt, why the name of the country is today, more or less, synonymous with corruption. While perception of high and widespread corruption may be linked to the visibility given to the phenomenon by the local media, or even the desperate attempts by successive leaders to curb the menace[67], it is undoubtable that all forms of corruption, petty-grand, local-international, financial and non-financial, public sector and private sector, have all existed in the country, in a very serious way before the arrival of reforms in the Fourth Republic. As one writer describes it, those days it was clear that: « *Nigeria has gotten to a stage in which it is no longer possible to differentiate between the armed robbers in our midst and the thieves who pilot the affairs of government.*[68]"

One could validly affirm that the transformation of corruption from a simply wide-spread phenomenon in the 60s, to a situation of endemic and systemic corruption at the eve of the Fourth Republic, was responsible for underdevelopment of Nigeria in spite of the immense potentials of the country. Nigeria is certainly not the only country which has seen such rapid and significant depletion of national resources due to corruption. Some have experienced corruption and still managed to develop. But Nigeria unfortunately experienced a more destructive form of corruption[69]. Even more unfortunately, this rise and prevalence of destructive corruption in Nigeria was never confronted with any effective and adequate control measures by successive Nigerian leaders, military and civilians. Indeed, many of these leaders were more preoccupied with protecting their personal interests that the reduction of corruption and development of their country. Despite internal pressures for reforms, which were insufficient anyway, these leaders ignored the exigency of an effective struggle against corruption and where they could not ignore demands for such a war against corruption, they often found a way of instrumentalizing it for political purposes. In the end, the launching of anti-corruption fights in Nigeria, as elsewhere in Africa, in the 70s, 80 and 90s, went hand in hand with the increase in corruption.[70] Médard aptly captures this view when he observed that: "the theme of corruption is becoming more and more a political resource in Africa. It is the battle horse of populist opposition. It is the

justification which the military clings to when they take power before, most often, sinking in the same troubled waters."[71]

Although a global and historical challenge,[72] the politicisation or instrumentalization of anti-corruption projects in the specific case of Nigeria, occurred in more diverse ways. The first was to assist unpopular military regimes (1966-1979 and 1984-1999), to build political legitimacy. Since anti-corruption projects are popular, the presentation of anti-corruption as policy priority by these regimes, facilitated the acceptance of these regimes by the majority of the population. The second dimension of the instrumentalization of the war against corruption involved the appropriation of anticorruption projects as a tool of political contestations which can be employed by the different competing military and civilian elites, or factions within them, to further their group interests. For instance, one group or faction may use accusations of corruption to delegitimize a rival group or faction, thereby positioning itself as a credible alternative. This kind of struggle for power was most visible under the military government of Gowon (1966-1975) and the key actors were - top bureaucrats, nicknamed 'Super Permanent Secretaries', and some military officers who felt having risked their lives to prosecute the Nigerian civil war, they were entitled to call the shots under the military government[73].

The third case is related to the second, and occurs when a faction or group of elites employ anti-corruption as a tool to eliminate their rivals. Most military regimes in Nigeria followed this part, when they staged *coup d'etat* against elected civilian governments after accusing them of corruption and financial mismanagement[74]. Fourth, and finally, anti-corruption projects have also come handy as a tool for rescuing or rebuilding a collapsing hegemony. A good example is the Muhammadu Buhari-led military coup which occurred in 1983, which was staged by senior military officers who were themselves part and parcel of the civilian regime (Second Republic) they overthrew. The coup was in part motivated by the need to prevent another potentially more bloody coup by relatively junior officers considered hostile to the collapsing hegemony.[75]

Our analysis of past anti-corruption programmes in Nigeria offers some vital lessons to contemporary Nigerian leaders, who have repeatedly stressed their desire to finally halt the ravaging spread of corruption in the country. The first lesson is that these leaders must

learn to avoid ad-hoc and unidirectional approaches in their renewed fight against corruption. This means that they must realise that, a more systematic, comprehensive and institutionalized approach, combining both preventive and enforcement measures, will more likely produce the desired change. Secondly, they must also appreciate the need to sustain such measures over a long period of time, unlike the experiences under the military. Thirdly, and perhaps more importantly, there is the need to avoid using anti-corruption programmes as tools for actualizing political projects, such as eliminating perceive political rivals or enemies. The presence of multiple permanent and specialised anti-corruption agencies, such as the ICPC, which boast of independent powers, can be leveraged on to move the war against corruption forward.

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CHAPTER 3

CONCEPTION AND ESTABLISHMENT OF THE INDEPENDENT CORRUPT PRACTICES AND OTHER RELATED OFFENCES COMMISSION

GRACE ORIEOMA AGHA-IBE

Introduction

Corruption is an age old and worldwide phenomenon, a veritable social problem that has been with virtually all societies throughout history as a major infraction or even crime. Perhaps, more than most - or even any other - deviant behaviour or actions, corruption possesses the singular tendency to permeate and influence human social interaction, albeit negatively and unwholesomely, leaving in its trail serious violation of and damage to the social fabric, structure as well as component units of society.[1]

During the military era in Nigeria, corruption permeated every sphere of the society eroding acceptable national, cultural, religious and moral, belief. It spurred inequality, impeded growth and stunted investment. Corruption reduced the effectiveness of public administration to unabashed looting of treasury, shameless creation of abandoned federal government and white elephant projects, contract variations without additional value, hospitals turned to consulting clinics as the "out-of-stock" syndrome became the norm instead of exception. Universities deviated from being citadels of learning and character building to breeding grounds for cultism and other social vices, thereby downgrading the standard of education. The national wealth popularly known as the national cake, became the main basis for power struggle and spiritedly sought by those in government and the governed. It reached a point where corruption was rightly pronounced as being institutionalized in Nigeria by Okeke, JC[2] and described as a vampire, hunting down cherished rights.[3]

Despite measures put in place by different regimes to tame the scourge of corruption, it ravaged on and assumed renewed dimensions to the extent that Nigeria was treated as a pariah state among the comity of nations and was twice rated the most corrupt nation in the world.[4]

It was against this backdrop that the administration of then President Olusegun Obasanjo on assumption of office in 1999 took a hard stance on the subject, making combating corruption a cardinal thrust of his administration by declaring that:

> Corruption as the greatest single bane of our society today, will be tackled head-on at all levels. Corruption is incipient in all human societies and in most human activities. But it must not be condoned. This is why laws are made and enforced to check corruption so that society would survive and develop in an orderly, reasonable and predictable way. No society can achieve anything near its full potential if it allows corruption to become the full-blown cancer it has become in Nigeria…[5]

Acknowledging that the beneficiaries of corruption will fight back with everything at their disposal, President Obasanjo was determined to be 'firm', deliberate and indiscriminate.[6]

Conception of the Independent Corrupt Practices and Other Related Offences Commission (ICPC)

In fulfilment of his campaign promises, as well as the need to fall in line with the international agitation at the time, a draft Executive Bill titled, *'Prohibition and Punishment of Bribery and Other Related Offences Bill'* was submitted to the National Assembly on 13th July, 1999 barely six weeks of assumption of office.[7]

The Bill, which was in line with the spirit of the Constitution, was meant to outlaw all forms of corruption in the public sector, recommend changes in procedures and processes to curb susceptibility to corruption in government affairs and give legal backing for the creation of an independent agency to enforce the law.[8]

The draft bill was a harmonized product from existing laws promulgated to tackle corruption in Nigeria, taking into consideration the lacuna, deficiency of the previous laws and emerging global trends. Some of those laws are:

i. Investigation of Assets (Public Officers/ and other Persons) Decree of 1968;
ii. The Corrupt Practices Decree 1975;
iii. Public Officers (Special Provisions) Decree 1976;
iv. Recovery of Public Property Decree 1984;
v. The Penal Code
vi. The Criminal Code
vii. The failed Banks Recovery and Financial Malpractices Act No. 18 of 1984 among others[9]

The brilliance and uniqueness of the new legislation lie in the creation of an independent agency with a holistic approach adopted to fight corruption, guaranteed by her independence and autonomy.[10] The law contains varied provisions to cover offences in their multidimensional nature which covers not only public servants,[11] but also dealt with corrupt practices occasioned by public officer,[12] private person,[13] employees of private companies wholly or jointly floated by the government or its agency.[14]

Another feature of the law is the donation of the fiat of the Attorney-General to officers of the Commission by legislation, to initiate[15] and prosecute cases investigated by the Commission,[16] making the much desired prosecution-led investigations possible and the job of the prosecutor easy. Unlike the previous legislations which had provisions on corruption dotted across numerous laws, the new law is a comprehensive piece of legislation devoted to combating corruption. It is couched in simple language, devoid of technicalities and complications inherent in the Penal and the Criminal Codes, largely criticised for being technical and obsolete.[17] It also introduced some innovative provisions such as the admissibility of electronic evidence,[18] admissibility of evidence of a person who is dead or cannot be traced,[19] protection of information and informer,[20] making the investigation and prosecution of anonymous petitions feasible; and foreclosed the possibility of pleading custom, as defense for accepting bribe.[21]

The Bill was before the National Assembly for almost a year due to concerns about certain provisions thought to be in conflict with the Constitution of the Federal Republic of Nigeria hence, the need for amendment. One such objection raised, was the unwieldy power of the Commission to invade the privacy of suspects in the course of investigation.[22] The argument was that it constituted an infringement on the constitutional right of citizens to privacy in their homes, correspondences, telephone conversations and telegraphic communications.[23] The National Assembly also amended the portion of the draft bill that ensured immunity from prosecution of the President, Vice President, Governors of States and their Deputies while in office. The legislature found this unwholesome and inserted a clause that permitted the investigation and prosecution of these key elected officers while in office[24], and modified the title of the bill.

Establishment of Independent Corrupt Practices and Other Related Offences Commission (ICPC)

The Bill was eventually passed into law as "The Corrupt Practices and Other Related Offences Act No. 5 2000" on 13 June 2000, and signed by President Olusegun Obasanjo on the same day. The Law established the Independent Corrupt Practices and Other Related Offences Commission (ICPC) as a corporate body and instituted its independence, to enforce the provisions of the Act.[25] The Commission commenced operations on 29 September 2000 with a compliment of a full Board comprising a Chairman and twelve members at FEAP Office, Olusegun Obasanjo Way, Zone 7, Abuja. It subsequently moved to Plot 802/803 Constitution Avenue, Central Business District, Abuja, the present Headquarters.

The Corrupt Practices and Other Related Offences Act, 2000, mandates the Commission to receive and investigate complaints from members of the public on allegations of corrupt practices and prosecute offenders. It empowers the Commission to examine systems and procedures of public bodies and recommend changes in such processes to reduce susceptibility to corruption. This duty extends to directing and enforcing the recommendations therefrom on the culpable agencies. It is also, the responsibility of the Commission to educate the public, mobilize and enlist public support in tackling corruption.[26]

The Commission was created as a formal and primary rallying point for the country's concerted effort against corruption hence, adopting

an integrated approach to tackle the vice, became imperative. Modelled after the Hong Kong Anti-Corruption Strategy, the Commission adopts a three-pronged approach of enforcement, prevention and public enlightenment cum education in combating corruption. The enforcement strategy encompasses the investigation and prosecution of acts of conspiracy, aiding, abetting, attempt to commit offences of corruption and actual commission of these offences.[27] The underlying principle of enforcement is to deter further commission of the crime and recovery of proceeds of crime to underscore the point that crime does not pay. It is also a demonstration of political will to fight corruption and a weapon to guard against impunity.

The power to receive and investigate petitions covers oral, written complaints or information otherwise received. Enweremadu, DU[28] opined that the Commission was only restricted to investigate petitions received from the public. This position cannot stand in the light of Section 27(3) CPOROA, 2000 which empowers investigation of persons on suspicion of corruption and Section 5 (1) CPOROA, 2000 which vests officers of the Commission with all the powers and immunities of the Police and any other Law protecting other Law Enforcement Agencies. The Commission investigates cases based on intelligence and information gleaned from electronic, print and social media, whistleblowers and informants among others. The Supreme Court further affirmed this position in 2017.[29]

Part of the enforcement mandate of the Commission is the prosecution of petitions investigated by the Commission under the Corrupt Practices and Other Related Offences Act, 2000 or any other law prohibiting bribery, corruption and related offences.[30] Every prosecution under the Act is deemed done with the consent of the Attorney General of the Federation.[31] In order to facilitate the speedy prosecution of corruption cases, the Chief Judge of a State or Federal Capital Territory is to designate a court or Judge to hear and determine all cases arising under the Act.[32] In practice, designation of judges to handle cases of corruption exclusively in each state of the Federation and the Federal Capital Territory as stipulated by the Act does not occur. Rather judges are selected to handle corruption related cases in additions to other matters in their daily schedule and special assignments such as nomination to Election Tribunal, which frustrates the speedy disposal of corruption cases and defeats the intendment of the legislation.

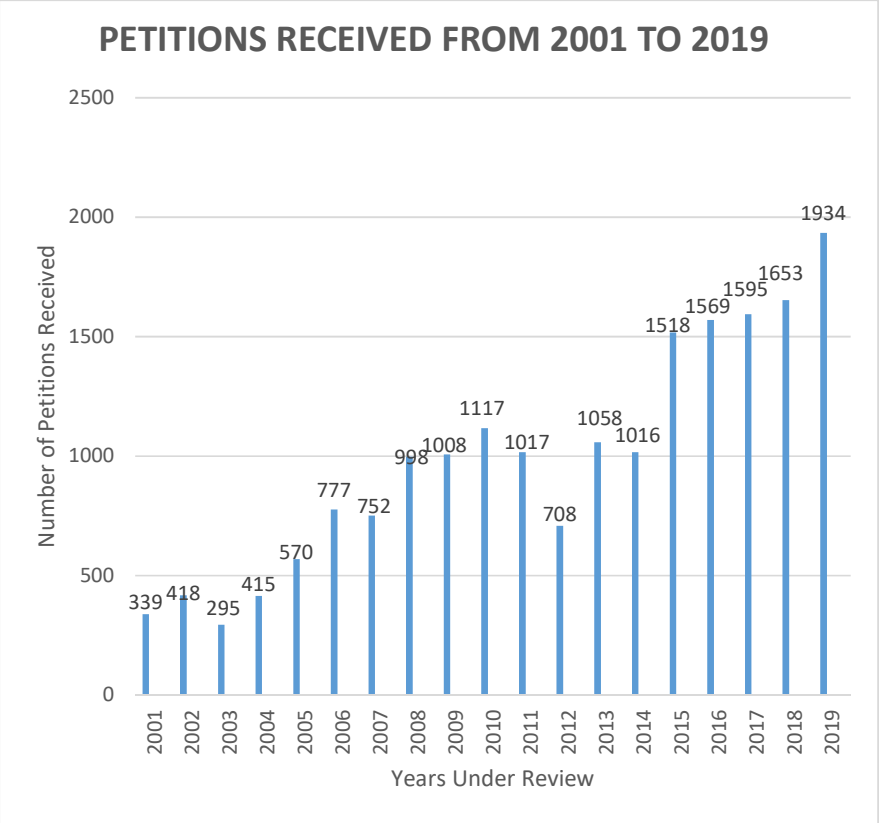
Given this lag, one may be inclined to reflect on why the Commission, being a Federal Agency has not explored the possibility of initiating criminal proceedings in Federal High Court in matters relating to the CPOROA, 2000. Going by the provisions of Sections 26 (2) and 61 (3) of the Corrupt Practices and Other Related Offences Act, 2000, it is clear that the High Court of the various States and the High Court of Federal Capital Territory are empowered to entertain prosecution under the CPOROA, 2000.[33] The question is, does this express mention of State High Court and High Courts in FCT in the Act, divest the Federal High Court of jurisdiction over matters in the Corrupt Practices and Other Related Offences Act, 2000. On the contrary, Section 251 (3) of the Constitution of the Federal Republic of Nigeria vests criminal jurisdiction and power in respect of civil causes and matters set out in Section 251 (1) of the Constitution of the Federal Republic of Nigeria on the Federal High Court. Therefore, ICPC being an organ of the Federal Government, prosecuting on behalf of the Federal Government and enforcing an Act of the National Assembly can, by the provision of Section 251 (3) initiate prosecution in matters relating to the CPOROA, 2000 in the Federal High*, ceteris paribus*.

In the case of Ruth Aweto Vs. FRN,[34] one of the issues for determination by the Supreme Court was whether the Federal High Court has exclusive jurisdiction over matters on the Corrupt Practices and Other Related Offences Act, 2000. The Supreme Court held that taking the provisions of the ICPC Act and co-relating them to Section 251 of the Constitution as (amended), what comes clear is that the Federal High Court does not have exclusive jurisdiction to deal with matters on ICPC Act, rather, it shares jurisdiction with the State High Court or High Court of FCT.

However, it is worthy to note that the Constitution provides for the generic jurisdiction of courts and not specific jurisdiction in respect of offences and it is trite law that the law creating an offence spells out the court that has jurisdiction to try such offence, which certainly should be in line with the Constitution.[35] This lends credence to the jurisdiction conferred on the State High Courts in respect of the ICPC cases by Section 26 (2) and 61 (3) of the CPOROA, 2000.[36]
In view of the fact that the Federal High Court has criminal jurisdiction on issues listed in Section 251 (1) (a) – (r) of the Constitution, the National Assembly should review the CPOROA,

2000 to properly situate the jurisdiction of the Federal High Court to also hear ICPC cases pursuant to Section 252 (2) of the Constitution of the Federal Republic of Nigeria.

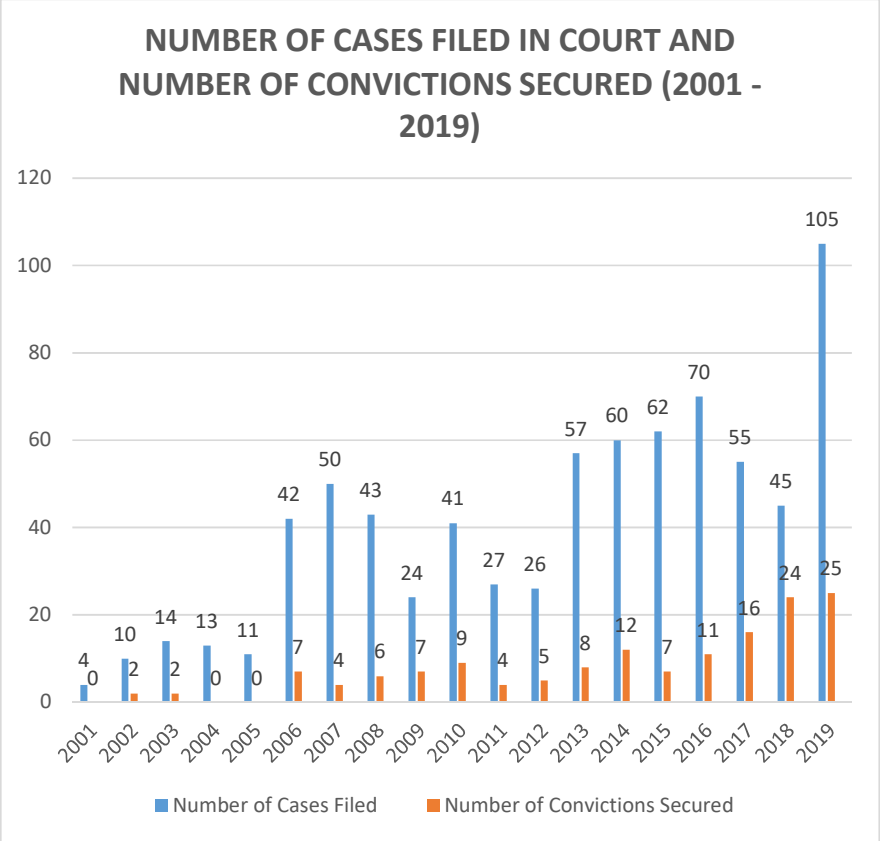
FIG. 3.1



Source: ICPC Data

The Bar Chart shows that the Commission received the highest number of petitions (1934) in 2019, while the least (295) was received in 2003. Between 2009 and 2011, the Commission maintained the standard of receiving at least 1000 petitions in a given year but it dipped to 708 in 2012 and increased again in 2013, maintaining a steady rise in number of petitions received.

FIG. 3.2

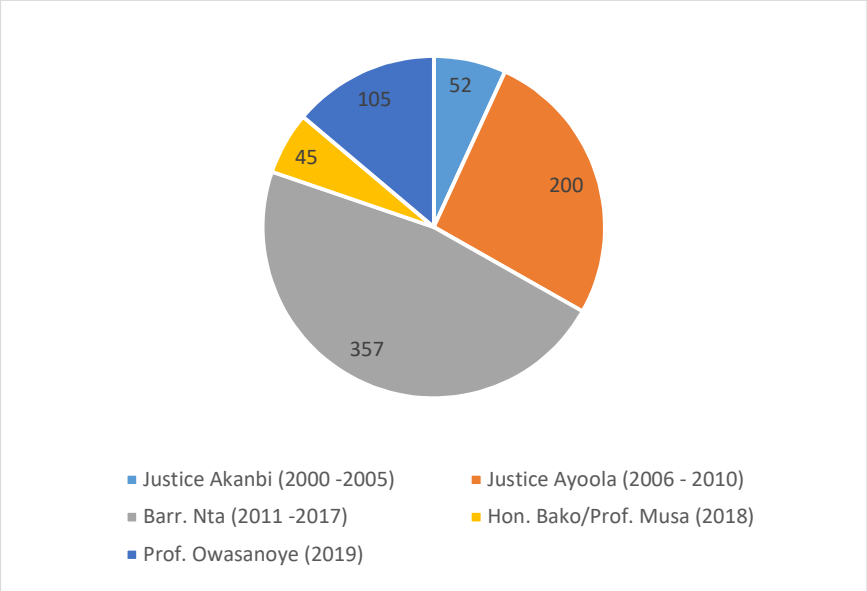


Source: Prosecution Department, ICPC

Figure 2 shows the number of cases filed in Court in the period under review. The year 2019 recorded the highest number (105) of cases filed in Court, followed by 2016. The least number of cases filed in Court i.e. nil was in 2001, which can be attributed to the fact that the Commission had only begun operations in September, 2000. The number of convictions vis-à-vis the number of cases filed speaks to the slow grinding pace of the judicial system. It is also important to mention that some of the convictions against a particular year are convictions on cases filed in previous years.

The Commission has recorded about 110 acquittal from 2001 to date, while about 392 cases are pending in court. The number of acquittals and cases pending in court is not exact because there is a difference of 108 cases between the cases filed and the aggregate of acquittals, convictions and pending cases in court.

FIG. 3.3: COMPARISON OF CASES FILED IN COURT UNDER THE DIFFERENT LEADERSHIPS OF THE COMMISSION[37]



Source: ICPC Annual Reports

Figure 3 is a Pie Chart display of the number of cases filed in Court by the different administrations of the Commission from inception, the administration of Hon. Bako/Professor Musa was in acting capacity for about a year.

The Chart indicates that Barr. Ekpo Nta's administration filed the highest number of cases in Court during his 6-year tenure, while Justice Ayoola's administration had 200 cases filed. During Justice Akanbi's administration, 52 cases were filed. It is pertinent to note that during Justice Akanbi's administration, the Commission was disconcerted by legal tussles challenging the constitutionality of the ICPC Act. Within the period that Hon. Bako and Prof. Musa (respectively) were at the helm of the Commission's affairs in 2018, 45 cases were filed in Court. However, the fourth substantive Board of the Commission, filed 105 cases during the first year of its existence.

In 2006, the internationally recognized tool of Recovery and Management of Assets was novel and only developing for the Commission. Therefore, between 2006 when this tool was launched

and 2018, the Commission recovered the sum of ₦51, 355,139,407.40, comprising cash, funds returned to MDAs, funds saved through system study interventions and physical assets.

Breakdown of Assets Recoveries, 2006 – 2018

S/NO.	DESCRIPTION OF ITEMS	AMOUNT/VALUE (₦)
1	Cash (Net Amount)	307,022,694.14
2.	Monies restrained due to System Studies/ICPC Intervention	46,690,885,713.26
3.	Estimated value of farmlands	50,000,000.00
4.	Estimated value of Plots of Land	415,850,000.00
5.	Uncompleted Buildings	1,432,000,000.00
6.	Completed Buildings	1,632,281,000.00
7.	Vehicles	827,100,000.00
	Total	**₦51,355,139,407.04**

In 2019, funds recovered summed up to ₦81.23 billion.[38]

Breakdown of Recoveries in 2019

S/NO.	DESCRIPTION OF ITEMS	AMOUNT/VALUE (₦)
1	Cash in Treasury Single Account (TSA)	1,167,000,000.00
2.	Cash (Other Accounts)	865,000,000.00
3.	Cash (Other Domiciliary Account converted @305 per $	$1,113,000.00 (Naira equivalent = ₦339,465000.00)
4.	Land, Building & Vehicles	35,011,000,000.00
5.	Money restrained on Review of MDAs Personnel Cost Expenditure	41,980,000,000.00
6.	Recoveries from Project tracking	770,000,000.00
7.	Completed Projects on return to site	1,097,000,000.00
	Total	**₦81,229,465,000.00**

Pursuant to her preventive mandate,[39] the Commission adopts Systems Study and Review (SSR) of policies, processes and procedures of MDAs to detect its susceptibility to corruption with a

view to facilitate effective measures in blocking leakages. The Commission also takes on system control and staff integrity checks using Corruption Risk Assessment (CRA) to identify possible threats and provide mitigation plan. These aside, corruption monitoring in MDAs, establishment of ACTUs as the watchdog of the Commission, Budget implementation monitoring, among others are engaged as preventive mechanisms. These preventive measures are vital to building strong institutions and systems that enhance transparency, make corruption difficult to achieve and throw up or expose transgressors for punishment. In line with the dictum, prevention is better than cure, strong preventive policy measures and strategies have enduring effect on the nation.[40]

The policy thrust of the Commission in the execution of the education and public enlightenment mandate is, multi-dimensional and citizen-oriented. The education programmes focus on tutoring and enlightening the masses on the forms, causes and consequences of corruption as well as their civic responsibility to report corruption.[41] It equally, targets the adult populace for re-orientation, seeks to inculcate strong moral and anti-corruption values in youths and infuse integrity, honesty, accountability and communal concern in the young as the hope of the nation.[42] In drafting the Corrupt Practices and Other Related Offences Act, 2000, sufficient attention was given to ordinary citizens, owning the fight against corruption, nation-wide.

Apart from imposing a lawful duty on citizens to report incidences of corruption anonymously or otherwise, it also empowers the Commission to enlist public support in combating corruption, thus soliciting full participation of all citizens in the crusade against corruption.

In fulfilling this aspect of its mandate, the Commission has adopted both traditional and modern instruments of communication to drive home the fact that corruption is a fatal enemy. Innovations like the National Anti-Corruption Coalition, Anti-Corruption Clubs in Secondary schools, Anti-Corruption Vanguards in tertiary institutions and National Youth Service Corps Community Development (CDS) Groups are directed toward achieving this mandate. Also, such programmes as the ICPC Weekly Television Programme – Corruption Must Go, and public outreach programmes to Business Management Organisations, Professional Associations,

CSOs, Community Development Associations, Town Unions, Town Hall meetings engaging the public through social media platforms are all targeted at citizens' enlistment and ethical re-orientation.[43]

The Anti-Corruption Academy of Nigeria (ACAN) the training arm of the Commission, established to train the public, particularly the public officials on corruption and its negative impacts, is another means through which the Commission fulfils its education mandate.

Functional Difference Between ICPC and Other Anti-Corruption Agencies (ACAs)

This discourse will not be complete without highlighting the functional difference between the Commission and the other Anti-Corruption Agencies (ACAs). A fundamental fact in the establishment of the Agencies is that the ACAs were created based on realities of the effect and impact of the virulent malaise of corruption and economic crimes on governance in Nigeria, at the time. While the ICPC was established to combat corruption at the time the nation was acclaimed the most corrupt country in the world, the Economic and Financial Crimes (EFCC) Act was promulgated in 2002 to address the concerns of the Financial Action Task Force (FATF) on weak Anti-Money Laundering and Combating the Financial Terrorism (AML/CFT) regime as well as combat Economic and Financial Crimes.[44] The two agencies were to complement the efforts of the Code of Conduct Bureau and Code of Conduct Tribunal (CCB/CCT) which had been in existence,[45] with the underlying concept to promote and maintain public morality, integrity and accountability in public service.

The main difference between ICPC, EFCC and CCB is in the scope and sphere of operation. The ICPC is empowered by the Act, to investigate and prosecute corruption offences as enshrined in the Corrupt Practices and Other Related Offences Act, 2000 and other laws prohibiting corrupt practices.[46] The Act also endorses the exploitation of the preventive approach comprising rudiments that seeks to dislodge entrenched systemic corruption and enthrone practices and procedures compactible with the efficient and effective discharge of duties by the public institutions as well as public enlightenment.[47] Thus, ICPC is not only a law enforcement agency, but also executes a preventive mandate, a responsibility that is peculiar to the Commission.

On the other hand, the EFCC, established by the EFCC (Establishment) Act, 2004 is charged with the responsibility of investigating financial crimes and also the coordinating agency for the provisions of the Money Laundering Act, 2004, the Advance fee Fraud and Other Related Offences Act, 1995; Failed Banks Act 1994 (as amended), Banks and Other Financial Institutions Act, 1991, Miscellaneous Offences Act, and any other law or regulation relating to economic and financial crimes including the criminal code and penal code[48].

The Code of Conduct Bureau and Code of Conduct Tribunal, establishment and functions were enshrined in 1979 Constitution[49] but were incapacitated until the promulgation of Decree 1 of 1989, to become operational. This was re-enacted and enshrined in the 1999 constitution. The CCB was mandated to enforce the law, which prohibits giving and receiving of bribe, abuse of office, operation of foreign accounts and conflict of personal interest with official duties on the part of public officers as well as administration of declaration of assets by public servants.[50] The CCT has the responsibility of adjudicating on all allegations of contravention of the Code of Conduct and impose penalty as specified in the Constitution.[51] The CCB/CCT deal specifically with the complaints of public and political office holders while the ICPC focuses on the public servants, public officials, private persons and employees of private companies wholly or jointly floated by the government or its agency; EFCC has a wider sphere as the law is applied to private corporations and individuals, as well.

The areas of convergence of the functions or overlapping responsibilities of the two agencies (i.e. ICPC and EFCC) is the definition of **Corruption** by the Corrupt Practices and Other Related Act, 2000 which defines corruption to include bribery, fraud and other related offences.[52] The Economic and Financial Crimes Establishment Act on the other hand, defines **Economic Crime** to include "any form of fraud…embezzlement, bribery, looting and any form of corrupt practices…."[53] By this definition, the functions in the highlighted aspects are interwoven. Again, corruption is a predicate offence for money laundering, terrorism and financial crimes, which is under the purview of the EFCC. Thus, the EFCC can investigate and prosecute cases bordering on corrupt practices same with the ICPC on cases of fraud. This cannot be viewed as a coincidence but deliberate and the intendment of legislature because the Corrupt Practices and Other Related Offences Act, 2000 accords recognition

to other existing laws on corruption and the power of other anti-Corruption and law enforcement agencies to prosecute offences committed before or after coming into effect of the Act, under other the laws which were in force.[54] The NPF is also in alignment with the clarion call to combat corruption.[55]

At a national symposium on Corruption and National rebirth, President Olusegun Obasanjo affirmed that ICPC was not intended to be the sole organ through which the country hopes to eradicate corruption in our national life.[56]

It is unfortunate that whenever there is a move to curtail the cost of governance, the anti-corruption agencies are propped up for a merger or scrapping. What the proponents of merger/scrapping have failed to realize is that, it is continual mismanagement of the economy by most Nigerian administrators and not the existence of several ACAs in Nigeria that is responsible for the problem of high cost of governance. Giving in to the recommendation and suggestion of a merger or scrapping of the anti-corruption agencies would in the long-run pave way for unscrupulous plundering of the nation's resources. Therefore, the author posits that having a single agency to fight corruption is neither panacea to combat the systemic corruption in Nigeria nor will it cause a reduction in cost of governance. Repositioning and institutionalization of agencies are the sure paths to reduction of the cost of governance.

Borrowing a leaf from other countries like India, China, USA, and Ghana among others, which have succeeded in combating corruption, a multi-agency with multi-strategy approach is imperative.[57] Again, taking cognizance of the peculiar nature of the Nigerian populace and the impact of corruption in the system, having distinct but complementary agencies in existence, will provide checks and balances on the use of power. What is needed is strengthening and streamlining the anti-graft agencies to perform optimally to curb corruption.

Challenges

From inception, the Commission has been faced with several challenges ranging from legal tussles at its tender years, underfunding, capacity gaps, and judicial lapses to legal constraints, among others.

Worthy of specific mention was the case before the Supreme Court contesting the legitimacy and constitutionality of the Establishment Act. The legal tussle stemmed from the Commission's investigation of a petition alleging fraudulent acquisition of property valued at ₦500 Million in Victoria Island, Lagos, involving two Commissioners from Ondo State as well as conferment of unfair advantage on themselves and their associates through a spurious deal. In the course of investigation, the Commissioners were invited to appear before the Commission with all documents relating to the said purchase, which they disregarded, and were subsequently declared wanted for failure to honour the summons and evading arrest. The Commissioners sued the Commission to Court for infringing on their fundamental human rights.

In a build-up to the case, the Attorney-General of Ondo State instituted an action in the Supreme Court against the Attorney-General of the Federation and 36 others by way of an Originating Summons challenging the constitutionality of the Corrupt Practices and Other Related Offences Act, 2000.[58] The legal issue for determination, among others, were:

i. Whether the CPOROA, 2000 is exercisable in Ondo State in relation to the activities of any person in that state, including public officers of Government of Ondo State;
ii. Whether the Attorney-General of the Federation or any person authorised by the Commission can lawfully initiate or authorise the initiation of any criminal proceedings in any Court of Law in Ondo in respect of criminal offences created by the CPOROA 2000; and
iii. Whether the National Assembly has the sole power to legislate to abolish all corrupt practices and abuse of power under Section 15(5) of the Constitution.

In a lead judgement by M. L. Uwais CJN[59] (as he then was) the Supreme Court held inter-alia: that the powers of the ICPC are co-extensive with those of the Police under the Police Act, Cap 359 and do not usurp the power under Section 214 of the Constitution.[60] The Court confirmed the applicability of the CPOROA, 2000 to every person in Nigeria whether or not a government functionary, including anybody in Ondo State. The Supreme Court also held that the National Assembly has the powers to make laws to abolish all corrupt practices and abuse of powers enshrined in Section 15(5) of

the Constitution of Federal Republic of Nigeria 1999 as amended. However, the Court struck out Sections 26(3) and 35 of the CPOROA, 2000, as being unconstitutional and therefore, null and void, while the rest of the Act was declared valid.[61] The activities of the Commission at this period suffered serious setback as every other thing was kept in limbo in the face of the life-threatening struggle.

Again in 2003, the Commission was caught up in a face-off with the then Senate President, Chief Anyim Pius Anyim while investigating allegations bordering on the use of position to corruptly acquire some choice properties in Nigeria and abroad levelled against him by Senator Arthur Nzeribe. The Commission commenced preliminary investigation of the petition, to identify and establish the owner of the properties in issue while on the field, the Security detail of the then Senate President held the team hostage for several hours within the vicinity of one of the buildings in issue, at Asokoro. It took the intervention of the Inspector General of Police Rescue Team to secure the release of the ICPC officers. The Senate President's objection to the investigation of his properties was premised on the Commission's approach which he claimed was inconsistent with the provisions of the Act, which provides for non-disclosure of the offences to any person except the officers of the Commission, or the Attorney-General of the Federation until the accused has been arrested or charged to Court.[62] He also claimed that the Commission had no power to enter his house without his consent or a warrant of arrest. Irked by what was deemed as an affront to members of the National Assembly and abuse of power by the Commission, the Senate invoked its power to investigate the conduct of affairs of ICPC in administering its establishment law on November 19, 2002.[63]

The Senate fast-tracked the process of the amendment of the ICPC Act 2000 and passed the bill as the "Corrupt Practices and Other Related Offences Act, 2003 on 26 February, 2003. Disturbed by the brazen violation of the Constitution, Hon. Bala Kaoje and four others sued the National Assembly and its Principal Officers on 3rd March, 2003 at the Federal High Court before Justice Egbo, J challenging the bill. To preserve the subject matter in the suit, the Judge issued an order dated 12th March, 2003 restraining all parties in the suit from taking further steps in any manner whatsoever on the bill, until final determination by the court and adjourned the case for definite hearing on 10th April, 2003.[64] However, during the subsistence of the restraining order, and before the date set for definite hearing, the

Clerk of the House sent the bill to the President for assent in flagrant disregard of the Order. The President could not assent to the bill in the light of the restraining order of 12/03/2003, a position he communicated to the Senate President vide a letter dated 9th April, 2003.[65]

Despite the public outcry and existing Court Order[66] stopping the Senate from passing the bill, the Senate overrode the presidential veto and the amended ICPC Act was passed into Law on 7th and 8th May, 2003 by the Senate and House of Representatives, respectively. The amendment focused on the removal of the Chairman and Board at that time and vested the power for the appointment of the Chairman (a serving Judge of the Court of Appeal) on the Chief Justice of the Federation, on the advice of the National Judicial Council subject to the confirmation of the Senate. It also divested the Commission of prosecutorial powers and vested same in the Director of Public Prosecution (DPP) directed by the Office of the Attorney-General of the Federation. The "amended Act" also, whittled down the powers of the Commission and directed investigations of offences under the Act to be conducted in accordance with the Police Act or any other Law regulating the obtaining of statement and evidence.[67] The Act was to take effect on 18th May, 2003.

The attempt by the National Assembly to repeal and supplant the Corrupt Practices and Other Related Offences Act, 2003, was challenged in the Federal High Court.[68] The Court held that the ICPC Act, 2003 passed on the 7th and 8th of May, 2003 by the defendants respectively, without the observance of the relevant due process of law as unconstitutional and void. It further held that the Corrupt Practices and Other Related Offences Act, 2000 as construed and validated by the Supreme Court in the case between Attorney-General of Ondo State and Attorney General of the Federation (2000), is the valid law on Corrupt Practices and Other Related Offences. The CPOROA, 2003 was declared null and void ab-initio.

Unfortunately, notwithstanding the decisions of the Court on the validity of the CPOROA, 2000, the Anti-Corruption Act, 2003 found its way into the Laws of the Federal Republic of Nigeria, 2004, hence, the Commission has been inundated with litigations on the subsistence or otherwise of the Corrupt Practices and Other Related Offences Act, No. 5 2000.[69] The same issue came up again before the Supreme Court in 2017 and in a unanimous judgement dismissing the appeal, the

apex court held that the Corrupt Practices and Other Related Offences Act, 2000 is the valid and extant Law.[70]

In disregard to the judgement of the Apex Court on the validity of the CPOROA, 2000 and its applicability in every state and person in Nigeria, some States like Rivers and Ekiti[71] have obtained court injunctions ousting the power of the Commission to investigate their state governments. In the case of Rivers State, the Attorney-General of the State instituted an action against the Speaker, Rivers State House of Assembly and 36 others[72] before Hon. Justice P. N. C. Agumagu at High Court of Rivers State, Port Harcourt on Friday, 16th day of February, 2007

The Claimant, contended that pursuant to the provision of Sections 120, 121, 125, 128 and 129 of the 1999 Constitution of the Federal Republic of Nigeria, the control of Rivers State public funds is vested in the House of Assembly of Rivers State and that appropriation of the fund has to be in accordance with an appropriation bill presented to the House of Assembly.[73] He also contended that the Auditor-General for Rivers State is vested with the power to audit the accounts of funds appropriated by the Rivers State House of Assembly, and under a duty to lay the report before the State House of Assembly.[74] He further claimed that the powers to investigate the financial affairs of Rivers State Government, expose corruption, inefficiency or waste lies with the National Assembly[75] and that it will amount to an unconstitutional act and usurpation of power of the House of Assembly for the EFCC or ICPC to be allowed to investigate Rivers State accounts. These claims and prayers of the Applicant were upheld by the Court.

It is pertinent to observe that in making that decision, no distinction was drawn between the power of the House of Assembly in Section 128 of the Constitution to investigate the financial affairs of the State and expose corruption as an oversight and administrative function and the statutory power of the Commission to investigate and prosecute cases of corruption as a criminal matter.

Taking a clue from the Attorney General of Rivers State Vs. the Speaker, Rivers State & 36 others, the Chairman, Rivers State Local Government Council on behalf of the twenty three (23) Local Government Councils in Rivers State took out a suit against the EFCC and 15 other, (the Commission inclusive) in 2012 at the Federal High

Court in Port Harcourt.[76] The motive of the Plaintiff was to stop the EFCC and ICPC from investigating the financial affairs of the plaintiffs for the purpose of exposing corruption, inefficiency in the management or control of the funds by the Local Government Councils. It also sought similar relief granted by the Court in AG Rivers State Vs. The Speaker, Rivers State House of Assembly & 36 others[77], relying heavily on the judgement of the Court and the fact that the judgement has not been vacated therefore presumed valid. Hon. Justice T. Abubakar in dismissing the claim of the plaintiff held that the Supreme Court sufficiently resolved the issues raised, in the case of AG. Ondo State Vs. AG. Of the Federation and 36 others, in which the AG. Rivers State appeared as 32 Defendant before the Supreme Court. He concluded that allowing the suit was tantamount to giving the plaintiff the opportunity to re-litigate issues resolved by the Supreme Court, the preliminary objection was therefore upheld.[78]

Currently, there is a pending suit before the Federal High Court 2, Uyo at the instance of Akwa Ibom State Government, challenging the powers of the Commission, EFCC and the Nigeria Police Force to investigate as well as seeking an interpretation of the provisions of Sections 121,122,123,124,125 and 128 of the 1999 constitution of the Federal Republic of Nigeria..[79] The preliminary objection in the case was overruled by the Court, hence the case is in progress.

Conscious effort has been made by the Commission to enlighten the public on this, especially lawyers who use this as a ploy to slow down the speed of prosecution of cases in Court through a newspaper publication on the subject.[80] The Commission has also filed an appeal to challenge the High Court judgement given in favour of Rivers State Government to preclude the Commission from carrying out its constitutional duty[81]

Delay in the prosecution of cases in court is another challenge the Commission faces. The slow and grinding pace of the judicial process has seen majority of ICPC cases lasting an average of five (5) years before final determination. The Commission has about 392 cases pending in the various Courts across the Federation.[82] Although, the Administration of Criminal Justice Act, 2015[83] has addressed some of the concerns of ICPC, given the subsistence of Section 396(1) – (6) of the Administration of the Criminal Justice Act, in the wake of the recent pronouncement of the Supreme Court in the celebrated Orji Uzor Kalu's case which nullified Section 369 (7) of the Act, the non-

adherence to the provisions of Section 61 (3) of the CPOROA, 2000, is still a problem. The Commission was already basking in the euphoria of the relief provided by Section 396 (7) of the Administration of Criminal Justice Act, 2015 which gave dispensation to a High Court Judge elevated to the Court of Appeal to conclude part-heard criminal matter at the High Court, till the recent decision of the Supreme Court in the celebrated Orji Uzor Kalu's case.[84]

In that case, the Appellant challenged the competence of M. B. Idris JCA to continue to sit and conclude a part-heard matter pending before the Federal high court, Lagos having been elevated and sworn in as a Justice of the Court of Appeal pursuant to Section 290 (1) of the 1999 Constitution of the Federal Republic of Nigeria. In a lead judgement by Ejembi Eko, JSC on Friday 8th May 2020, the Supreme Court held that the fiat issued by the President of the Court of Appeal to Hon. Justice M.B. Idris, Justice Court of Appeal to proceed to the Federal High Court, Lagos and conclude the part-heard criminal case, notwithstanding the fact that the Honourable Justice M.B. Idris JCA upon his elevation to the Court of Appeal had ceased not only to be a Judge of the Federal High Court but also to have and exercise the power and jurisdiction of the Federal high court is *ultra vires* Section 1 (2) (a) and 19 (3) & (4) of the Federal high court, same being an outright usurpation of the office and powers of the Chief Judge of the Federal High Court; hence the Fiat was declared a nullity. The Supreme Court also held that Section 396 (7) of the Administration of criminal Justice Act 2015, contradicts and challenges the letter and spirit of Section 290 (1) of the Constitution and to that extent inconsistent with the Constitution and was declared void to the extent of its inconsistency. The appeal was allowed and the matter remitted to the Chief Judge of the federal High Court for re-assignment to another Judge of the Federal High court to start *de novo*.

This brings the Commission back to an inopportune position of having all part- heard matters on corruption assigned to another judge to start *de novo*, upon the elevation of the judge to the Court of Appeal.

The Commission is also plagued by inadequate manpower. Upon inauguration, the Commission lacked the requisite staff numerical strength and competence for immediate take off and considering the herculean task she faced, there was need for foundation staff to set

up the Commission before recruitment. Support staff were seconded from different MDAs such as Office of the Secretary to the Government of the Federation, Office of the Head of Service of the Federation, Office of Accountant-General of the Federation, Ministry of Justice, Nigerian Television Authority (NTA), Nigeria Police Force (NPF), Department of State Service and some administrative staff from the defunct Petroleum Trust Fund (PTF) to set up the Commission.

In 2002, a recruitment exercise was conducted and eighty (80) pioneer staff were employed to beef up the activities of the Commission. Thereafter, the Commission has conducted three (3) other major recruitments in the twenty years of its existence. As at the time of this publication, the Commission parades about 758 personnel[85], for a population of about 200 million[86], this number is grossly inadequate to cover the Commission's activities in the existing 15 State Offices and the Headquarters talk less of 36 states of the Federation and the Federal Capital territory. Inappropriate mix of staff competences also affects the performance of the Commission. The Commission requires a large number of lawyers, accountants, forensic experts, criminologists, investigators than general administrative staff.[87]

The assertion that the Commission's operational inefficiency is rooted in the perennial inadequate funding cannot be brushed aside. Combating corruption is capital intensive; thus, the national "envelope" budgeting system has failed to address the peculiar needs of the Commission. The chronic underfunding of the Commission has adversely affected the capacity of the Commission to procure high-tech equipment and other operational logistics for effective fight against corruption such as forensic laboratory equipment, specialised ICT equipment, surveillance tools specialised operational vehicles, Safe houses, Suspects Processing facilities of international standard, e- Operations Room, offices in 36 States of the Federation, and functional e-library.

The Commission also faces constraints occasioned by certain provisions of its Establishment Act. The Act provides that the composition shall consist of the Chairman and twelve (12) other members, two of whom shall come from each of the six geo-political zones.[88] Thirteen (13) members, inclusive of the Chairman, is rather enormous and unwieldy for effective performance and management

of government resources particularly, considering the executive nature of the appointments. It has also been noted with concern that some of the penalties prescribed in the CPOROA, 2000, are not weighty which defeats the purpose of punitive sanction of deterrence within the Criminal Justice System and weakens the effectiveness of the fight against corruption. Some of the fines[89] in the Act are ridiculous compared to the monumental corruption in the country and its crippling effect and is not reflective of the Naira value.[90] Again, certain provisions of the Act apply strictly to persons employed in the public service thus excluding public officers as defined by the Act.[91] Also, the interpretation of certain words and phrases in the interpretation section of the Act are too limited and ought to be reconsidered.

Furthermore, on the prosecution of offences under the CPOROA, 2000, the Act does not provide the Commission with options on which court to initiate proceedings when it becomes difficult or impossible to exercise prosecutorial powers in instances of insecurity, breakdown of civil and cases involving high-profile individuals.[92]

Achievements[93]

Despite the challenges encountered by the Commission at inception, it has maintained persistent progress in the fight against corruption. Since her establishment, the Commission in line with her mission to rid Nigeria of corruption through lawful enforcement and preventive measures, has recorded modest achievements based on her mandates of enforcement, prevention, citizen engagement and ethical re-orientation.

In executing the preventive mandate, the Commission has recorded tremendous progress in the area of prevention using System Study, Corruption Risk Assessment, Ethics Compliance Score Card, Budget Implementation monitoring among others. Some of the ground-breaking achievements recorded by the Commission within the period under review (2000 – 2019) are the establishment of more than 524 ACTUs in MDAs to serve as the watchdog of the Commission and replicate the functions of the Commission with the exception of prosecution. The deployment of Corruption Risk Assessors to the Nigeria Port Authority in 2013, International Airports (Murtala Mohammed and Nnamdi Azikiwe International Airports) in Lagos and Abuja respectively is proof of the Commission's progress in this

area. Interestingly, the above-mentioned Corruption Risk Assessment was declared by the United Nations Global Compacts Public 2015 as one of the best anti–corruption creativity of the year.[94] Also, the Commission has deployed Corruption Risk Assessors over the e-governance system covering Government Integrated Financial Management Information System (GIFMIS), Integrated Personnel and Payroll Information System (IPPIS), the Treasury Single Account (TSA) and the Remita Platform, which serve as a major switch for electronic-related payments by the Treasury, and this revealed the vulnerabilities in the system for reform. In recognition of President Muhammadu Buhari's role as African Union Anti-Corruption Champion, the Commission in 2018, organized a Corruption Risk Assessment training for Heads of Anti-Corruption Agencies in African Union (AU) member states, through her training arm, the Anti-Corruption Academy of Nigeria (ACAN) and successfully trained more than sixty (60) CRA Assessors, courtesy of UNDP and UNODC.

As part of the preventive mandate, the pilot scheme for Ethics, Compliance and Integrity Scorecard Analysis, another form of risk vulnerability tool, was deployed by the Commission in 280 MDAs in 2019. This is a rating mechanism, which uses the key performance indicators to assess the system, focusing on three (3) key parameters: management culture and structure, financial management systems and administrative systems.[95]

In the area of enforcement, the Commission has filed over 759 cases in Court and secured about 149 convictions. It is important to mention that out of the cases filed and convictions secured, 2019 records the highest i.e. number of cases filed (105) and convictions secured (25). Upon adoption of the strategy of asset recovery as a tool of enforcement in 2006, the Commission has maintained a steady course of improvement. Assets recovered from 2006 to 2018 are valued at about ₦51, 355,139,407.40[96] comprising cash, physical assets, funds returned to MDAs among others.

In 2019, the Commission witnessed an increase in its activities following the inauguration of a new board in February. The Commission introduced the Constituency and Executive Projects Tracking Group (CEPTG) initiative which is grassroots oriented. The Group was constituted to track Zonal Intervention Projects (ZIPs) from 2015 - 2018. 424 projects in 12 states spread across the six geo-political zones has been tracked. This led to the recovery of about ₦2

billion in diverted assets and recorded return of over 200 contractors to abandoned sites across the nation. The Commission under this dispensation, has recovered the sum of ₦81.23 billion[97] consisting physical assets, money restrained on review of MDAs personnel cost, recoveries from project tracking and completed projects on different parts of the country. It is instructive to point out that about one-half of the funds recovered in 2019 came from money restrained on review of MDAs Personnel Cost Expenditure.

The Commission has also constituted a new team, Illicit Financial Flows Team (IFFT), in response to a call to action by African Union to track and stop illicit financial flows. This positioned the ICPC to be designated as additional focal point under AU Convention on prevention of corruption as well as the Secretariat of the Inter-Agency Committee on the Implementation of Thabo Mbeki Report on Illicit Financial Flows from Africa. In this regard, the Commission is bringing her expertise to bear in the development of a Common African Position on Asset Recovery, an initiative birthed by Former President Thabo Mbeki.[98]

In line with its education and enlightenment mandate, the Commission has driven the crusade against corruption deeper to the grassroots through the enlistment of National Youth Service Corps members into the Anti-Corruption CDS group, establishment of Anti-Corruption Clubs in secondary schools, Student Anti-Corruption Vanguard in Higher Institutions of learning as well as partnering with Non-Governmental Organizations through the National Anti-Corruption Coalition. To further enhance youth education and mobilization, the Commission developed and infused the National Values Curriculum in subjects at the Basic, Post Basic and Colleges of Education nationwide, effective 2008. Civic education, one of the carrier subjects is compulsory in the Primary and Secondary Schools in Nigeria. The Commission also targeted Professional Associations (PAs), Business Management Organizations (BMO), Religious Leaders, and Traditional Rulers in its citizens' engagement programmes. The Commission has created increased awareness about corruption through its sensitization programmes and braced up the citizens to own the fight against corruption.

Through the training and research arm of the ICPC, the Anti-Corruption Academy of Nigeria (ACAN), Keffi, the Commission commenced the engagement of the public sector in capacity building

of personnel in the three tiers of government, to tackle corruption in their respective sector.

At the State level, ACAN has organised State Anti-Corruption Summit for Abia, Akwa-Ibom, Bayelsa, Cross River, Bauchi, Ebonyi, Plateau States, among others; while capacities for local government officials have been built in FCT, Akwa Ibom, Bauchi, and Ebonyi states. The Academy has also built competencies on agency focused ethics and Integrity modules for agencies such as, Universal Basic Education Commission, Nigeria Institute of Mining and Geoscience, National Broadcasting Commission, among others.

Apart from training, ACAN has also delved into research projects on vexatious issues such as Vote Buying, with policy recommendations forwarded to the government, in line with the conviction that corruption can be controlled through the formulation of knowledge-driven policies.[99] Accordingly, the Academy has also conducted Corruption Awareness attitude and Susceptibility (CAAS) survey on students in 39 Tertiary Institutions in 2019, to measure the impact of anti-corruption interventions in tertiary institution to support the recommendation for the introduction of General Studies in anti-corruption in tertiary institutions.[100]

Recommendations

The achievements recorded by the Commission within the period under review, though can be qualified as modest in the light of the prevailing circumstance, yet has given the Commission visibility. The approach adopted by the Commission in combating corruption is encompassing and if sustained, will go a long way to diminish corruption.

Moving forward, the following recommendations are proffered to catapult the Commission to the desired height:

i. The Commission should concentrate on building institutions and systems that enhance transparency and make corruption difficult to achieve through conducting system studies review. The effort of the Commission in this regard is commendable particularly in the system studies of different MDAs and its recent feat in the CEPTG initiative. Using the gravity and frequency of complaint received, the Commission should set up teams to review

the policies and systems of such MDAs, and make recommendations to the government where appropriate.

ii. The preventive aspect of the Commission's mandate should not be limited to studying existing systems with a view to identifying their susceptibility, but should also be deployed to emerging scenarios to prevent the exploitation of embezzlement and plug any opportunity for corrupt practices. Emergency procurement is an area that is prone to corruption, in such situation, the Commission should be involved in the planning and execution in order to monitor and track releases and disbursement of funds to ensure proper execution.

iii. Asset recovery and management, as an emerging trend in the fight against corruption has proved beneficial to the nation. Consolidation of these achievements by passing the Proceeds of Crime Bill, will not only ensure the efficient utilization of the funds but also protect the anti-corruption effort of the Commission and other Anti-Corruption agencies from ending in a virtual circle.

iv. Understanding that the judiciary is overburdened with corruption cases in addition to the regular caseload assigned to them, creation of Special Courts for corruption and financial crime cases will lighten this burden and accelerate disposal of cases in court.[101]

v. Apart from the above, training of the designated judges on the emerging strategies in the fight against corruption and the law generally, such as forfeiture, plea bargaining, electronic evidence among others, will enhance productivity. Experience has shown that most suspects on court bail jump bail due to imperfection of bail conditions and profiling of the surety, hence, training the designated Court Registrars is important to curb the incidence.

vi. The chronic underfunding of the Commission has adversely affected her ability to close capacity gaps and procure the necessary tools to effectively achieve her mandate. Drawing a certain percentage from the consolidated revenue will not only enhance productivity but will further enhance its independence. In addition to the above, the Commission should be given at least 10% of asset recovered as a source of additional funding, to be applied to core operational activities.

vii. A comprehensive review of the Corrupt Practices and Other Related Offences Act, 2000 is equally recommended to grant jurisdiction to the Federal High Court to adjudicate on cases of corruption as well as review of penalties/punishments in the Act to be more stringent, to serve as deterrence to offenders. It is also recommended that the sections of the Law declared null and void by the Supreme Court be expunged and proper adjustment and re-alignment of the numbering in the Act effected.

viii. Inter-agency collaboration is critical to the success in the fight against corruption therefore, information sharing among Anti-Corruption Agencies and access to databases with information on targets, will create synergy and enhance performance of the ACAs.

Conclusion

The Independent Corrupt Practices and Other Related Offences Commission (ICPC) remains the foremost anti-corruption agency in the fight against corruption in Nigeria. Arguably, the ICPC in spite of her shortcomings has successfully brought the issue of anti-corruption like never before to the front burner of public domain and discourse through her remarkable public enlightenment and citizen engagement initiatives as well as blockage of corruption leakages in Ministries, Departments and Agencies. This has registered or created the impression that nobody or institution is above the Law as the ICPC is watching and represents a psychological and symbolic victory.

With the benefit of hindsight, the Commission has discovered that prosecution and punishment alone (as a deterrent measure) is not sufficient to win the war against corruption and that an ounce of prevention is better than a tonne of remedy.[102] This is because, not only is it a costly process, but for every offender apprehended, tried and convicted, there are several others who go undetected either because they are presumably smart or those who are aware choose not to report to the appropriate authorities. Dissimilar to the above, the preventive strategy targets fortification of institutions to prevent the occurrence of corrupt practices and where it does occur, the system makes detection easy. Going by the primordial nuances of an average Nigerian, the focus is on enforcement at the expense of prevention, and the success of the Commission is hinged on the

number of convictions gained, relegating other ground breaking achievements to the background.

Needless to say, the three core responsibilities of ICPC – enforcement, prevention, citizen engagement and ethical re-orientation are important and it is believed that an inter-play of these three mechanisms will go a long way to curb corruption in Nigeria. However, prominence should be given to prevention, which aims to build strong institutions with lasting effects and also serve as a tool for enforcement. Taking in the achievements of the Commission from inception to date, it is apparent the Commission has not lost the enthusiasm to succeed and will definitely soar, if given the wings to fly.

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CHAPTER 4

IMPLEMENTING THE SPECIALISED POWERS AND COMPETENCIES TO OVERCOME CORRUPTION

AKEEM LAWAL

Introduction

The advent of combating corruption as a social malaise with economic and political implications dates back to before the present period. A retrospective glance at Nigeria's historical development will reveal that incidents and events reminiscent of corruption and perhaps behaviour similar in manifestation to modern variants of corrupt or largely immoral practices,[1] were issues of concern at both the political and economic strata of governance and the society which eventually warranted some measures of enforcement and judicial interventions. Common generalisations have always affirmed that corruption is as old as humanity,[2] while religious assertions support and validate corruption as a practice that was even prevalent in times we often now regard as pristine in terms of human desires and wants.[3]

Past and Contemporary Efforts against Corruption

Before former President Olusegun Obasanjo's administration, previous administrations made feeble and ultimately ineffectual attempts to address corruption through policies and laws that only scratched the surface of the problem. It was the Obasanjo Administration that gave fillip to the fight by introducing the Corrupt Practices and Other Related Offences Act, 2000 (ICPC Act, 2000) which is aimed at prohibiting and punishing bribery, corruption and related offences through the Independent Corrupt Practices and Other Related Offences Commission (ICPC). In 2004, the Economic and Financial Crimes Commission was established with the objective of combating economic and financial crimes such as money laundering, oil pipeline vandalism, advance fee fraud (419), terrorism financing, banking and insurance frauds etc. Some of the laws and policies directed at solving the phenomenon of corruption before the coming of ICPC Act, 2000 included the Criminal Code,

Penal Code and Code of Conduct for Public Officers (as contained in the 1979 and 1999 Constitutions of Nigeria).[4]

The efforts of President Obasanjo's administration against corruption were propelled by both internal and external factors. Internally, corruption posed political and moral challenges to the development of the nation and externally, the seeming resolve of other nations, encouraged by Bretton Woods institutions and Organisation for Economic Co-operation and Development (OECD) countries, to stop economic relations with Nigeria unless a political resolve was made to institute a serious legal regime to tackle corruption. At that period, Nigeria was already a pariah nation, her people were being meted 'degrading and inhuman treatments' by foreign countries for coming from a country perceived as the most corrupt in the world.[5]

Unlike the past, there is now greater traction and impetus against corruption in Nigeria. Though some may disagree, but the impunity with which corruption was previously perpetrated in the country has reduced through the activities of ICPC and EFCC, as well as efforts and policy focus of other integrity institutions like the Bureau for Public Procurement (BPP), Nigerian Financial Intelligence Unit (NFIU), Office of the Auditor-General of the Federation (OAuGF), Office of the Accountant-General of the Federation (OAGF), Bureau for Public Service Reforms, SERVICOM, Nigerian Extractive Industries Transparency Initiatives (NEITI), Technical Unit on Governance and Anti-Corruption Reforms (TUGAR) etc. The policy direction of government as being implemented by these agencies is not only focused on investigating and sanctioning the corrupt, but also aimed at effecting re-orientation of the people, building ethical capacity for integrity, improving service processes, regulating procurements, enhancing systems and procedure of government for effectiveness, encouraging atmosphere of transparency and accountability, monitoring illicit or suspicious financial transactions. The introduction of automated payment processes: GIFMIS and IPPIS is saving public funds hitherto lost to corrupt contractors and salaries spirited by 'ghost workers'. It is hoped that the recent introduction of a national Whistle-blowing Policy which has led to the discoveries and recoveries of stolen public funds from serving and retired public officers will encourage the public to further assist in the fight against corruption.

Corruption not being a national or local problem peculiar to any race or groups of countries in some particular regions of the world, needless to say, has become an issue for global conversations and actions often made imperative as a reaction to its destructive effects on overall developmental objectives, economies, growth of nations and their citizens. Its international nature has led to the emergence of various international instruments and protocol aimed at providing comprehensive adaptable strategies in dealing with corruption and associated crime. Most of the instruments target at prescribing best practices for countries that are signatories to them and such countries are encouraged to fashion out domestic legislation on corruption that will align with the practices recommended as standards to effectively combat corruption by way of either enforcement or prevention.

It begs emphasis to note that, may be except for the Corrupt Practices Decree No. 38 of 1975, which established the Corrupt Practices Investigation Bureau, the Corrupt Practices and Other Related Offences Act, 2000 (ICPC Act) was the first of its kind law legislated to fight corruption in Nigeria. Not only did it birth the legal and institutional framework to address frontally the problem of corruption in the country, other global, regional and indeed sub-regional conventions were later to its emergence in time. This assertion is not unmindful that the United Nations had earlier before the 1990s confirmed interest in dealing with corruption leading to the adoption of a Declaration against Corruption and Bribery[6] and ultimately in the eventual adoption of the United Nations Convention against Corruption (UNCAC) in 2003.[7] Interestingly, however, the ICPC Act, which was to be shortly followed by a sister enactment, the Economic and Financial Crimes (Establishment) Act, 2004 (EFCC Act) (as amended) in its provisions, largely and prospectively conforms to the essential requirements prescribed by those global instruments.

Appreciating the intricacies and dimensions of corruption is the basis upon which it has more or less become a standard among countries to have specialised agencies as prescribed by UNCAC with personnel and competencies distinct from regular and traditional police forces to enable focused, strategic and systematised tackling contemporary forms of corruption. These include embezzlement of public funds, obstruction of justice, concealment, conversion, misappropriation, acceptance of undue advantage by foreign and international officials,

trading in influence, money laundering, and concealment of illicit assets.[8]

Corruption also presents as influence peddling, abuse of power, acceptance of improper gift, manipulation of regulations, rent seeking, maladministration, illegal campaign fund. The common decimal to all these practices is that most, if not all, aim mainly at public officials benefitting from public office for personal gain'.[9] It is no argument to deny the existence of corruption in the private sector of economies and even among ordinary private individuals as recognition of that fact has made Transparency International to define corruption as "abuse of entrusted power for private gain".[10]

The TI's meaning is a significant deviation from World Bank's definition of corruption as the abuse of public office for private gain, which understandably does not reflect on the major role of private sector as supply side of corruption. [11] This is because the bank's approach to fighting corruption is connected with the issue of good governance and accountability[12]. UNCAC has reasonably set liability for private persons as they are covered within the definition of public officials to mean 'any person who performs a public function or provide a public service' as defined within the domestic legislation of a state party.[13]

Fighting Corruption: International Legal Regime and Protocol

The adoption of the United Nations Convention against Corruption in 2003 was a complement to the initial steps by the United Nations to address the corruption elements in transnational trade not long after the United Nations Convention against Transnational Organized Crime came into being.[14] The purposes of the UNCAC are promotion of measures to prevent and combat corruption more efficiently and effectively, facilitation and support of prevention and asset recovery and promotion of integrity, accountability and proper management of public affairs and public property.[15] The UNCAC introduced uniform standards and prescriptions in form of mandatory and non-mandatory provisions for state parties to the Convention to comply with or observe in combating corruption.[16] Besides the general provision, the major articles of the Convention are on Preventive measures, Criminalisation and law enforcement, International cooperation, Asset recovery, and Technical assistance and information exchange.

Importantly, UNCAC not only places premium on the establishment of anti-corruption agencies by State Parties, but also understands the critical need to have them manned by competent personnel with appropriate capacities and supports. State Parties are required to initiate, develop and improve specific training to build and enhance the capacity of staff of the agencies in the prevention and investigation of corruption, strategic anti-corruption policy, mutual legal assistance, management of public finances and procurement, legal and administrative mechanisms for facilitating return of proceeds of crime, method of protecting victims and witnesses among others.[17]

The African Union Convention on Preventing and Combating Corruption (AUCPCC) and the Economic Community of West African States Protocol (ECOWAS Protocol) are the other two relevant regional and sub-regional anti-corruption best practice regulatory instruments that Nigeria is a signatory.

Like UNCAC, the two instruments require State Parties to combat corruption and money laundering in both public and private sectors using a combination of preventive and enforcement measures. They include, amongst others, making appropriate laws and criminalization of offering and accepting solicitations and other acts of corruption, setting up independent anti-graft agencies , ensuring transparent and efficient procurement process, encouraging participation of CSOs, NGOs and the Media, establishing a regime of code of conduct and asset declaration mechanism in the public service.[18]

The establishments of the Independent Corrupt Practice and Other Related Offences Commission (ICPC) and the Economic and Financial Crimes Commission (EFCC) through their establishment acts are evidence of efforts made by Nigeria to comply with the provisions of the articles in UNCAC and those of the AUCPPC and ECOWAS Protocol.[19] Only recently, the Nigerian Financial Intelligence Unit charged with the gathering, analysis and dissemination of financial intelligence to the anti-corruption agencies in the country became autonomous as a body.[20] This is to strengthen it and allow for objective discharge of its functions to have greater impact in the battle against corruption.

Before the existence of these specialized agencies, the primary traditional law enforcement institution i.e. the Nigeria Police Force, had the authority to use relevant provisions in the Criminal Code and Penal Code, the two major pre-existing legislations, to prosecute corruption cases of fraud, bribery, embezzlement, misappropriation, criminal deceit, breach of trust, obtaining by false pretense, etc.[21] Similarly, the Code of Conduct had been in existence as watchdog over the unethical conducts and also as custodian of asset declarations by public officers.[22]

As Nigeria embraced the regime of enforcement and prevention actions in the global, regional and sub-regional instruments against corruption, the anti-corruption agencies have purposefully and strategically implemented their enabling statutes alongside some other complementary laws and policies of government to achieve impactful traction in fighting corruption in the country. This is despite the myriad of peculiar challenges that they face in their operations in respect of investigation, prosecution, inadequate funding and to some extent political interference as well as public apathy and judicial obstacles.

The Anti-Corruption Agencies and Special Powers

For the purpose of this paper, the Independent Corrupt Practices and Other Related Offences Commission shall be the focus particularly the nature of Special Powers in its enabling Act, which are peculiar and aimed at facilitating, distinguishing and ensuring the effectiveness of the discharge of its mandate.

Independent Corrupt Practices and Other Related Offences Commission (ICPC)

The legislature in passing the Corrupt Practices and Other Related Offences Act, 2000, establishing the ICPC taking into account the enormity and dynamic state of corruption, went beyond criminalizing corruption and related practices. It also established an institution with personnel specially empowered with enablement to perform the task of dealing with corruption and special ability to overcome challenges that may attend the performance of its functions as prescribed in the statute.

Of the ICPC's tripartite mandate that of enforcement, which combines investigation and prosecution, is found in section 6 (a) of the Act and provides thus:

> *'Where reasonable grounds exist for suspecting that any person has conspired to commit or has attempted to commit or has committed an offence under this Act or any other law prohibiting corruption, to receive and investigate any report of the conspiracy to commit, attempt to commit or the commission of such offence and in appropriate cases, to prosecute the offenders'.*

This part will address the provisions of the ICPC Act, which relate to the Commission's investigative powers and prosecution processes, which are specialized and differ from those of pre-existing law enforcement agencies i.e. the police[23]. The power of the Police in this regard is expressly recognized and preserved in the ICPC Act[24] and provides that nothing in the Act will undermine the right or authority of any other persons or appropriate authority to prosecute the offenders under any other law. Also, the ICPC Act retains the power of the Police to investigate and prosecute offences created under the Act with a proviso that the Commission be duly informed of such cases.[25] The essence of this provision is to enable the Commission to have a record of corruption cases being handled by the police in order to build a reliable data of persons, typology and number of the corrupt cases being investigated and prosecuted, the Commission having become the primary agency specifically charged with dealing with corruption. No protocol has been developed for this yet, as much as it is imperative for the Commission to consider doing so with the police going forward.

From a political perspective, the Act provides for a significant power aimed at distancing the Commission's operations from any form of interference or control in the discharge of its functions under the Act.[26] This is in conformity with the "necessary independence" prescribed by UNCAC for specialized anti-corruption bodies like the ICPC and EFCC.[27]

Since inception, the successive boards to date have always guarded this operational independence tenaciously and the staff also have been emboldened by this to do their work without fear of intimidation. An instance of a show of this was when the Commission, then under the leadership of Justice M.M.A Akanbi despite political pressure, continued with the investigation of corruption allegations it received against principal members of the National Assembly. However, this led to a foiled attempt by the legislature to whittle

down the powers of the Commission by way of amendment, but the judiciary prevailed and restored the Act.[28] Unfortunately, the EFCC Act does not provide this kind of shield for EFCC Chairman and enabled easy removal of Nuhu Ribadu, the pioneer Chairman of the EFCC for political expediency.[29]

Officers of the Commission who are its foot soldiers are conferred with "all the powers and immunities" of the police under the Police Act and any other laws that empower and protect law enforcement agents[30]. However, it has been argued that this power is delimited by the qualification in Section 5 (2) requiring an officer of the Commission who discovers an offence under any other law that is not offence under the Act, while investigating an offence under the Act, to notify the Director of Public Prosecution or any other officer charged with prosecution of criminal cases who may issue directions that will meet the justice of the case.[31] The limitation notwithstanding, officers of the Commission have this power printed on their identity card and it has facilitated operations by ensuring officers are not prevented or obstructed from doing their work upon presentation of the card because it makes their status incontrovertible during operations involving arrests, searches and indeed recognition and ease of passage for officers on the field. The provision in Section 8 (5) EFCC Act is similar to section 5 (1) ICPC Act and grants the EFCC's officers, not just the powers, authorities and privileges of the Police, but the power to bear arms. The Commission has suggested an amendment to Section 5 (1) to allow officers of the Commission to bear arms rather than relying on the police at all times to provide armed men for its operations.[32] This, no doubt, will be empowering if carried through eventually.

Regarding prosecution of cases, the officers of the Commission are deemed granted the power of the Attorney-General of the Federation to prosecute all offences of corruption prescribed in the Act and any other law prohibiting bribery, corruption, fraud and related offences.[33] In other words, it is unnecessary for the Commission to seek consent of the Attorney-General before filing and prosecuting any charge of corruption against any person. There is no such deemed grant of prosecutorial power in the EFCC Act, 2004. However, the Supreme Court has interpreted the provision of Section 174 (1) (b) of the Constitution to mean that other authorities like the EFCC which have lawyers in its employment can prosecute in all courts in Nigeria

in the name of the Federal Republic of Nigeria under the deemed authority of the Attorney-General.[34]

For the purpose of effectively invoking its investigative powers, officers of the Commission are empowered to order any person to attend examination, produce any books, certified documents or to require any body to provide a sworn information that are required to assist investigation.[35] Failure of the person so required to comply constitutes an offence.[36] This provision of the Act has been used severally to invite suspects and witnesses alike, but not until very recently, did the officers of the Commission see the need to use it to facilitate actions required. As is the case of some suspects, who have either been charged or threatened with a charge pursuant to the section for failure to attend invitation or produce documents. With such instances, invitations and even summons to suspects are regarded and taken seriously.[37]

As the crime of corruption involves the exchange and transfer of money and other financial instruments whether at the petty or grand levels sometimes involving the use of financial institutions, the Act empowers the Chairman of the Commission to investigate such accounts.[38]. To this end, the Chairman of the ICPC is empowered to obtain a court order authorizing officers of the Commission to exercise all powers of investigation on a bank or any financial institution to inspect and take copies of bankers' books, bank accounts (statements of accounts), electronic data storage, shares accounts, purchase accounts, accounts of any person, safe deposit box etc.[39] They can also request for information related to any of the documents outlined above and may also take possession of any of them.[40]

In addition is the *sui generis* power of the Chairman to direct a bank or financial institution not to part with, deal in or otherwise dispose of any moveable property including any monetary instrument or any accretion thereto that is subject of investigation in its custody or control.[41] This investigative power enables the Commission obtain vital information on corrupt financial transactions, fraud, money laundering as well as bribery and gratification payments. It ensures the Commission's ability to enforce the stoppage of withdrawals from accounts where corrupt proceeds have been lodged or laundered. Depending on investigation findings, this is followed up by civil or conviction-based forfeiture of any *moveable/ monetary* assets linked

to corruption. [42] A high court has, however, described this power as a "bad law" for being exercisable without court's permission.[43]

It is obvious that the learned judge did not fully consider the proviso to section 44 (1) contained at section 44 (2), (k), 1999 Constitution (as amended) which authorizes the exercise of any general law to compulsorily and temporarily take over moveable or an interest in an immoveable property for the purpose of 'any examination, investigation or inquiry'. It is within this exception that the exercise of the power of the ICPC Chairman is legitimate and does not breach the right to own property by any person under investigation. Essentially, the power inheres for the objective of preventing the dissipation of funds, financial and other pecuniary property under investigation, but in possession of the banks or financial institutions. The power of seizure lasts for a period of twelve months within which the Commission is expected to prosecute and secure a conviction or otherwise the Chairman shall apply to court for an order of forfeiture of the seized property[44].

Equally, the Chairman of the ICPC is empowered to obtain information from any person suspected to have committed an offence under the Act or his/her relation or associate with respect to the suspect's assets, location and estimated value of such assets.[45] This is in line with international best practices[46] with regards to asset forfeiture that where such assets are in excess of the suspect's legitimate means or no satisfactory explanation is given, they are presumed to have been earned by corrupt means. The Supreme Court has equally adopted this position[47] and it has helped in no small measure to lessen the burden of proof on the prosecution in forfeiture cases.

The question then is: *Do sections 40 and 44(1) ICPC Act 2000 breach the constitutional right to remain silent under section 35(2), 1999 Constitution?*

Section 40 of the Act criminalizes the failure of a person who has statutory power to give information to an officer of the Commission. Section 44(1) of the Act, on the other hand, gives the Chairman power to obtain from a suspect, his relative, associate or any other person, a written statement identifying the suspect's property within and without jurisdiction, location and estimated value of such property,

businesses, travel history as well as sources of income for any specified period.

A cursory look at the provisions of Section 35(2) of the Constitution compared with Section 40 of the ICPC Act, ostensibly breaches and criminalizes an act guaranteed as a right of an accused person under Section 35(2) of the Constitution. A careful consideration of Section 40 however, and particularly the wordings will reveal that no contradiction exists between both provisions.

Section 40 of the Act specifically provides that persons who are liable for non-disclosure are those under statutory obligation to give information. On the other hand, Section 35(2) provides for the fundamental right of a person arrested or detained to refuse to provide information. It is instructive to note that the right to remain silent is personal to prevent self-incrimination and does not extend to statutory duty to disclose information.

Accordingly, Section 40 applies to persons who occupy certain offices and have statutory power to provide information by virtue of such office. It is trite that statutory powers are not personal and as such those who hold such offices cannot claim personal rights over such power to disclose information, herein lies the distinction.

On the other hand, Section 44 (1) gives the Chairman of the Commission power to obtain information from a suspect in respect of matters earlier highlighted. Nothing in Section 44 of the ICPC Act criminalizes failure to provide such information, as is the case with Section 40 of the ICPC Act. This distinction is important in view of the right guaranteed by Section 35(2) of the 1999 Constitution.

In addition, the pronouncement of the Court of Appeal[48] while considering a similar issue provides some insight. The Court of Appeal was to interpret Section 27 of the EFCC Act as to whether compulsory declaration of assets infringes the right to remain silent. The Court held, per Garba JCA, as follows:

> "*Undoubtedly, these provisions have nothing to do with compulsion on such a person to make a statement upon arrest for an offence under the Act, in respect of the offence he was arrested for. The section merely orders, commands and requires that a person arrested for an offence under the Act, declare his*

> *assets by completing the designated assets declaration form, whether or not he makes a statement in respect of the offence he was alleged to have committed under the Act. The moment a person is arrested for the commission of an offence under the Act, the provisions of the Section 27(1), as a matter of law and fact, become applicable to him, independent of his making a statement in respect of the offence(s) for which he was arrested and distinct from his right to remain silent and not to incriminate himself of such offence(s) since by the provisions of the Section, the declaration of the assets is to be made upon, where or when a person is arrested for the offence(s) under the Act, the duty or obligation to declare assets arises when the arresting authority presents the asset declaration form to the person arrested and requires him to complete it in compliance with the provisions of the section. The requirement to declare asset does not involve asking the person arrested to speak or answer any questions in respect of the offence he was arrested for and in no reasonable way, connected with the right to remain silent and avoid answering any question on the said offence(s).*"

Although the above judicial pronouncement relates to Section 27 of the EFCC Act, which is similar to provisions of Section 44(3) of the ICPC Act, it is clear that disclosure of assets and property does not infringe the right to remain silent.

Power of seizure and forfeiture of moveable and immoveable properties

The Act[49] enables an officer of the Commission to seize any property, movable or immovable, which he has reasonable grounds to suspect, is a subject matter and evidence of an offence, to seize such property. Such seizure is done by issuing a signed list identifying the property to the owner or the person in possession. However, where the property is in the custody of a bank, the seizure shall be effected as prescribed in section 45 (a cross-referencing error states section 35 and 42); by means of a court order. This power of seizure that inheres in an officer of the Commission with respect to immovable property seems exercisable by publishing a Notice of Seizure signed by the Chairman or a person authorised by him, prohibiting dealings with the property, published in two national newspapers and served on the Ministry of Lands where the property is situate.[50] The Commission in recent time is proactively enforcing this power to

seize property derived from proceeds of corruption and in many cases eventually get them forfeited by court orders. It is a potent provision that deprives the corrupt the benefits of their crimes and in a way restitutes the government and the citizens that are the victims in most cases of public office corruption.

The Act[51] equally makes provisions for the custody of seized movable property especially where it is not practicable or desirable to effect removal of such property from the premises where it is found. It takes into account different prevailing circumstances and provides officers of the Commission practical solutions to deal with them e.g. perishable property, financial instruments in the custody or control of other persons. The Act[52] provides for a temporary return to the owner or person in whose possession it was before seizure upon such terms and conditions or furnishing of security not less than the amount representing the open market value of such property to ensure the surrender of such property when demanded.[53]

In the case of movable property liable to decay or deterioration, an officer of the Commission is empowered to sell or cause such property to be sold at the prevailing market value and proceeds of such sales will be held upon deducting the cost of sales and maintenance until proceedings in court are determined.[54]

The Act[55] empowers the Chairman of the ICPC to make rules to give effect to the provisions of the Act as well as make rules to provide for specifics on anything to be done under the Act. This blanket provision empowers the Chairman of the Commission to innovate and create avenues by which to give effect to the provisions of the Act. The current Chairman Prof. Bolaji Owasanoye has utilized this provision in several ways including the delegation of power to issue a 'post no debit' on bank accounts to a member of the Commission and the director in charge of operations; directive on tax profiling of corporate entities under investigation; development of protocol for handling petitions with sister law enforcement agencies. Others include signing of collaboration pacts with stakeholders and most recently, setting up of Constituency and Executive Projects Tracking Group initiative (CEPTG), and issuance of guidelines for the utilization of COVID-19 pandemic funds to ensure the integrity of expenditure during the emergency by relevant government institutions.

Former Chairmen, Justice M. M. A. Akanbi, Justice Olayinka Ayoola and Ekpo Nta, Esq., also variously activated the power in section 70 to make a Standing Order which prescribes rules for the operations of the Anti-Corruption and Transparency Units (ACTUs)[56] as established by ICPC in the MDAs; the production and adoption of a National Values Curriculum and Teacher's Guide[57] to inculcate anti-corruption values in schools; the crafting of a National Ethics Policy. In addition, section 70 has been the livewire of all other administrative and operational policies developed by previous boards and those in the works at the instance of the present board. This has led to the several innovative approaches to the fight against corruption and enriching collaborations with several agencies of government and stakeholders which include the NERDC, Police, FIRS, FRSC, NUC, INEC, Nigerian Institute of Taxation, COREN, UNODC, UNDP, Action Aid, British High Commission, etc. and birthing of coalitions and groups like National Anti-Corruption Coalition.

Building Competencies for Performance

With respect to the enforcement mandate of the ICPC, it started out by employing the conventional investigation approach of receiving petitions, cultivating information for intelligence, inviting suspects and interrogating them with a view to getting a confession where possible, establish a prima-facie, and charging them to court. This approach has been relied upon overtime by agencies investigating fraud and corruption cases. However, with the peculiarity and sophistication of corruption and other financial and economic crimes in this age, law enforcement agencies, following the provisions of UNCAC, consider it important to develop appropriate competencies to face the dynamism and challenges fighting corruption poses.

In light of the above, the ICPC has always placed premium on training of all its personnel from inception to date. The pioneer officers of the Commission had the benefit of being trained upon recruitment by American officials from Federal Investigation Bureau (FBI), Department of Justice (DOJ) and Central Investigation Agency (CIA). They also enjoyed foreign and local training opportunities by UK DfID, UNODC and UNDP.

There has been a gradual improvement in operatives' skills and knowledge, however to accelerate the pace, the Commission in the current dispensation has intensified the exposure to specialized skill

sets to enhance capacity and competencies of its officer to effectively deal with corruption.

Asset Tracing and Recovery

In the investigation and prosecution of cases where there are proceeds of crime, a strategic approach has been adopted by the Commission stemming from improved capacity, understanding and application of the laws. Rather than proceed against the owners of the assets/property, the focus has shifted to first of all depriving them of such proceeds by means of action in-rem (action against the subject matter), before proceeding against them, if at all. This has improved the seizure, confiscation and forfeiture of asset/property actions for the Commission especially where they have been discretely acquired with proceeds of corruption and legitimacy of such acquisitions cannot be established. This particular specialization is handled by a special investigation unit in conjunction with the Legal Department.

Greater competency is being developed in this area as the Commission recently introduced a monthly Lunch Hour Lecture Session for its lawyers. The sessions held so far have dealt on technical areas of the law relevant to improve the understanding of Commission's prosecutors in the areas of relevance and admissibility of electronic evidence and standard of proof in money laundering and predicate offences.

Suspect handling

In line with the provisions of the ICPC Act[58] and other the extant laws[59] on suspect handling particularly with respect to statement taking and its admissibility, the Commission has developed competencies by setting up standard interview rooms equipped with recording cameras and related infrastructure. Investigators are trained and conversant with the use of the interview room and recording equipment deployed to ensure that evidence required to prove cases against the corrupt are legally obtained to prevent their being challenged and defeated on technical basis of non-compliance.

Beyond this, the Commission has embarked on the digitization of all its investigation files and relevant exhibits to prevent against loss and obliteration of evidence for prosecution. Indeed, this will also protect the Commission against possibility of frustration of investigation that may occur through destruction, mutilation, falsification, etc., envisaged in the ICPC Act.[60]

In relation to data management of suspect information, the Commission is developing capacity by deploying biometric capability for its investigation towards building a corruption and economic crime offenders data base to ease future reference on such offenders.

Forensics and Polygraph

With the advent of technology and digitalization, corrupt persons deploy these tools to perpetrate crime, making, it necessary to adjust to the challenges that come with it. To this end, the Commission has a fully equipped digital forensic laboratory manned by officers certified in the use of forensic tools such as sentinel, cellebrite, magnet axiom. These tools are used to extract and analyze information stored in mobile phones, computers, tablets and other devices that may have been used as tools to perpetrate corruption. This has led to discoveries and recovery of information and data used in the prosecution of otherwise difficult cases in which our specialists successfully testified in courts.

In further developing expertise in forensics, the Commission, recognizing that majority of corruption cases border on documents, has engaged a hand writing and physical document analyst and is equally training some officers as hand writing and document analysts with the objective of building competency in that area. This competence is required to unravel cases of forgery, alterations/mutilation/destruction of documents, analysis of questionable signatures, handwritings and fingerprints and provide expert opinion on such documents in the course of trial.

As the Commission has acquired polygraph machines, a cluster of staff have been internationally trained and certified as polygraph experts for the purpose of expediting fact-finding during investigations. Of course there still exists doubt in many jurisdictions as to the value, relevance and admissibility of evidence generated through polygraphs based on what is regarded as 'their scientific uncertainty' and lack of capacity of a lie detector (as it is commonly called) for detecting the truth or falsity of a statement.[61] In Nigeria, there have not been opportunities for the judiciary to explore the legal landscape and make guiding pronouncements on use and reliability of polygraph statements unlike in the United States where the courts have gone the routes of outright inadmissibility[62] of

polygraph evidence to prescribing conditions[63] for its relevance and express admissibility of same.[64]

Under the extinct Evidence Act, there was no provision for the admissibility of electronically generated evidence which polygraph evidence will qualify as a specie under section 84 of the extant Evidence Act, 2011. It seems reasonable to assay that because modern polygraph machines retrieve and analyze data on physiology and psychology of a person by means of a computer graphs, there should be no basis to reject the results produced as electronic evidence of facts in issue. Such statement will qualify as 'statement contained in a document produced by a computer'.[65] The admissibility, however, will be subject to the four conditions provided under sections 84(2) and 84(4) of the Evidence Act, 2011 on the state and integrity of the process of production of the electronic evidence. Surely other protocols may be prescribed by the Nigerian courts governing when and how polygraph evidence may be admitted whenever the opportunity arises. Looking ahead the use of the lie detector by the ICPC, provided a person agrees to be tested prospects an exciting progress in evidential process of prosecution of corruption.

Financial investigations

Successful investigation and prosecution of corruption cases of money laundering, fraud and embezzlement involves tracking and analysis of complex financial transactions by financial analysts with the required expertise. Recognizing the complexity of these transactions, the Commission has engaged consultants with banking and forensic accounting expertise. This is without prejudice to the fact that the Commission has in-house accountants who conduct general financial investigations. The Commission leverages on the expertise of these consultants who understand the web of fraudulent financial transactions and can extract evidence required to prove complex cases of corrupt and fraudulent transactions for presentation as evidence before the court.

In seeking to increase the competencies and expertise of operatives in the area of financial investigations, the Commission set up an Illicit Financial Flows/Tax Fraud Group was created in 2019. The Group is tasked with identifying corruption-related Illicit Financial Flows, investigate tax related offences and serve as the secretariat of the

Inter-Agency Committee in Nigeria for the implementation of President Thabo Mbeki Report on Illicit Financial Flows.

Partnerships and collaborations

Recognizing that the Commission cannot singlehandedly tackle corruption, the Commission's network of strategic partnership has expanded internationally and domestically. Within the country, it has strong technical relationships with other law enforcement and anti-corruption agencies like the Police Force, Department of State Services, National Intelligence Agency, Nigeria Security and Civil Defence Corps, Federal Road Safety Commission, Code of Conduct Bureau, Bureau of Public Procurement, Nigeria Financial Intelligence Unit and the Economic and Financial Crimes Commission. This has led to several joint operations with some of these agencies resulting in the arrests public officers engaged in acts of bribery, gratification and other related offences.

On the international scene, the Commission has recently established liaisons and understandings with international agencies like National Crime Agency that has facilitated bespoke investigation trainings for the officers of the Commission in Nigeria and the United Kingdom by way of an exchange programme. The long established relationships with the United Nations Office on Drugs and Crime and UK Department for International Development continue to run for the benefit of the Commission in combating corruption.

Conclusion

The establishment of ICPC in the year 2000 signaled the onset of Nigeria's commitment to dealing with the challenges of corruption alongside its damaging effect on the growth and socio-economic and political development of the nation. In its twenty years of existence, the Commission has progressively and continuously taken up the gauntlet against the malaise in our society. The Commission has had its fair share of teething problems like any other institution but has over the years, outgrown and overcome those challenges to stabilize its operations and modus operandi.

There is no doubt that the Commission has grown and developed its competencies over the years, more important is that it continuously seeks to strengthen its competence and capacity within the ambit of its specialized powers.

This commitment is epitomized in the dedication of the new board headed by Prof. Bolaji Owasanoye to build an institution enabled by the capacity of its personnel and use of its powers and competencies acquired through experience to tackle the infamy of corruption. In this regard the present policy whereby staff are being trained to acquire specialized anti-corruption enforcement skills is commendable and will surely impact the repositioning of ICPC for greater performance and success in the years to come.

Endnotes

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[2]Sushanta K.B (2012), Corruption In Political Democracy Is Hard to Control With Law Only: https://www.academia.edu/25980160/Origin_of_corruption_in_human_civilization, 3 – 4 (accessed 29/03/20).

[3] See *The Bible* Genesis 6:12; 2 Timothy 13:1-14; and the Qur'an (Verse 3:14); (Verse: 2:188).

[4] See also: Criminal Justice (Miscellaneous Provisions) Decree, 1966; Corrupt Practices Decree, 1975, the Retrenchment of Corrupt Civil Servants by the Murtala/Obasanjo Military Administration of 1975, the National Programme on Ethical Revolution (1979-1983) by President Shagari, the War Against Indiscipline (1984-1985) by General Buhari, the Mass Mobilisation for Social Justice and Economic Recovery (MAMSER) by General Babangida, the Special Investigation Panel to Recover Stolen Public Funds (1998-1999) by General Abdulsalami Abubakar.

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[17] Art.60 (1) paras. (a)-(j) UNCAC.
[18] Arts. 2-5 AUCPPC and Art.5 ECOWAS Protocols.
[19] David U. Enwerenmadu, *Anti-Corruption Campaign in Nigeria, 1999-2007* (Ipskamp Drukkers, Enschede, Netherlands) 16.
[20] It was previously domiciled in the EFCC.
[21] Section 61(2), ICPC Act 2000 reiterates this position.
[22] Political officer holders are public officers by virtue of Part II, Schedule IV to the 1999 Constitution of the Federal Republic of Nigeria (as amended).
[23] See Mohammed A.Y*, The Jurisprudence of Corruption; An Exegesis of the ICPC Act, 2000 And the Code of Conduct for Public Officers in Nigeria* (Benchmark Law Series, 2007) 1.
[24] Section 61(2) of the ICPC Act 2000.
[25] Section 69, ICPC Act 2000.
[26] Section 3(14), ICPC Act 2000
[27] See Article 36 United Nations Convention against Corruption (United Nations, 2004) 26.
[28] See Attorney-General of the Federation Vs Chief Anyim Pius Anyim and three others; Senator Adolphus Wabara and two other vs FRN, and Yahaya vs Federal Republic of Nigeria (2007) (23, WRN, 127 @146).
[29]See HRW Report, *Corruption on Trial? The Record of Nigeria's Economic and Financial Crimes Commission* (2011), 8-9. Ribadu was removed by President Umaru Yar'Adua in 2007 for reasons connected to the trial of the then Governor of Delta State, James Ibori, a political associate of the President.
[30] See Section 5(1), ICPC Act 200 and Section 41, EFCC (Estab.) Act, 2004.
[31] See Mohammed A.Y, The Jurisprudence of Corruption; An Exegesis of the ICPC Act, 2000 And the Code of Conduct for Public Officers in Nigeria (Benchmark Law Series, 2007) 166.
[32] The Commission made the recommendation to PACAC in a submission in 2016.
[33] Sections 26(2) and 61(1), ICPC Act 2000.
[34] See FRN V. Osahon (2006), 5NWLR, Pt. 973, 361.
[35] Section 28 (1) (a), (b) and (c), ICPC Act 2000.
[36] Section 28(10), ICPC Act 2000.

[37] Section 29, ICPC Act 2000 provides for issuing summons against suspects and other persons.
[38] Sections 43(1) & 45(1), ICPC Act 2000.
[39] Section 43(2), ICPC Act 2000.
[40] See section 43 (3), ICPC Act 2000.
[41] Section 45(1), ICPC Act 2000. Only the Chairman, ICPC can direct banks to freeze a customer's account without a court order. The Chairman EFCC is required to get a court order to do same.
[42] See section 47 (1) (a), Ibid.
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[46]See Gogitidze & Ors v Georgia (Application no. 36862/05) @ https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-154398%22]}. (accessed 10/05/20)
[47] See Jonathan v FRN (2019) LPELR- 46944(SC) Pp. 42-43, Paras. E-F,
[48] Mustapha V FRN (2017) LPELR- 43131 (CA) Pp. 76-80, Paras. D-D
[49] Section 37 (1), ICPC Act 2000.
[50] Section 45(4), ICPC Act 2000.
[51] Section 38, ICPC Act 2000.
[52] Section 38(2), ICPC Act 2000.
[53] Failure to surrender such property on demand consists an offence attracting forfeiture of security as well as two years' imprisonment and fine of not less than two times the amount of security furnished. See Section 38(4) ICPC Act, 2000.
[54] Section 38(7), ICPC Act 2000.
[55] Section 70, ICPC Act 2000.
[56] ACTUs were established by ICPC in conjunction with the Office of the Head of the Civil Service of the Federation by circular no: OHCSF/MSO/192/94 dated 2nd October, 2001 (Establishment Circular).
[57] The Teacher's Guide was developed by the ICPC in conjunction with the Nigerian Educational Research and Development Council (NERDC) in December 2010 at a Workshop at Minna, Niger State.
[58] Section 56(1) & (2), ICPC Act 2000 provide for admissibility of statements whether confessional or not.
[59] Sections 29- 32, Evidence Act, 2011 and Section 15(2) & 17(1), Administration of Criminal Justice Act, 2015.
[60] Section 15, ICPC Act 2000.
[61] See HG.org Legal Resources: 'Is Polygraph Test Admissible as Evidence', @hg.org.
[62] See Frye v. United States, 293 F.1013, 1014 (D.C. Cir. 1923).
[63] See State v. Valdez 91 Ariz. 274, 371 P.2d 894 (1962); USA v. Ridling 350 F. Supp (E.D. Mich. 1972).

[64] See generally Giannell, Paul C., 'Polygraph Evidence: Part II' Faculty Publication 340: https://scholarlycommons.law.case.edu/faculty_publications/340.

[65] See Omolabi-Adeleye, A., 'Electronic Evidence: Principles and Practice', being a paper delivered at the ICPC Lunch-Hour Seminar for Lawyers at the ICPC Headquarters, Abuja, 20th February, 2020.

CHAPTER 5

LEADING FROM THE FRONT: BIOGRAPHICAL NARRATIVES OF ANTI-CORRUPTION MANAGEMENT

UDU YAKUBU & MARK FAISON

Introduction

Nothing wins over the confidence of a nation's citizenry more than leadership that exudes the public spirit of trustworthiness. There is also nothing like a system that is capable of watching over and regulating itself, within the ambits of its political, economic and legal frameworks. Nigerians, through their journey across a unique political history, know so much by experience to think always that whoever roasts the groundnut for the blind must be willing to whistle all through the process.

With Nigeria, several factors have contributed significantly to how the people perceive their political leaders and public office holders. A long history of military rule and intermittent successions by civilian administrations had interrupted the nation's political space to make the history of leadership and governance checkered enough to have somewhat battered the people's collective psyche, and affected the nature of their expectations and their sense of what exactly counts as fairness or accountability.

Since this overarching mood had subsisted for too long, it was only natural to think that the one who should know better how to fill these systemic gaps must truly have either 'tasted' power as both military and civilian ruler, or worked under both systems of government for a sufficiently long time. Perhaps it was merely fortuitous or by careful design that former President Olusegun Obasanjo was in power when such political intervention was most needed.

Hence it felt only 'normal' that, on 29 September 2000, exactly a year and four months into the Obasanjo administration, the Independent Corrupt Practices Commission (ICPC) was created as a child of a new

Act of Parliament, on the instrumentality of the Corrupt Practices and Other Related Offences Act 2000. Earlier in 1999, the Transparency International Corruption Perception Index had rated Nigeria the second most corrupt nation in the world. The establishing Act made possible a decisive and holistic approach to the fight against corruption. An entire array of new offences was outlined and brought under the purview of the Independent Corrupt Practices and Other Related Offences Commission. Indeed, the ICPC law went further to make provision for any person who offers to give information to the Commission in connection with any offence committed or likely to be committed by any other person.

For the keenly watching sociopolitical critic, the events that would later pan out produced reactions of a mixed nature: whether the ICPC as a corruption and accountability-based institution was discovering persons, especially public office holders, culpable of corrupt practices for the first time, or that such practices had been entrenched within the Nigerian system but were being tackled almost for the first time by a novel institutional watchdog manned by a loyal and incorruptible 'sheriff.'

The ICPC has a three-fold mandate which includes preventing corruption, enforcement, and education or public enlightenment. Preventing corruption takes many forms including building processes to enable public sector institutions become integrity compliant through such steps as Corruption Risk Assessment and Systems Study and Reviews. But education and public enlightenment are also prevention tools by bringing into the public domain the dangers and damage that corruption is doing to the society.

Across their separate tenures, the various Chairmen at the ICPC have been able to demonstrate the practicality of the education component of the ICPC mandate as involving the building of the capacity of stakeholders to be able to identify corruption-prone processes, corruption red flags in their work places, understand how corruption destroys the system and society, and build the capacity of public institutions to be able to self-regulate, and detect and prevent corruption in their respective domains. This way, the war against corruption does appear to be left to the anti-corruption agencies alone but in reality, it is one which is being fought actively by all stakeholders.

In order not to leave public sector agencies and organizations at the mercy of unscrupulous individuals, the anti-corruption agency would rather build and integrate resilient systems that would make it difficult for such people to pillage the system.

Two decades down the line, the Independent Corrupt Practices Commission (ICPC) has been in the frontline in the fight against corrupt practices in several aspects of the nation's life, and in promoting ethical practices in private and public endeavours. Though the Commission operates within established legal and bureaucratic frameworks, at the heart of its impact on the Nigerian society are the roles and contributions of various persons who have offered critical leadership in the fight against corrupt practices in the nation. Working through the years with the same enabling Act, the Commission's sway on society has varied over the years, depending largely on the context and disposition of the leadership at the time. In this chapter, we seek to explore themes of strategic leadership through the prism of biographical narratives, dwelling largely on diverse contexts of understanding, broad administrative and political milieus, decision-making processes, roles and experiences, lessons learnt, and the varying results achieved by the selected former and current officials.

In the study, therefore, we briefly periscope the historical backgrounds of the leading officials and the ways in which these might have influenced their roles in the ICPC. We also examine some of the key personal attributes and ideas that guided their leadership style. We have interrogated the selected officials' perception of, and engagement with the enabling law, policies and strategic decisions in governance, and have discussed some significant activities, problems, achievements and contributions of the Commission through their experiences. Importantly, this chapter extrapolates some strategic lessons of leadership in anti-corruption management in Nigeria.

2000-2005: Justice Mustapha Akanbi: Pioneering of Anti-Corruption and Transparency Ethos

When President Olusegun decided to launch its anti-corruption fight in 2000, the world and, more especially the Nigerian citizenry, got the impression that the country had adequately counted the cost of such a venture. Whoever would mount the saddle of public prosecution of this kind must himself or herself have possessed a clean sheet of personal history void of corrupt practice. Such a tzar must epitomize

a defining sense of ethos across the ramifications of personal conduct in law, public prosecution and disposition towards public accountability.

The Honourable Justice Mustapha Adebayo Akanbi, a Commander of the Federal Republic (CFR), was a retired President of the Nigerian Federal Court of Appeal and the pioneer Chairman of ICPC. Mustapha Akanbi was born in Accra, Ghana on 11 September 1932 to Muslim parents who were from Ilorin in North Central Nigeria. Upon the completion of his secondary school education, he worked as an Executive officer in the Ghana Civil Service, and was also active as a trade unionist. He later returned to Nigeria and was with the Ministry of Education when he received a scholarship to study Law at the Institute of Administration, Ahmadu Bello University, Zaria. He subsequently completed his law studies in England. He was called to the English Bar in 1963, and later to the Nigerian Bar in January 1964. In 1969, Akanbi set up his private legal practice in Kano. Upon his father's counsel, he joined the Ministry of Justice where he became a Senior State Counsel in 1974. He was later appointed a judge of the Federal Revenue Court and, in January 1977, he was elevated to the Court of Appeal Bench. In 1992, Mustapha Akanbi was made President of the Nigerian Court of Appeal, a position he held until his retirement in 1999. Akanbi joined the Board of the Justice and Law Enforcement Reformation Organization, a non-profit organization that aims to eradicate corruption and poverty from the Judiciary and within law enforcement agencies. In 2000, he was appointed Chairman of the newly established Independent Corrupt and Other Related Offences Commission (ICPC).

To many, Justice Akanbi appeared to be the undisputable fit, in the frame of the ideal occupant of the chair of the ICPC. Under his watch, the ICPC accomplished a pioneering feat of establishing the Anti-Corruption and Transparency Monitoring Units (ACTUs) in government ministries, departments and agencies [MDAs] across the country, as its outposts. This was the first time of such critical and novel stride, and was a demonstration of the internal and institutional political will to act in the interest of the law and public accountability within the political context of a country just emerging from a long history of military rule. The stakes were high, and so were the shades of hopes and optimism from the Nigerian public.

Beholding the ICPC in retrospect, it is evidently far from hazy that Justice Mustapha Akanbi had the opportunity to define the focus of the Commission of which he was pioneer Chair. His interpretation of the Law and his role in overseeing the application of the law, was chiefly responsible for the outlook of the Commission and what would subsequently become the internal and essential culture of the Commission.

Clearly, Nigeria has not been a nation given to speedy passage of judgements as the wheel of judicial process is known to grind slowly. It is, however, notable that, with Akanbi at the helms of the anti-corruption fight, there was a remarkable level of resolve that, no matter the exigency of a case, the Commission must operate within the rule of law. The crave for the arrest and prosecution of big fishes notwithstanding, Akanbi did not give in to dramatizing the crusade. This strict compliance with the rule of law became a distinguishing factor between the ICPC and other law enforcement agencies, especially as it concerned the processes of investigation and prosecution.

Remarkably, too, the presence at the Commission of teams and personnel deemed to be of high quality and commendable professional discipline, was not unconnected with Justice Akanbi's careful approach to recruitment. Possessing a clear understanding of human nature and the principle of monitoring for compliance, he sat as Chairman of the interview panel during the 2005 recruitment exercise. Even as a 75-years-old, he was noted to have sat throughout the interview sessions that sometimes lasted till the wee hours of following days.

As the anti-corruption chief, Akanbi had argued that if Nigeria was serious about fighting corruption, the crusade should be funded by the government. Consequently, his approach to the idea of Development Partner Support was one of utter resistance. The impression easily registered from interactions with some pioneer and other long-serving staff of the Commission.

Certainly, with any institutional leadership that is moored to tenures, there must be the principal challenge of time: to accomplish as many strides distinctive of an administration within a period of time as delimited by the law. For the Akanbi leadership at the ICPC, particularly being a pioneering tenure, there were the natural

'teething problems' as should be expected of an institution such as the ICPC which had no systemic antecedence. Some of these challenges were partly responsible for the ascription, from some quarters, of the label of 'slow' or 'unhurried' to the Akanbi-led ICPC. Mainly, some of the challenges of the pioneering tenure of the ICPC leadership from its inception in 2000 to termination in 2005, include the question of the validity of the law that birthed the Independent Corrupt Practices Commission. There was the important scenario of the legal challenge by the then Attorney General of Ondo State, directed at the constitutionality and vaguely-defined scope of applicability of the ICPC Act 2000 to all persons and authorities in Nigeria. Though the judgement would later be in favour of the ICPC, the disconcerting legal battle, no doubt, notably affected the pace of the work of the Commission.

With the establishment of Economic and Financial Crimes Commission (EFCC) in 2003, just about three years into the creation and existence of the ICPC, it seemed to many social critics that the Obasanjo administration was taking the anti-corruption war to new heights. However, what was amiss was, by the admittance of many people, the apparent duplication of roles in a system that was yet to appraise and take a proper account of its launch and 'minimal' achievements of the ICPC at that time. Within a relatively short time, the approach of the EFCC gave the impression of a good political judgment on the part of the government of the day, but on the one hand also appeared as one move that was satisfying popular expectation for the dramatization of the war.

The response of Justice Mustapha Akanbi to this development was to maintain what he believed in, which was keeping the sanctity of the independence of the Commission, respect for human rights and respect for the rule of law. In the middle of all these challenges, in addition to the poor funding of the Commission, Justice Akanbi could only maintain his focus on doing the needful.

Under Akanbi's anti-corruption leadership watch, the Independent Corrupt Practices Commission established, as its strategic outposts, the Anti-Corruption and Transparency Monitoring Units (ACTUs) in government Ministries, Departments and Agencies (MDAs) across the country. He also started the ICPC Training School in two rooms on the ground floor of the Commission. This was headed by Margo Brady, an American envoy to Nigeria. This may pass as, more or less,

the only, or a major step by Justice Akanbi to accept any foreign support. He retired in 2005 after the expiration of his first term in office, in spite of pressures from the Nigerian Presidency and his associates to serve a second term. Justice Akanbi died on Sunday 3 June, 2018 at the age of eighty-five.

2005-2010: Justice Emmanuel A. Ayoola: The Flight of 'Operation Hawk'

Following the expiration of Justice Akanbi's tenure, there was an expected move to ensure an unfailing continuity in the quality of leadership at the Commission. Consequently, Hon. Justice Emmanuel Ayoola, Commander of the Order of the Niger (CON), continued the anti-corruption administration from where Justice Mustapha Akanbi stopped, leading the second Governing Board from 2005 to 2010.

A retired Justice of the Supreme Court, the tenure of Justice Emmanuel Ayoola was characterized by a good combination of enforcement and prevention interventions. In 2007, two years into his tenure at the ICPC, he piloted a major enforcement initiative at the Commission, which he called 'Operation Hawk'. Expressing the motivation behind this move, Justice Ayoola made the case that while there was no lack of vigour or commitment in the campaign against corruption, what was then lacking was sufficient public participation in the campaign. This was possibly the informing spirit for mapping out the objectives of the Commission during this administration into different phases. According to Ayoola, the first phase was that of public enlightenment, public education and public mobilization. During this phase, Ayoola believed that the nature of tolerance for corruption within the system declined noticeably. One index of the success of the first phase was the fact that people were adopting an attitude of showing or publicly expressing revulsion for corrupt practices by sending petitions to the Commission.

The goal of the second phase was therefore to consolidate on the success of the first phase by riding on the platform of the new level of public awareness to enhance institutional cleansing. The goal here was to make all institutions, such as ministries, departments and agencies free of corrupt practices in their operations. There was also the major goal of making every citizen an active participant in the anti-corruption war. In the pursuit of this goal, the ICPC developed a very robust public mobilization programme.

Perhaps this accounts for why, in the history of the Commission thus far, the greatest number of Information, Education and Communication (IEC) materials were published in various forms and also distributed widely across the country. The *ICPC Monitor* made a debut as a quarterly magazine which provided for peer review of Chief Executives of Ministries, Departments and Agencies and of state governors. The publication also featured strategies adopted by successful leaders and lessons learnt in the process.

For Ayoola, perception of corruption is one aspect of a country's national life that cannot be indexed by any metric framework. It remains, at best, what it is – perception. According to him, while the level of corruption in Nigeria appears to be receding, albeit on a gradual scale, there is yet to be found any clear-cut formula for indexing corruption. However, in taking early steps, the Commission under him promptly gained its ground in collecting data relevant to the fight against corrupt practices in the MDAs. These moves began with the tracking of over 300 MDAs. This basically was the essential part of the third phase of his road map towards cleansing the system of corrupt practices. In scrutinizing the MDAs, the idea was to be able to issue *Certificates of Integrity* to any agencies of government that were so deserving, especially in terms of effectiveness, transparency and accountability in executing and managing capital projects.

Justice Ayoola was also a strong believer in the significance of providing purposeful leadership, which combined being proactive with operating within the ambit of the law. The proactive practices in any institution does not preclude the existence of extant laws: institutions, no matter how proactive, cannot act outside the prescribed range of existing laws. This also applied to the ICPC.
Under his watch, the National Anti-Corruption Volunteer Corps (NAVC) was designed with the view to taking the anti-corruption campaign and integrity issues into the public domain and promote voluntary participation of very honest, well-meaning and credible Nigerian in the fight against corruption. More than 20,000 applications were received and processed within a period of time.

The Commission also introduced the *Citizens' Engagement Forum*. This was a town hall-like meeting where issues bordering on corrupt practices were critically engaged, with diverse views and suggestions offered to map out new directions in the anti-corruption fight. This new platform provided the unique opportunity for the Commission

to interact with citizens in urban and rural areas, and to listen to them. In this process, the ICPC had the opportunity, that were otherwise absent, to clarify public misconceptions about its activities and guide the citizens on how to contribute meaningfully in the campaign against corrupt practices.

The ICPC launched the *Local Government Integrity Initiative* to enhance public and political awareness at the grassroots. The aim was to mainstream the culture of integrity and public accountability at the local government level. This was in tandem with Justice Ayoola's conviction that, for the battle against corruption to be successful, there must be a commendable level of community acceptance of the war. Fundamentally, the war against corrupt practices would not be achieved if the cultural foundations and general attitudes of the people are not refocused through an ethical reorientation.

In 2006, the Justice Ayoola-led Commission also introduced the *Good Governance Forum* which provided an exclusive platform for senior public servants and elder statesmen who had excelled in their various endeavours to share experience with Nigerians on how they were able to do it with integrity. Thus far, the Good Governance Forum has featured personalities such as Joseph Makoju, former Senior Special Assistant to President Obasanjo on Energy; Dora Akunyili, former Director General of the National Agency for Food, Drug Administration and Control; Cardinal John Onaiyekan, former Catholic Archbishop of Abuja; Mr. Yayale Ahmed, a former Head of Service and secretary to the Federal Government; Chief Afe Babalola, a legal luminary, and a host of other prominent public servants.

Justice Ayoola was indeed of the view that, for the fight against corruption to be effective, the Legislature at all levels must be involved. Hence, he created the *Zonal National Assembly Conferences*, which was intended to make the National Assembly take leadership in organizing anti-corruption conferences in the six geo-political zones of the country. Participants at the conferences included all National Assembly members from each zone, state legislators from all of the states in a zone, as well as permanent secretaries and top government functionaries in the various states.

One of the major challenges faced by the Ayoola administration was the lack of willingness, readiness and cooperation from the National

Assembly, especially in the area of creating the context for an open system. The state assemblies were also found to be blameworthy in this respect. A typical reference was when the ICPC sent requests to the national and state assemblies to ascertain their level of compliance with extant laws in the areas of generating, executing and managing constituency projects. Part of the Commission's finding at state levels showed prevalent disparities in processes and standards. For instance, while some states had constituency projects as part of a ministry's active projects, other states simply gave out the monies to the legislators. There were states that had no constituency projects of any kinds going on at all.

There were many cases in which projects that were claimed to have been executed and commissioned had no contractors to step forward to claim the cheques for such 'projects', even when the concerned ministries were willing to pay out cheques upon the certification of due process. Situations such as these were some of the 'mysteries' that the Ayoola team encountered in the process of carrying out the duties of the Commission. A lot of frauds were committed under the guise of 'constituency projects' against the law which clearly stipulated that no public officer must take up interest in any public contract. Many public office-holders had defaulted in this respect by setting up private companies to be awarded contracts tied to constituency projects, against the position of the law.

Another challenge that militated against the work of the ICPC during Ayoola's tenure, as would later apply to other chairmen after him, was the issues of inadequate funding. A critical work such as the Commission was and is doing need not suffer any forms of setback because certain institutions of government believed lobbying must be done to get funding. The ICPC at this time was denied required funding even after undergoing the due process of presentation of proposal. In one particular instance, programmes that were proposed for the Commission, upon getting to the National Assembly for approval, were replaced with the purchase of computers, which the Commission did not ask for. A passionate public followership of the ICPC could have been highly strategic in rescuing the Commission from many unnecessary structural shackles and impediments it had to go through.

While giving the anti-corruption battle all the intellectual, moral and legal support that it required during his administration, Justice

Ayoola took as priority the welfare of the Commission's personnel. This welfarist disposition was informed by his understanding that an effective prosecution of the anti-corruption crusade could not be achieved by officers whose salaries could not take them home, thus leaving them vulnerable to all kinds of possible compromise. He therefore sought and got approval for an enhanced living wage for the Commission's officials. This well-thought-out philosophy and practice have been sustained and remains operational in the Commission to date.

For much of his tenure, which ended in 2010, Justice Ayoola upheld the view that the Commission has a mission to bring about transparent ways of conducting elections, to foster corruption-free ways of administering governmental agencies and parastatals, and entrench new modes of governance that are averse to nepotism, misappropriation and embezzlement of public funds, and the betrayal of public trust.

2012-2017: Mr. Ekpo Nta: Systematic Swabs in Anti-Corruption

Perhaps Mr. Nta Ekpo is thus far the only Chairman of the ICPC who assumed that position without a prior notice of his appointment. He was only informed in the hall during the swearing-in of the board members. Mr. Nta was nominated as Board Member representing the South-South and was sworn into office on 29 November 2011, first as Acting Chairman, along with other members of the third Governing Board. He was later confirmed by the Senate and sworn in as substantive Chairman on 17 October 2012.

Born on 12 October 1952 in Offa, present-day Kwara State, Nta had an itinerant childhood moving round with his parents to different parts of Nigeria and spending most of his formative years in the northern and western parts of Nigeria. He earned a Bachelor of Science in Political Science and a Master of Science in Political Science from the University of Ibadan in 1977 and 1980 respectively. He also got his LL.B from the University of Calabar in 1987, a Bachelor of Law from the Nigerian Law School in 1988 and was called to the Bar in the same year.

Ekpo is a member of the Nigerian Bar Association, fellow of the Compliance Association of Nigeria, fellow of the Institute of Forensic Auditors of Nigeria, and fellow of the Chartered Institute of Management and Administration, among others. He had a brief stint

working with the Nigeria Television Authority in Kano during his service year as a corps member at the National Youth Service Corps between 1977 and 1978, and later worked with the Akwa Ibom State Government. He was at the Niger Delta Development Commission from 2001 to 2010 when he retired from service.

On assuming leadership of the ICPC, he spearheaded the activities of the Commission on mopping up unspent funds and balances in the government ministries, departments and agencies. It was an initiative that killed the unwholesome end-of-year 'spend-the-vote' syndrome, and fast-tracked the development and deployment of the Government Integrated Financial Management Information System (GIFMIS) and the Integrated Payroll and Personnel Information System (IPPIS) in MDAs. In this innovative mode, the Commission constantly monitored the processes of project implementation and the transparency and accountability of agencies.

The ICPC also worked with various stakeholders in birthing the implementation of the Biometric Verification Number (BVN) in Nigeria's financial system. This was a game-changer in curbing fraud and other corrupt activities in the banking sector. By the same token, the Single Treasury Account (TSA) initiative, which consolidates all money inflows from all agencies of government into a single account at the Central Bank of Nigeria, is one of several innovative ways that the anti-corruption body has participated actively in systematically entrenching anti-corruption. A core strategy of the Nta administration was to work with various stakeholders in achieving the maxim that 'prevention is better than cure.'

Having been in the public sector and having been Director of Human Resources, and then Administration, and Security in OMPADEC and NDDC, Nta understood how the public service worked, and the ideas and tasks before him were clear-cut ahead of time. Much of the innovations and collaborations under his administration were either informed by his early cognizance of Corruption Risk Assessment of the public sector, or his simulative conception of it. In most anti-corruption bodies around the world at the time, there were hardly people who had been trained in anti-corruption fight or as Corruption Risk Assessors. The Corruption Risk Assessment programme was an integral part of the curriculum in the International Anti-Corruption Academy (IACA) where Nta served as a Board Member. It was only proactive on his part to leverage on the opportunity later on to

second a member of staff at the ICPC to the International Anti-Corruption Academy. Personnel were effectively deployed following training in Corruption Risk Assessment at the ICPC. Consequently, the Corruption Risk Assessment and System Studies were introduced.

Ekpo Nta had an advantage that set apart from his two predecessors. This would be discovered as a matter of circumstance. While the ICPC was focused on public sector corruption and abuse of office, among other, Nta had a major plus of having also previously worked in public sector organizations for close to twenty years. So, he could relate with the responsibility and functions of his portfolio. By his admittance, combined backgrounds in Political Science, Law and the public sector enhanced his understanding of the system and his efficacy at work.

For most of his time at the Commission, Ekpo Nta was more or less distinguished for his acumen in leveraging previous work experiences across different fields both within Nigeria and overseas. Indeed, while still a young civil servant, he had enjoyed from the Cross River State Government the privilege of a sponsored overseas programme run by the British Council in the UK on Organization and Methods at the Royal Institute of Public Administration. The course provided for him a foundation in System Study and Review, which was one of the legs of what the ICPC programme of preventing corrupt practices. He had the distinctive opportunity of upgrading what the ICPC had been doing to a much higher professional process, and preparing operations manuals at the Commission. Corruption Risk Assessment thus became a strong operational forte for the ICPC staff.

To build on these innovative developments, Nta went further to get the United Nations Development Programme's Virtual School to set up personnel training for about a hundred members of the Commission in Corruption Risk Assessment. The three-month structured programme afforded ICPC staff the opportunity of face-to-face on-site training and interaction, and a six-month online supplement programme. About seventy-nine members of staff passed the course and were registered as Corruption Risk Assessors. It was an innovative development that was remarked to be the first of its kind in Nigeria. The ICPC was the first anti-corruption agency to arrange and introduce such a programme anywhere in the continent.

The Chairmen before Mr. Nta were essentially men of the Bench, renowned jurists who naturally focused on the legality of actions. But Mr. Nta had acquired sociological approaches to tacking the foundations that made crimes and corrupt practices possible in the first instance. This approach appeared to have been helpful to an appreciable extent in the fight against corruption, especially given his previous work exposures which informed his ability to identify patterns of behavior, under various conditions, among civil servants. Relating with these issues and addressing them for their substance, he guided the directions of investigations in a public sector-sensitive way.

Building on the foundation of his predecessors, he consolidated on the previous efforts to empower the Anti-Corruption and Transparency Units, which were positioned in the MDAs. In many cases, the Commission under him looked out for such matters that bordered on intimidations, victimization and deprivation of privileges by superior Civil Service officers with oppressive tendencies.

Also, like his predecessors, there was a range of challenges that the Commission had to face during his tenure. One of such was the dual challenge of investigation and prosecution, and the question of what party qualified to oversee the chain of legal processes. However, as a systematic leader at the helm of affairs, Nta believed in the objectivity and fairness of process. He majorly maintained the disposition that any prosecuting party which did the investigation and the prosecution all by itself was most likely to be subjective and bias. This was even made more challenging by the fact that the system was designed in such a manner that one in such a position as that of the ICPC Chairman would also be contravening the Act of the ICPC when perceived or understood to be using the office of the ICPC Chairman for private gains. He believed that the success of the ICPC would likely be much better, if the Commission's leadership valued investigation properly under the guidance of its Legal Unit, getting exactly what is more reasonable and realistic in its situation.

Before Nta's assumed office, the existing practice saw officers from the Nigeria Police heading Investigation. But the Commission under Nta was able to change that. One major intervention was to commence the process of giving a lot of the much-needed training and self-worth to the ICPC staff, a decision that turned out to be very

good as the Commission no longer depended on the Nigeria Police for the investigation of cases.

Another challenge during Nta's administration related to the bureaucratic structure of the Commission. The nomenclature of the staff was not in consonance with the Act establishing the Commission. Under Nta's leadership, the Commission had to revert to the provisions of the Act, which empowered the staff of the Commission like other law enforcement officers. That implied that the ICPC officers had the same powers as the Police and other law enforcement agencies. This one critical gap was closed in tandem with the provisions of the establishing Act of the Commission, so that officers at the highest level were subsequently designated as Anti-Corruption Commissioners, Deputy Anti-Corruption Commissioners, Assistant Anti-Corruption Commissioners, etc.

Yet, uncertainties within the rank and file of the ICPC staff about roles, status and designations due either to the lack of precision of the Act or the interpretation of it, had to be clarified. The very fact that the Commission's staff were not too sure whether they were law enforcement or civil service did really affect their operations. In its response to resolving this lack of clarity, the ICPC Board set up a general reorientation programme that saw the personnel trained in bearing arms. This was because the establishing Act of the Commission also clearly states that personnel of the ICPC could bear arms. This part of the Act was never activated or actualized until the tenure of Nta at the Commission. Before then, the work of the Commission, especially enforcement, was made difficult because it did not make so much sense that the ICPC had powers of arrest, powers to break into premises, powers of detention, but lacked the capability to restrain or enforce directives as might be given. In line with the move to fill in the gaps, there were efforts by the Commission's Board to work with the office of the National Security Adviser to provide arms to its officers. The process met with resistance as it was opposed by the Police which thought it was its place to provide the ICPC with the personnel to assist in that function whenever the needs arose.

Nta had discovered on coming on board the ICPC that a significant number of the personnel were from the Nigeria Police Force, and one of them was heading the Investigation Department. It soon became clear that so many of such staff members were in investigation on

secondment. One of the many steps which he had to take was the decision to disengage this category of personnel and send them back to the Police Force, while the permanent staff of the Commission was put through the requisite training with the view to taking over those functions. Though some of these had been trained at much earlier times, the Police still ran much of the affairs. Massive training exercises were conducted in 2012 with the intention to fill in the gaps created by the exit of the Police. About two-thirds of the staff was trained out of the entire senior staff cadre. The Commission also sent them to Anti-Corruption Academies across the world to acquire better and more sophisticated skills. It was a proactive step that highly paid off. As a result, internal wrangling between ICPC staff and those seconded from the Police, which had created quite a number of problems before this time, was virtually eliminated. Where the Commission required collaboration with other external bodies, as it did on a regular basis, such was pursued on the basis of partnership and inter-agency cooperation.

The broad public and political contexts under which Nta served as Chairman also played an important part in shaping how and which public and political considerations affected his work as head of the ICPC. He promptly came to the understanding and conclusion that leadership and accountability was integral to his role. Indeed, based on his careful scrutiny of the Commission's establishing Act, the word *independent* suggested a further connotation that, different from the public sector where he was coming from, the buck, this time, stops on the table of the ICPC Chairman. The implication was that in the event, for example, that an enquiry was set up to investigate the activities of the Commission's Chairman, there was no room for the typical alibi that, 'I was directed by someone to do what I did.' The mandate or law setting up the ICPC is clear regarding the independence of the ICPC leadership.

Accordingly, and based on this personal resolution, Mr. Nta Ekpo had requested the then President, Goodluck Jonathan, to state clearly that he was not going to interfere with his job or in the functions of the Commission. This, Ekpo thought was needed in order to set the records straight and to send the right message across to everybody, including politicians and people who thought they were influential. Perhaps owing to this principled start, he never had any interference with his functions as Chair of the ICPC. This is seen to have continued into the Buhari government as he had the opportunity to carry on in

office for two years after the elections that brought President Muhammadu Buhari into government. To great extents, it was remarkable that Nta had free hands to operate in his role and office under two different Presidents who never interfered in the operations of the Commission.

In terms of funding, however, Ekpo Nta did think that the Commission was not really treated right. Nevertheless, that in a way was considered a plus as the apparent lack of adequate funding motivated him and the ICPC Board to think outside the box. The attendant result was that quite a lot of innovations was brought about. The funding problem necessitated the need to conduct inquiries and needs assessments of the nation's situation in the context of anti-corruption. The conclusion was to have the Commission address areas that had severe impact on the populace. Sectors such as education, health, transportation, including the ports, were placed under the close watch of the ICPC to eradicate corruption.

The rationale for this action was based on the thinking that, the first contact any foreigner has with any country is through the airport. Also, expatriates from other countries which possibly have zero-tolerance for corruption, would be coming face-to-face with Nigeria's airport authorities, the Nigerian Customs, Immigration, drug law enforcement, and other agencies manning the country's interface with the outside world. From the airport, outsiders are mostly to encounter scenes and scenarios that reinforced stories that they had heard about the country on corruption.

Once it had achieved this level of clarity on what it wanted to do, the ICPC under the watch of Ekpo Nta quickly moved to address the challenges and also took the corresponding action to show that the Commission was serious in carrying out its statutory mandate. Some of the attendant results of these moves then included public arrests of quite a number of officials at the Lagos Airport, a move that had a ripple effect and sent a strong message to members of the public and people at the helms of affairs in many of the country's ministries, departments and agencies. In all of these, the Commission did not discriminate in its arrests. It simple apprehended anyone already placed under surveillance for over a period of three months.

As part of its *modus operandi*, the Commission had issued adequate warning, and in many instances ran potential culprits through an

integrity programme. However, once such persons were found to have continued in their corrupt practices, the Commission did the needful. In many cases, such culprits had no idea that, for up to three months, they were being placed under watch to see if they had changed their practices. In certain instances, a few of such people were found not to have changed. When they came to the awareness that the ICPC was going to hit them, they simply changed their modes of asking for money. But the ICPC also studied the changing system with its evolving typology and moved accordingly.

In the instance of the maritime sector, the ICPC had particularly established an anti-corruption desk within its system. The International Association of Maritime Workers had sent a petition which provided a platform for the ICPC to collaborate with it to pursue a clean-up in the sector. One of the positive results from this reform process is the current state of the Nigeria Ports Authority. In the context of this new development, face-to-face contact in various contexts of transactions and interactions was drastically minimized through the groundbreaking introduction of electronic platforms.

With respect to the Educational Sector, the ICPC had been keeping track of the prevailing practices, particularly within its Primary, Secondary and Tertiary levels. At the tertiary level, the Nta-led ICPC resolved to face the university system because the number of petitions received had indicated that the tertiary institutions were also deeply-rooted in corruption. To tackle this challenge, the ICPC went into partnership with the Nigerian Universities Commission (NUC), and set up a team with members from the NUC and Investigators and System Study experts from the ICPC. This was headed by Professor Peter Okebukola, a former Executive Secretary of the NUC. The team carried out a comprehensive pilot study of the university system, with sample universities from the federal, state and private categories across the six geo-political zones. On completion of this task, the results were published and the effort by the ICPC, once more, was greeted with public acceptance.

With collaboration and funding from the United Nations Office on Drugs and Crime, the ICPC also engaged in a study on the electronic payment system of the Federal Government of Nigeria. The project covered the IPPIS, the GIFMIS, and the Treasury Single Account, among others and was eventually published and launched in December 2018 by President Muhammadu Buhari at the Presidential

Villa during a programme for Heads of Anti-Corruption agencies in Africa. Quite a number of other system studies and corruption risk assessments were also undertaken.

The challenges of funding for the ICPC during Ekpo Nta's tenure had necessitated the decision for partnerships which the Commission had to seek, especially where the work of the ICPC was of immense value to such partnering and funding institutions. For instance, the partnership with the Tertiary Education Trust Fund (TETFUND) was responsible for funding some processes in the universities. Though there were initial complaints from the university administrators that the TETFUND was not releasing enough funds to them, the ICPC was to make decisive its partnership with the TETFUND. It ran an Integrity Programme, which brought together university administrators and trained them on the process of attracting and managing TETFUND-sponsored projects, and the required close monitoring and evaluation associated with such. At the conclusion of this training, the universities were able to understand the processes involved, and were subsequently able to draw from the N30 billion which had been in the coffers of the TETFUND. The ICPC also succeeded in establishing new monitoring and evaluation mechanisms to assess the outcomes of financial disbursements of funds to the universities. Fallouts of this development include cases in which a number of universities had to face indictment, and academic staff who received funds to pursue some conferences or programmes but misappropriated them were prosecuted by the ICPC.

At the international level, agencies such as the UNODC and the UNDP, among others, found some of the innovations coming from the ICPC very stimulating and decided to fund research around these. Consequently, more system studies and corruption risk assessments were undertaken.

To manage some of the intrinsic challenges that came with international collaborations, Nta saw the need to maintain a careful disposition especially with respect to bilateral agreements that involved collecting money from donor agencies which were essentially owned by foreign countries. The philosophy behind this decision was not far-fetched. A reliance on international donors, particularly in bilateral contexts, could create scenarios in which processes were hijacked, with these foreign bodies dictating how

they wished the monies spent, or how the ICPC should go about carrying out its activities, or how it should be accountable. To balance the scale of relations, the ICPC had tilted towards multi-national agencies that had contributions from various sources, and as such might not be inclined towards challenging the independence of the ICPC. This, Nta reckoned, paid off, and by extension, improved the general anti-corruption sector the world over.

Nta, for instance, had reported the marvel with which such international organizations had received the reports of the ICPC under him. Some of these reports included those on the National Values Curriculum, where the Commission had drawn up specific anti-corruption training for Primary, Secondary, and Teacher Training Colleges, and infused the same into various subjects. This had attracted the interest of other countries when the Commission made the presentation at an international conference.

Around this period, the government was short of funds to send public officers for training abroad and this had also affected the ICPC. In being proactive, Nta had anticipated this situation and so, together with his Board, had commenced the setting-up of the Anti-Corruption Academy of Nigeria (ACAN) at Keffi, Nasarawa State, as a full training arm that could compete with any institution in any part of the world. Apart from the President's promise to equip the academy, organizations such as the African Union and the ECOWAS have equally taken interest in collaboration with the ACAN. The Anti-Corruption Academy of Nigeria soon embarked on intensive and extensive anti-corruption training for various agencies in Nigeria and elsewhere.

Considering the different kinds of anti-corruption agencies in existence, the ICPC could be said to be the ultimate in terms of its mandate. In other parts of the world, it is common to find agencies that are preoccupied with dealing with investigations only, after which they usually pass their findings to other bodies that will take over the entire process of prosecution. It is also common to find agencies that are designed to pursue ethics and compliance, and do little or nothing of investigation or prosecution. But the ICPC is a hybrid that combines all these functions, with its strengths and shortcomings.

This has also been made possible by the enabling legal framework which backs the mandate and direction of the Commission's anti-corruption activity. Though the legal framework was adopted and patterned after the United Nations Convention against Corruption (UNCAC), the irony is that the ICPC Act actually came into existence a couple of years ahead of the UNCAC. The UNCAC itself is now modeled on the tripartite foothold of Public Enlightenment, Prevention and Enforcement.

2019 to 2020: Professor Bolaji Owasanoye: Raising the Goal Post of Performance

Professor Bolaji Owasanoye was sworn in as Chairman of the 4th Governing Board on 4th February, 2019. Like all his predecessors, he had a background in legal practice, and had in fact been a Research Professor of Law. Trained at the Obafemi Awolowo University and the University of Lagos, he has a couple of professional certifications in Legislative Drafting, Negotiation of Contracts, Management of Development Projects, and in the application of public policy to behavioural conduct. With the added advantage of a background in the academia and the civil society, the combination of his multi-dimensional engagements became strategic in positioning and stabilizing him on the ICPC assignment.

Just before he became Chairman of the ICPC, he was Executive Secretary of the Presidential Advisory Committee Against Corruption (PACAC). That role offered him an insider view to the challenges that existed within the anti-corruption institutions. Ahead of his appointment into PACAC, he was already well-grounded in ideas about what the challenges were with regards to the Nigerian environment in fighting corruption, though much of these were theoretical. A full-time engagement at PACAC equipped him with closer appreciation and better grasps of the nature and extents of the extant challenges of corruption within the Nigerian system. He had the privilege and platform to engage directly with active stakeholders and to come up with more practical solutions within the context of the fight against corruption in Nigeria.

From that pedestal, Bolaji Owasanoye could then look at the ICPC environment with respect to the issues that needed immediate response; the remedies and steps that would lead to attitudinal changes; the critical issues of capacity building for the Commission;

and making sure that the Commission was exactly positioned for what it was already empowered to do.

While playing his role at PACAC, Owasanoye had been established as a key anti-corruption skills maven in designing strategy documents that anti-corruption agencies had deployed in improving the fight against corruption. This contributed immensely in preparing him for his at the ICPC. A significant example in this instance is the Asset Recovery Strategy Document, which was the very first strategy document he prepared under PACAC and long before his appointment at the ICPC. The Whistleblower Policy, the Non-Conviction-Based Strategy, the Corruption Coordinating and Monitoring Strategy, the Plea Bargain Manual, and Sentencing Guidelines came as critical contributions from his office at PACAC. He thus joined the ICPC with pretty sound ideas of how to engage the war against corruption.

He is in agreement with his predecessors that the law establishing the Commission is more than adequate, being the product of a proactive and very forward-looking legislation. While the law provides for how to deal with specific issues of corrupt practices, its effectiveness will depend on the nature and character of those operating it; and on whether the operators of the enabling law self-censored or not. Owasanoye believes that the law is probably one of the best legislations for fighting corruption, obtainable anywhere in the world. This is because it adopts a model which gives power for enforcement, prevention and public enlightenment and education. These are synonymous with the three S's that are required in dealing with corruption: Sanctions, Systems and Society.

An important institution such as the ICPC must have the power to give sanctions, to change systems that are corruption-prone, and to seek the buy-in of the society. With his civil society background, he has been able to leverage on public education and enlightenment using already established networks and platforms, among others.

Prof. Bolaji Owasanoye has concentrated on the launching of evidenced-based and visibly impactful interventions in consolidating the earlier recorded gains of the anti-corruption crusade. In just over one year, his administration has witnessed the launch of a number of programmes. These include the Redefined System Study and Review

Programme of the ICPC, and the Constituency Projects Tracking Group (CPTG) initiative.

In 2019, for instance, the Commission recovered assets worth N81.23 billion. This further establishes the great emphasis which the current Chairman has placed on asset recovery, apparently in tandem with the anti-corruption and asset-recovery orientation of the President Muhammadu Buhari administration. Owasanoye had posited that proceeds of crime must not be allowed to be with accused persons under prosecution. This is with the view to foreclosing the possibility of such accused person deploying those funds towards hiring lawyers to defend them, and in the process making prosecution very challenging for the Commission.

In addition to steps being taken in the direction of assets recovery, the Constituency Projects Tracking Group (CPTG) Initiative has tracked up to 424 projects, including many that were completed only half way, or abandoned. With the latter category of projects, contractors in questions have been compelled to complete such abandoned works across the country. For projects whose funds were discovered to have been diverted, the culpable persons, directly and indirectly involved, have also been forced to pay back such misdirected funds. It is remarkable that, while the recovered assets are now re-channeled to reach the actual and targeted beneficiaries, the constituents are also now further enlightened on how to participate in the identification of projects and the monitoring of the implementation of the projects.

The Owasanoye-led ICPC has made landslide progress with the idea of the review of personnel and capital funds expenditure of ministries, departments and agencies. About 201 ministries, departments and agencies have been closely reviewed within one year, with over ₦40 billion in recovered funds restrained from looting. Owasanoye has led the Commission to vigorously pursue the massive recoveries of assets, and quite importantly has shown in steadily displaying the name of defaulters and shaming them.

The ICPC under Prof. Bolaji Owasanoye has also made a clear input in the form of a centralization of the Commission's operations. In an unprecedented move, all operations activities of the Commission have been centralized and placed under the supervision of the Director of Operations. In the past, the various departments and units

with operational functions worked independently of each other, each reporting directly to the Chairman. The reform of the agency's operational structure has enabled it to attain greater efficiency in dealing with operational issues nationwide.

The incorporation of weekly management meetings brought about greater degrees of information flow, and has provided for easy review of targets and deadlines on critical tasks. It also enhanced the dimensions of cooperation between the Board, Management and the general staff.

At the end of every Board and Management meeting, the Chairman insists that decisions of common interest taken at such meetings be communicated to staff by the various unit heads within specific periods. The practice soon dispelled a tradition of obtaining information through rumour-mongering, and has promoted much trust and camaraderie within at the Commission.

To tackle the challenge of a 'top-heavy' structure, the leadership of the Commission worked concertedly to review the promotion system to ensure that the ICPC followed the rule book in engaging all available administrative mechanisms. To get the staff to put in their best at all times, the practice of 'automatic promotion' was dispensed with. Strengthening the processes for promotions to make it more competitive was a critical element in developing a team of anti-corruption officers who were committed to best practices in the sector.

Activities directed towards the prevention of corruption became intensified under Owasanoye. This approach was considered more beneficial and productive to the work of the ICPC and to the Nigerian society at large, as opposed to relying mainly on corruption detection. In this regard, the Commission introduced notable policy dialogues and briefs into its processes, as efforts were directed towards assisting policymakers in their work. Two of such policy briefs so far developed are the Policy Briefs on Eradicating Vote-Buying, and Accountability for Security Vote.

To improve upon the country's corruption index, the Commission developed a mechanism for assessing the causes, manifestations and prevalence of corrupt practices in Nigeria. This corruption assessment mechanism is directed at complementing the Nigeria

Corruption Survey earlier done by United Nations Office on Drugs and Crime (UNODC), with focus on issues of minor corruption.

Between 2019 and 2020, the Commission has organized scheduled retreats with Nigerian legislators. The initiative is based on the understanding that fighting corruption in Nigeria requires the collaboration of various stakeholders. Involving the members of the National Assembly was with a view to exploring all necessary avenues for fighting corruption in the country with the backing of the law, among other allied issues bordering corruption.

Efforts were also intensified towards specialized trainings for the personnel of the Commission. To prosecute the war with more scientifically inclined approaches, training programmes needed to cover the scope of critical skills, capacities and competences. Thus far, the Commission has recorded four internationally certified polygraph experts, as well as a good number of handwriting experts. These have provided a fillip to the Commission's capacity for scientific investigations.

Importantly, the Owasanoye administration has achieved other critical landmarks within its brief tenure thus far. The successes include the hosting of a *National Summit on Diminishing Corruption*, the use of administrative sanctions, and the creation of a forensic suite, among others. The Commission has also attracted more grants from development partners, and improved funding from the Federal Government. Thus, it is being currently better positioned to achieve a lot more in the nation's war against corruption.

Anti-Corruption Academy: The Reinforcement Factor

Under the leadership of Professor Owasanoye, the Anti-Corruption Academy has been further strengthened for strategic responses to anti-corruption through the multiplying effect of capacity-building. According to the pioneer provost of the Academy, Prof. Sola Akinrinade, the Academy has been at the forefront of the efforts to build capacity of individuals and organizations to become anti-corruption agents; hence, the Academy is critical to delivering on the prevention and enlightenment mandates of the Commission. With the Federal Government's adoption of the National Anti-Corruption Strategy, 2017 to 2021, a lot of capacity building work was devolved to the ICPC and specifically to the Anti-Corruption Academy. The Implementation Plan for the National Anti-Corruption Strategy

requires the Academy to work with public sector organizations, including the public service and educational institutions at all levels, to build the knowledge of stakeholders to understand and to tackle corruption. Thus, the Academy has been critical to attaining the mandate of the ICPC since its inception in 2015.

It has covered a broad spectrum of the society with its initiatives. It has trained at every tier of government – federal, state, local government – and has also trained two arms of government, namely the executive and the legislature. Though the Academy has not been able to engage the Judiciary as an arm of government in terms of re-engineering for anti-corruption, judicial officers have had opportunities to serve as facilitators for many of the academy's training programmes. These have included trainings for lawyers, investigators and prosecutors.

The aim for each level has been to raise awareness of the importance of getting every sector and every tier of government to buy into and become stakeholders in the war against corruption rather than leave the initiatives to the Federal Government. As Professor Akinrinade also stated, there will be a major gap and constant challenge in the war against corruption if it is only the executive which is concerned with or targeted at the fight, leaving out the legislature and judiciary. Similarly, if the fight against corruption is being waged only at the behest of federal agencies that are concerned, leaving out state and local governments, there are also great possibilities of leaving major gaps within the system. To address this potential systemic void, the ICPC and indeed the country as an entity must develop a sustainable and inclusive framework which puts all sectors in the frontlines of direct war against corrupt practices.

Also, with the Implementation Plan for the National Anti-Corruption Strategy requiring the Academy to work with public sector organizations including the public service and educational institutions at all levels, the Academy has the mandate to build the knowledge of stakeholders to understand and apply the *modus operandi* for tackling corruption. In this mode and since its inception, the Academy has been critical to attaining the mandate of the ICPC, and has covered a broad spectrum of the society with its initiatives.

Since 2015, the Academy has maintained a steady practice in which, towards the end of every year, it invites all Units and Departments of

the Commission to submit their capacity-building needs for the following programming year. As a usual practice, it also aggregates and prioritizes such submissions. In the process of aggregating, it concentrates on the training activities with the capacity to impact a larger population of staff.

The Academy also runs trainings for specific units or professional groups such as investigators and lawyers. In other instances, the leadership of the ICPC supports the Academy to conduct some training by securing technical support through personal and professional contacts. The task of capacity-building for operatives is also not one left to just the Academy because it addresses the crucial issue of the ability of staff to deliver on their mandates. Every year, it executes a number of trainings on various critical issues to help develop public and private sector agencies into integrity-compliant organizations. Such trainings include those on financial fraud prevention, procurement fraud prevention, integrity in project management, ethics and integrity trainings, basic investigation, whistle blowing, leadership integrity, and several others.

Conclusion

Altogether, the history of the ICPC through a biographical lens of leaders who have been at its helm of affairs, offers a symbolic representation of a nation in search of ethical standards, equity and justice, in spite of its perception among its citizenry and within the international community. There is a conclusive sense in which this history attests to a national fate and collective future tied to efforts made by successive leaderships both of the country and of the Commission. A successful prosecution of the fight against corruption holds very high propensities to reshape the economic and political destiny of the country through public accountability.

Nigeria is still perceived as one of the largest repositories of anti-corruption legislations and anti-corruption agencies. It could thus only be imagined what the sociopolitical and economic terrain would have been in the absence of the ICPC and other complementary institutions, and the leadership in anti-corruption that these institutions have offered were not to be in existence. Without doubt, there is an abundance of ideas, legislations and a vibrant leadership at the strategic level of anti-corruption in the country. Possible gaps in terms of the quality and commitment of leadership at the tactical and operational levels would be worth interrogation, to establish the

nature of the nexus between those levels and the impact of the anti-corruption war in the Nigerian society.

While the ICPC has had leaders who are considered very straightforward in the examples they set for society, such numbers are still quite negligible in most societal contexts. There are shortfalls in terms of the adequacy of moral and ethical examples for the Nigerian youth to follow, or probably numbers around are not adequately publicized in the collective imagination. It is to this end that Nigeria is required to put its resources to pursue the actualization of what it deems important and a matter of priority.

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CHAPTER 6

THE IMPACT OF SYSTEM REVIEW AND RISK ASSESSMENT IN THE PREVENTION OF CORRUPTION

ABBIA UDOFIA

Introduction

Any discussion on corruption normally whips up emotions, anticipation, irritation, sadness, and compunctions. The corruption question and its impacts continue to dominate family discourse, community consultations, village square chats, places of worship, cabinet meetings, parliamentary sessions, national conferences and seminars. Sadly, only a sizeable few of such conversations proffer suggestions on how to prevent it. The anger against corruption is ingrained in families, communities and the nation. Corruption is an irrational behavior with grave costs on the individual, people and government[1] and undermines every aspect of development, mostly the political and socio-economic growth of society.[2] It is ubiquitous, irrespective of region, culture, tribe and religion.[3] Corruption and governance are perceived to be innately fused both receiving continual adhesion from each other.[4]

Corruption in the Nigerian public service is graphically described by Pantami[5] as perpetuated by public servants who counsel elected and appointed executives on how to steal from government; public servants act as draftsmen who design the channels of diversions and theft of public resources; they act as valuers who measure and estimate the sums to be stolen; and expertly advise and chaperon elected executives on how to hide, retain and invest proceeds of public office corruption. Despite numerous campaigns and enforcement measures by anti-corruption agencies, corruption remains pervasive and public office misconducts and crimes incalculable.[6] Most officials find it impulsive to dip their hands in public purse. Some are oblivious of the distinction between private and public funds, and habitually claim ignorance, errors and directives.[7] When systemic and prevalent, corruption guides public policies, determine state contracts, forge appointments, sway discretions and judgements, establish projects, launch programmes and obliterate sanctions. The most efficient way of controlling or

checking corruption, as several authorities have suggested, is to strengthen vulnerable systems and procedures and flush out sleazy practices. This includes suggestions that institutions should be reviewed constantly along with officials manning them.[8]

New opportunities and avenues of corruption are afforded criminals by globalization and the inventiveness of this ambivalent age; these reversions overwhelm law enforcement and anti-corruption agencies. National and international policies and statutes however dynamic and stern, may mitigate but have not eradicated corruption. Systemic corruption emanates amorphously and asymptomatically over time from predispositions of an institution or systems. It is created by weaknesses and opportunities presented by the system but accentuated by corrupt individuals or agents in the system. Notwithstanding where systems are strong or impervious, corrupt officials create and instigate weaknesses and opportunities for abuse and corruption. Boisvert and Begin's study of corruption in Quebec found that moral weaknesses and self-induced factors and work environment reinforce the moral weaknesses that sustain corruption.[9] This highlights the essence for continuous system review and audit to ensure that particular processes and procedures are not broken by officers overseeing them.

Keeper[10] argues that corruption is systemic in a society when it is subsumed and entrenched in social structures of communal relations, official engagements and transactions. This transactional hold could be dispelled and controlled by taking off or strengthening weak links in systems and practices. Klitgaard[11] likewise posits that corruption causes dysfunctions of systems and cultures and that the practical challenge is not to change cultural values and beliefs, but disrupt corrupt balance and alter risk-reward controls of gratification givers and receivers. Corruption and corrupt practices make systems and institutions fragile and malignant. Corruption is preventable and controllable however prevalent, if fought with appropriate methods and tools.

Preventing Corruption

Corruption is deep-rooted and existential in many countries but its subterranean form presents difficulty of measuring and fighting it.[12] Anti-corruption literature and policies are replete with strategies to combat corruption. Approaches recommend employing culture as a purveyor to control corruption[13]; increasing controls by audits and

performance bench marking[14]; institutional reforms enhancing transparency and accountability[15]; strengthening anticorruption agencies and effective investigation and prosecution.[16] Despite the colossal literature from academics, policy makers and civil society, corruption remains coruscating and effervescent.[17]

However effective the enforcement against corruption could be, this ordinarily takes place after the commission of the crime and with dire costs of the corrupt act on the society particularly the poor.[18] The costs of enforcement and recovery are colossal, and criminal elements are compromising law enforcement efforts; this insight impels the imperative of building formidable systems that envision preventing corruption with irrepressible structures that hold off intensities and vagaries of corruption.[19] Short or long term, preventing corruption saves time, expenses and strains of enforcement; prevention is sustainable as it thrives on civil vigilance and support. Prevention corresponds and complements enforcement. While investigation and prosecution of corruption are commendable and offer physical authority and credibility of the activities of an anticorruption agency, yet if a high-profile prosecution fails, it sends chilled waters on the expectant public. An abortive investigation and prosecution of a celebrated corruption case may present grave reputational drawbacks on the agency.[20] Preventive measures as suggested by Tomic[21] involve differentiating between the classical notions of enforcement – one that concentrates on sanctions and other modes which consider settings that instigate opportunities for infractions. He suggests giving due consideration to fact gathering and not exclusively on implementing a punishment regime but whether there exists mechanisms for preventing and isolating issues of misconduct where appropriate.

Highlighting the problems in enforcement, Kuri[22] listed a number of banana peels enforcement officials grapple with, such as high statutory and evidential burdens in many jurisdictions as required to sustain a conviction; likelihood of the defendants to frustrate the matter from inception; plethora of loopholes in the criminal justice system which may undermine the success of the case; pressures on the investigator or prosecutor[23]; weak links in the chain of trial - poor collection and custody of evidence, an intimidated witness may not appear to testify or may be guided to perjure under threat of harm; and the judge may handle the trial with bias or unethically.

Human and Environmental Development Agenda in its *A Compendium of 100 High Cases in Nigeria,* gave a worrisome account of grand corruption cases involving billions of dollars undergoing prosecution, but are scandalously stalled.[24] Grand corruption trials suffer inordinate delays in Nigeria, chiefly due to omissions or defaults by investigators, prosecutors and even the judges.[25] Consequently, some cases remain in court for as long as ten years. Section 26(2) of the Corrupt Practices and Other Related Offences Act 2000, inserted to speed up trial of corruption cases, mandates the Chief Judge of a state and the FCT, to designate certain courts as anti-corruption courts. This provision has mostly been observed in default and conventional cases still are being prioritized and heard in the said designated courts while corruption cases are frustrated and delayed.

The United Nations Convention Against Corruption 2003 specifically demands that states put up adequate statutory policies and programmes to *prevent* corruption (Chapter 2) and also fight corruption through criminalization and enforcement measures (Chapter 3). Rightly as the Independent Corrupt Practices and Other Related Commission (ICPC) has emphasized overtime, it is imperative to maintain a balance between prevention and enforcement and not discard one for the other. The Commission has emphasized in several fora.[26]

Preventive Tools

One peculiar aspect of the ICPC Establishment Act, a legislation which predates the United Nations Convention Against Corruption 2003, is the patent provisions on preventive measures against corruption. Though section 6(a) of ICPC Establishment Act provides for enforcement – investigation and prosecution of suspected and substantiated reports of corruption, section 6(b) – (d) provides for the examination and study of systems, procedures, and practices that may be permitting and suggestive of corruption, and advice government and officials to review such skewed systems, procedures, and practices. The ICPC employs this provision as authority to identify and detoxify crooked public systems and procedures with advisories to relevant and concerned public agencies and officials realizing that these weak systems are cesspools for corruption.[27]

These tools include the System Study and Review (SSR), Corruption Risk Assessment (CRA), Ethics and Compliance Scorecard (ECS), Corruption Monitoring and Evaluation (CME) etc. Hitherto, preventive measures of the ICPC were derided and repulsed by a section of the public as ineffective, repugnant and pointless. However, over the years, these tools have become the cornerstones of the Commission's operations and well received and adopted by government and public officials. These tools have a conglomeration of merits. They check fraud and theft of public funds and reduce opacity and shaded practices as public systems are opened up for public scrutiny. Considering the egregious and eclectic cocktail of corrupt practices in public bodies and agencies, these preventive tools terminate or mitigate the corruption risks and pathogens wherever and however they are incubating.

This chapter concentrates on two of the preventive tools - the System Study and Review (SSR) and the Corruption Risk Assessment (CRA) under sections 6 (b) – (d) of ICPC Establishment Act. While the former is evidence-based and diagnoses previous and inherent vulnerabilities in a government agency, with suggestions on how to mitigate the weaknesses; the latter identifies different corruption risks which a government agency may be exposed, it prognoses potential risks of the public body and how to restrict the risks and develop integrity plans to strengthen accountability, transparency and service delivery. The sharp difference is that the latter tool looks at potential exposures and integrity plans, not intrinsic and immanent weaknesses that are addressed by the former tool.

System Study and Review

Systems study as the name implies inquire into government systems, practices and procedures to identify vulnerabilities permitting corruption and advise a review.[28] It may be profound as procurement in huge projects covering construction of dams, stadia, and social investment programme; while also assessing granular and isolated issues as discretionary powers, poor record keeping, assets regularity, personnel appointments and promotions etc. This tool is mostly compelled by reports, complaints and realities of broken public systems demanding the Commission's intervention.[29] Since 2003 the ICPC has deployed the SSR in numerous public ministries and parastatals. Agencies are selected not in particular order but may include fallouts from findings made from investigation conducted,

reports from the media, petitions and complaints from the public and the Commission's direct intelligence reports.

Methodology adopted may require public hearing to gather opinion, concerns, complaints and suggestions; training sessions may be conducted to sensitize staff, stakeholders and the public on the assignments to prompt and elicit their submissions. Objectives of the study would include but not limited to identifying vulnerable areas which make the institution susceptible to corrupt tendencies; design and facilitate implementation of corruption controlling recommendations; empower staff against corruption; promote awareness on the essence and functions of Anti-corruption and Transparency Units (ACTUs). Study tools often used are the Corruption Opportunities Inventory (COI), Corruption Resistance Review (CRR); Corruption Vulnerability Assessment (CVA) and Client Surveys.[30] Studies conducted found grave infractions and weaknesses in agencies reviewed[31] as adumbrated in Table 1. Also the System Study and Review on Capital and Personnel Budget Implementation conducted in 201 Ministries Departments and Agencies in 2019 made several disclosures among other infractions - appropriation of funds in excess of actual personnel cost suggestive of inflation of nominal roll; use of pension and health insurance budgets for unrelated payments, failure to remit deducted taxes, virement and use of capital project funds for overhead costs or agency's running costs.[32] Recommendations to check or mitigate the weaknesses typically include review of enabling law of agencies, audit control measures, assets verifications, improving compliance with the Public Procurement Act and contract awards, enhancing complaint reporting and whistle blowing systems, upgrading electronic systems for records and payments, swift rewards and sanctions, integrity and transparency in appointment and promotion of staff, establishment of Anti-Corruption and Transparency Units, investigation and prosecution of serious infractions etc.[33]

Most revelations from SSR would not have come through without an in-depth analysis using the tool. A routine investigation directed at particular complaints would not have fared better. Hybridization of the tools has been employed in fast track audit and evaluation of MDAs expenditure and programmes as executed in 2019. System study gives the MDA opportunity to self-assess its systems, performance and service delivery. It presents the institution with reports of its weaknesses and vulnerabilities militating against

effectiveness and productivity and recommends actions to stem the drift.

TABLE 1: SELECTED SSR CONDUCTED

SN	YEAR	GOVERN-MENT AGENCY	OBJECTIVES	FINDINGS
1	2010	The Federal Capital Territory (Land Adminis-tration)	▪ Identify vulnerable areas that are prone to corruption; ▪ Design and facilitate the implementation of corruption fighting measures and policies; ▪ Promote awareness of the functions of ICPC's Anti-corruption and Transparency Monitoring Units (ACTUs).	▪ Excessive discretional powers of the Director, Land Administration in determining land applications and process same for Ministerial approval. ▪ Weak financial management system, e.g. forgery and recycling of bank drafts for payment ▪ Cloning of land documents; ▪ Allocation of plots of land without the FCT Minister's approval; revocation of certain Land Titles without due process ▪ Creating fake layouts and fraudulent allocations in Area Councils

2	2012	National Commission for Museums and Monuments	• Identify areas and procedures that are prone to corruption, examine the financial management, procurement and recruitment procedures; and make recommendations for reform	▪ Commission not having a Governing Board from 2006 to period under review ▪ Lack of internal control and checks - a single officer in Cash Pay Office handling 3 other assignments ▪ Staff in out-stations not paid based on nominal roll but headquarters paid them whimsically ▪ Allocations and expenditures on sub-heads of vote-book based on the discretion of the Finance Department and not the annual budget of the federation. ▪ Failed to remit unspent balance of personnel cost for 2009, and the unspent balance of 2010 non-procurement capital to the nation's treasury. ▪ Gross violation of procurement process especially in 2011 where contractors with false

				documents were awarded contracts. ▪ Violation of the federal character principle in the recruitment of staff into the Commission in 2009
3	2012	Nigerian Prisons Service (NPS)	• Check corruption vulnerabilities and ascertain agency's compliance to budgetary, recruitment and procurement process	▪ Contracts awarded within period covered by the study, not seen in Prisons visited ▪ Unspent balances for period under review could not be verified. ▪ Non-Compliance with Federal Character Principles on recruitment; ▪ Personnel Budget inflated by salaries of unidentified staff; ▪ N127,125,000 paid to staff as allowances without budgetary provision; N450,000,000 paid as advances within the period under review not receipted/ retired; and

				virement of budgetary provisions without approval
4	2012	Universities System Study (USSR) ▪ Univer-sity of Nigeria Nsukka ▪ Olabisi Onabanjo Univer-sity Ago Iwoye ▪ Salem Univer-sity, Lokoja	• To establish the veracity of the various intelligence, petitions, complaints, public comments and claims against the university system	• Unethical and corrupt practices in the two public Universities: • Over admission and over populated classes • Absenteeism and non-completion of syllabus • Delay in the release of examination results • Unethical practices in appointment, promotion and disciplinary matters • Corrupt practices in procurements and contract awards • Over-enrolment and over-populated classes • Poor and inadequate facilities and accommodation • Existence of codes of ethics against harassment and cultism

				• Adoption of policies and programmes like "Leading by Example", Global Leadership concept for students to • Imbibe comprehensive and inclusive training and education, etc.
5	2014	Directorate of Road Traffic Services, Mabushi, Abuja	▪ To improve service delivery and check corrupt and unethical practices in the operations of the Directorate	▪ Establishment Act of the Agency is obsolete and requires a review. ▪ Lack of financial autonomy as budget is controlled by FCDA; and Transport Secretariat oversees its operation ▪ Absence of a Procurement Unit in line with the Public Procurement Act 2007. ▪ Finance Department, Advance Section, Expenditure Control Section, Checking Section and Cash Pay Unit appear non-existent and financial management and audit

				process may be compromised ▪ Process of issuance of driver's and vehicle licenses short-circuited by staff and touts
6	2015	Abuja Environ-mental Protection Board (Aepb) Abuja	▪ To ensure corruption is not impeding the AEPB in achieving its objective of taking care of the environment, ▪ To promote and enhance systems and structures of the agency to make the Capital city clean and beautiful	▪ Agency operates as a department under the FCTA and not an independent entity ▪ Oversight and supervisory roles of the executive board of the agency not present ▪ Absence of operational manual/conditi on of service to guide operations of the agency and staff ▪ Poor record keeping of contracts and procurement files and in some cases delay in processing contract approvals ▪ Incidences of alterations of contractor bid documents against provisions of the Public Procurement Act

7	2016	Gombe State Board of Internal Revenue (GSBIR)	▪ Study the revenue generating pattern, enhance revenue generation, in compliance to the state financial regulations, ▪ Identify corrupt practices militating against the efficiency and productivity of the agency	▪ Gombe State Board of Internal Revenue Edict of 1997 not reviewed since inception ▪ Operating without a Board since 2011 ▪ Not permitted to retain statutory sums on revenue collection to fund its recurrent expenditure ▪ Revenue collecting banks not remitting revenue on weekly basis as agreed and some banks maintaining other accounts otherwise called 'transit accounts' without approval ▪ Agency maintains other bank accounts not tied to the State IGR Account and generate funds and not remitted to the Main IGR Account. ▪ Tax clearance certificates issued to applicants by officials without verification whether tax

				payments fully made; Cash payment made for registration and renewal of vehicles. ▪ Vests much authority on consultants appointed to assess and collect revenue for the state without reviewing their activities
8	2017	Small and Medium Enterprise Development Agency of Nigeria (SMEDAN)	▪ To identify systems and areas permitting corruption; and propose changes to check and prevent corrupt practices	▪ Operating without a Board since 2015 against provisions of its Establishment Act. ▪ Execution of projects/activities not provided for in the budget ▪ Procurement process laden with irregularities, and provisions of Public Procurement Act 2007 not observed in certain procurements ▪ Almost N500m granted staff from Capital Funds of 2014, 2015 and 2016 yet to be accounted for ▪ Agency lacks codified Standard

				Operating Procedures ▪ Violated the Federal Character Principles on staff distribution; recruitment exercise conducted in 2010 marred by irregularities
9	2018	Ahmadu Bello University Teaching Hospital (ABUTH)	▪ To identify systems and areas permitting corruption; and check unethical practices hindering health care delivery in the hospital	▪ Poor revenue collection arising from weak internal control mechanism ▪ Illegal diversion of over N100 Million patients' deposits - sum paid to staff as official and unofficial loans ▪ Violation of Revolving Fund Guidelines; funds used for irregular payments. ▪ Inadequate equipment for diagnosis and training of doctors, and poor facilities for treatment of patients. ▪ Abuse of procurement processes and violation of Public Procurement Act 2007

10	2018	Lagos University Teaching Hospital (LUTH)	▪ To identify systems and areas permitting corruption; and check unethical practices hindering health care delivery in the hospital	▪ Weak Internal control mechanism in monitoring returns from internally generated revenue. ▪ Violation of Revolving Fund Guidelines; funds used for irregular payments. ▪ Illegal use of patients' deposits for staff loans ▪ Inadequate equipment for diagnosis and training of doctors, and poor facilities for treatment of patients. ▪ Absence of Planning Department creates room for poor monitoring and evaluation of work.
11	2018	Nigeria Export Processing Zone Authority (NEPZA)	▪ Examine practices that may be aiding corruption, ▪ Inquire what may inhibit the agency from optimal performance ▪ Recommend changes for effectiveness	▪ Discrepancies in procurement processes, e.g. bid security not requested for some projects with N300 Million value as required by law ▪ Usurpation of NEPZA's powers by the supervising ministry including forceful

				diversion of agency's appropriated funds ▪ Difficulty in accessing foreign exchange at government approved rate affects operations of the Free Zone Enterprises (FZE). ▪ Interference by some government officials and agencies with operations of NEPZA
12	2019	Federal Ministries, Departments and Agencies	▪ To analyse MDAs' personnel cost between 2017 - July 2019 and capital expenditure 2018 and their expenditure profile from Government Integrated Financial and Management Information System online platform ▪ To identify causes of infractions or abuses in the implementation of budgetary allocations	▪ Abuse and diversion of personnel budget ▪ Appropriation of funds in excess of personnel budget for 2017 and 2018 in the sum of N31.8b and unspent personnel cost balance was N12.4b as at July 2019. ▪ Utilization of pensions and health care insurance budget lines on unrelated payments as overhead and capital items ▪ The Integrated Payroll and Personnel

				Information System (IPPIS) substantially reduced infractions in MDAs, particularly where desk officers were responsible for finalizing payments ▪ Failure to deduct and remit taxes to appropriate authorities ▪ Massive capital project implementation through direct labour and payment of project funds above permitted limits to staff and consequently creating opportunities for fraud, poor implementation of projects and tax evasion.

Corruption Risk Assessment

Risk assessment comes in a variety of forms – financial, cultural, environmental, forensic, health, criminal justice etc. Almost every form of human endeavor has some form of risk assessment or the other. The common decimal of these consist of - identifying risks that may be injurious to the institution or its personnel; detect object or subject that may cause the risk; assess the risks and determine action to take; review the risk assessment and ensure implementation of suggestions. The importance of corruption risk assessment is underscored by OECD as improving governance, controlling corruption, lessening institutional weaknesses and enhancing public trust in government by heightening capacities to deliver better

services.[34] This analytical and diagnostic tool focuses on potential for risks and not the perception, existence or extent of corruption.[35] It is disposed to evaluating likelihood of corruption occurring and the impact this would have on an institution should it occur.[36] However, the fact that a threat exists may not warrant the conclusion that the organization is at risk.[37] A risk assessment identifies immanent threats and determines whether those threats actually relates to the organization, its operations, management and existence and mainly, if it could be detrimental to the organization.[38] Indeed, as President Muhammad Buhari noted, "Corruption Risk Assessment… places a premium on prevention as an effective complement to enforcement in the war against corruption."[39] Appreciating the crucial nature of corruption risk assessment in the fight against corruption, the ICPC with the support of donor agencies at various times trained 69 and later 42 assessors drawn from the Commission, civil society organizations and other anti-corruption agencies.[40] Another set of assessors are to be trained in 2020 to beef up ranks of assessors and close the capacity gap.

The methodology of corruption assessment include identifying risks, listing the risk factors and schemes; collection of data, identifying risks specific to the agency, rating probability and potential impact of each corruption scheme, presenting mitigating actions, controls and processes, calculating residual or unforeseen risks and response plans.[41] CRA has been conducted sectors like Ports,[42] Education, Aviation, Health, Water Resources, etc.[43] Corruption risk assessment has also been conducted on Lagos and Abuja airports and in some cases with assistance and collaboration from international and local agencies like United Nations Development Programme, United Nations Office on Drugs and Crime, European Union, British Council, Bureau of Public Procurement and TUGAR.[44]

The reports on Education, Health and Water Resources Sector listed weighty issues: such as management malfeasance; ethical dilemma by officers on difference between gift and gratification; non-compliance and adherence to laws; abuse of rules and procedures of procurement; disputes and controversies resulting in lopsided budgetary allocation; external interference in execution of constituency projects; poor budget allocation challenges which compel chief executives to prioritize projects and programmes; politically motivated appointments that create incompetence and inefficiency; difficulties of project documentation and location; poor

monitoring and evaluation frameworks and absence of Standard Operating Procedures and manuals to guide operations; absence of complaint, redress or sanctions mechanism; failure to sanction or prosecute officers indicted for criminal offences; cost of monitoring and evaluation of projects encompassed in contractors' sum, and contractor controls when projects could be inspected.[45]

Findings from the Abuja and Lagos airports assessment report[46] indicated general tolerance and permission of touting which create serious security risks to the airports and travelers; security agency officials influence posting to the two airports; undue interference and abuse of protocol by senior security personnel to facilitate passengers' passage; over population of security officers and check desks causing unwarranted delays; brazen offer of money by passengers to security officials for one favour or the other; corruption at the two airports also aggravated by poor automaton and computerization, inferior infrastructure, crowded terminals, lack of training and professionalism, weak ethical and moral culture, low wages, sloppy controls and oversight. Assessment has also been made on e-platforms covering public sector payments such as the Treasury Single Account, Integrated Payroll and Personnel Information System, Government Integrated Financial Management System etc.

A summary of CRA integrity plans extracted from the reports include:

i. Review obsolete and unrealistic establishment statues to drive management and operations of the agency for efficiency and productivity
ii. Appointment and recruitment should conform with public service standards and federal character principles and guidelines
iii. Effective and continuous monitoring of revenue drive, collection and expenditure to check fraud and abuse
iv. Development and deployment of Standard Operating Procedures to strengthen organizational business processes
v. Eradicate physical transactional contacts with the public; reduce monopoly in official service and assignment
vi. Ensuring budget integrity and blocking channels and avenues for fraud and related infractions.
vii. Instill ethical framework and training, and

encourage whistle blowing.

viii. Promote a transparent and swift reward and sanctions system to instill and inspire integrity, handwork and diligence

ix. Installation of computerized systems and e-payment platforms to minimize and check abuses and opportunities for corruption

x. Public procurement agencies at Federal or State levels to ensure adequate oversight of procurements through frequent procurement audits; while taking appropriate actions against defaulters and recommend other sanctions to anticorruption agencies.

xi. Anti-Corruption agencies to investigate and prosecute infractions disclosed in public reports and compel review of crooked systems as indicated in the reports.

xii. Follow up on performance and integrity of constituency projects to ensure that project design and costing are presented before budgets and project conception; and selection of contractors not at the exclusive discretion of certain individuals

TABLE 2: SELECTED CRA CONDUCTED

S/N	YEAR	GOVERNMENT AGENCY	OBJECTIVES	FINDINGS
1	2012	Nigerian Ports Authority (Ports in Calabar, Tin Can, Apapa, Warri, Port Harcourt and Onne	▪ Identify gaps and vulnerabilities of corruption in the ports ▪ Identify specific measures for addressing such corruption and offer remedial measures and actions	▪ Poor facilities and equipment; lack of operational procedure giving officials wide discretionary powers creating delays in processing documents ▪ Security challenges in coastal areas endanger entrepreneurs and their businesses ▪ Concessions granted exclusively to a single terminal

				operator for all oil and gas sector imports giving importers no option on choice of operators ▪ Multiplicity of agencies creating bottlenecks, delays, and corrupt practices ▪ Lack of mechanism for cargo owners to verify claims by clearing agents regarding seizure, detention or condition for clearance of their goods and appropriate charges by customs
2	2014	National Primary Health Care Development Agency (NPHCDA)	▪ Identify factors capable of contributing to and facilitating corruption within the Agency. ▪ Design implementation of policy and practice changes to address factors identified	▪ Staff perceptions on corruption within the Agency differ due to absence of a shared organizational culture on corruption prevention the lack of established ethics training routines ▪ Absence of institutionalized set of minimum standards on permits to establish PHC; and no centrally recognized authority to whom the sponsors of PHC centres are accountable

				▪ Enabling Statute focuses only on the establishment, structure and functions of the Agency and does not clarify what corruption means within the context of the Agency's work and its prevention ▪ Absence of Fixed Asset Registers and misuse of shopping method in procurement
3	2014	Universal Basic Education Commission (UBEC) Education Sector	▪ To identify corruption-related risks in the education sector and institutions and develop measures to prevent such risks	▪ Size of UBEC Board is unwieldy – makes it too heavy and expensive to maintain ▪ Constituency Projects (Absence of needs assessment, costing, nomination of contractors) ▪ Failures by states to implement work plans that accompany matching grants and qualify states for counterpart funds ▪ Weak complaint reporting, disciplinary and whistle blowers' protection systems. ▪ Though UBE Act forbids collection of fees from students, yet pupils and parents are

				paying fees and levies and do purchase school items supposedly provided in government budget.
4	2014	Federal Ministry of Water Resources - Water Supply Department and three (3) River Basin Development Authorities (RBDAs).	• To identify corruption - related risks in the water sector and the agencies and develop measures to prevent such risks.	▪ Absence of a National Water Policy ▪ Complex web of relationship among the organizations within the Water Sector with the Federal Ministry of Water Resources exercising a lot of power and influence over the RBDAs including on project conceptualization, budgeting, contract award and recruitment ▪ Absence of performance measurement measures (eg performance contracts with Key Performance Indicators) for CEOs of RBDAs and Board Members. ▪ Poor contract implementation and performance monitoring ▪ Culture of showing appreciation, giving gifts e.g. by successful contractor

5	2015	Lagos and Abuja International Airports	▪ Verify complaints of corruption occurring in two airports ▪ Identify and assess the corruption risks that make for such corruption to occur in the airports, the schemes used and the underlying impact on the efficiency of the airports and Nigeria ▪ Propose policy changes and solutions to reduce this malfeasance and reposition these airports to operate ethically, with transparency and accountability.	▪ Touting highly visible at the Cargo terminal involving staff and security officials who engage in protocol work for individuals and companies. ▪ The two airports are highly attractive to officials of the Services for pecuniary reasons and many lobby and influence their posting there. ▪ Proliferation of security and checking desks creating unwarranted delays ▪ Interference by superior officials and professional colleagues to facilitate passages; VIP screening also abused by exempting such passengers from mandatory checks ▪ Corrupt practices exacerbated by low levels of automation and computerization, poor and dilapidated infrastructure, lack of training and professionalism, low levels of ethics and morals, poor wages, and

				weak controls and oversight
6	2017	Federal Government and MDAs	• To prevent fraud, corrupt practices and manipulation of government payment or e-platforms - Treasury Single Account (TSA), Integrated Payroll and Personnel Information System (IPPIS) and Government Integrated Financial Management Information System (GIFMIS).	▪ Absence of specific legal framework on e-government platforms in Nigeria ▪ IPPIS risk assessment exercise exposed some public servants receiving salaries in multiple ministries ▪ Ministries, agencies and departments manufacture own nominal roll outside the salary template approved for them ▪ Low level of ICT in many MDAs puts the operations of the platforms in few hands creating a monopoly of access and control with opportunities for manipulation of the platforms.
7	2019	National Health Insurance Scheme (NHIS)	• Identify and analyse vulnerabilities within the processes and procedures of the Scheme, and design an intervention plan to reduce	▪ Discrepancies in releases between funds received by NHIS into Contributory Fund and sum released by Office of the Accountant General of the Federation (OAGF) to NHIS

			and prevent the vulnerabilities	contributory Fund in period under review. ▪ Indiscriminate charges and drawing of funds against enabling statute and government policy ▪ Procurement anomalies and deviations a company awarded a Consultancy Services for Media and Special Public Relations in the sum of N46,798,512.00 in 2017, did not participate in the Technical Bidding Process, but introduced at the Financial Bidding stage. ▪ Contract worth over N900 Million Naira for Capacity Development of staff in year 2017 which did not pass through procurement process ▪ No audit conducted by external auditors on financial records for over four years before the review ▪ Former Executive Secretary left with 5 official vehicles (SUVs) but entitled to only one (1) vehicle as

				part of his retirement package. ▪ Leadership crisis and instability - between 2005 and 2019 the Organisation had 12 Executive Secretaries heading the agency with attendant management deficits and volatility

The Commission has, through these tools, improved service delivery and instilled some accountability and ethical discipline in most reviewed ministries and departments. Sometimes applied singly and otherwise in a syncretized amalgam, the multifaceted approach has been deployed in fast-track review and evaluation of budgets, expenditure profiles, projects and programmes of Federal Government Ministries and parastatals. Systems reviews and risks assessment potently demonstrate the potentials of these tools to prevent corruption in government institutions whatever the system or process.

Impact of System Study and Risk Assessment

SSR and CRA tools have instigated tremendous improvements and progress in government institutions and escalated this in the nation. Through systems reviews, most MDAs visited have corrected systems hitherto crooked or with exposures to pathogens of corruption and unethical practices. Peripheral and opaque systems and processes are opened up for public scrutiny thereby speeding up service delivery. Being people-oriented and public- driven, as the public and stakeholders are mostly involved, the tools build trust and confidence of the people in government's policies and programmes and the officials discharging the functions. Reports also indicate that transparency, integrity and efficiency are enhanced in public systems and practices as records and processes are up for checks.

Where records were not kept or transactions made hand to hand, the studies have directed and insisted on computerized flies, electronic and automated payment systems to check theft and leakages of

government funds and revenue. Through public hearing and engagements before system reviews and risk assessments, the public are informed of the particular government department and systems being reviewed, this not only improves the anti-corruption components of government, but the maturation of accountability of public officers. The public constantly engaged and exposed to the process of monitoring public projects and programmes to ensure the integrity, standards and specifications of the projects.

System studies and reviews have taken public funds from predatory hands – officials with penchant and predilection for graft and who gloat on public resources. A number of officials have been directed to refund billions of public funds fraudulently diverted from government projects and converted to private purses and use. This intervention hampers impunity and the twisted conception that public office thieves could evade punishment whatever the felony. The constant visitations through system studies are impelling government agencies to their responsibilities. Officials are conscious of conducting themselves ethically and not abusing their offices. The University System Study Review principally has improved tertiary education management and administration in Nigeria. The morphology and structures of the institutions have been improved, admission and evaluation processes also enhanced, sexual and ineffable harassment of students by lecturers greatly reduced if not diminishing. The ICPC is prosecuting a number of university teachers for this criminal act and primitivism.

Corruption risk assessment reports have ensured that infrastructure and facilities are enhanced as shown in the air and sea ports. E-payment platforms are being introduced and touting drastically reduced as security is upgraded. Recovered funds from these studies are ploughed back to government treasury to boost public expenditure and projects. Reports from the studies also provide viable intelligence for investigation and prosecution of contumacious officials indicted for fraudulent and criminal conduct or abuse of public funds and offices. It presents ample data for the ICPC on projects and programmes undone or poorly executed. Discoveries of unethical practices are followed to ensure a review. Since deployments are conducted with the ministry or agency identified, the consensual examination and schematization offer the public body opportunity to identify the weaknesses in its system and implement recommendations made to mitigate them. Some Chief Executives

were overwhelmed when confronted with the myriad of misconducts and criminal infractions taking place under their noses but kept in the dark by their subordinates. Grand corruption causes poverty[47] as SSR and CRA have revealed. These cases especially often show diversion and theft of public funds and resources allocated to alleviate poverty and to make life meaningful. Funds released for rural and urban roads, schools, health centers, boreholes, medical facilities etc and the implementation of those projects could be traced through SSR and CRA. This also supports the realization of the Sustainable Development Goals particularly on eradicating poverty.

Importantly system reviews and risk assessments have checked the monumental attrition and erosion of public office ethics and accountability. Formerly, these tools were not given regard but they gradually have exposed felonies being committed in public offices, and attention of the government also drawn to these heinous and ineffable activities. Much consideration is presently accorded these tools as more officers are being investigated and prosecuted from the outcomes of the deployments. As the OECD noted a corruption risk assessment combines the dual benefit of an organization weighing "an enforcement-focused model with more preventive, risk-based approaches."[48]

Recommendations

1. Corruption is a crime and should be fought and prevented as other crimes. Corruption being a mother to countless crimes should be approached with various specialized preventive tools suitable and adapted to each corrupt practice. Bautista-Beauchesne and Garson[49] suggest a methodological miscellany, multi-faced fields and disciplinary synergies to fight corruption. This proposes that the tools discussed may be expanded or enhanced to meet emerging risks and appraise other modes of assessment from other fields in criminal justice for an assortment of interventions.

2. The SSR and CRA in Nigeria have so far concentrated on organizational risks and inattentive to individual risks, from chief executive officers, departmental, sectional heads to the subordinates. Measures should include history of leadership, disciplinary and reward reports, personal income-assets profile, officer's risk exposures and the outcome of such exposures. Private organizations and multinational

companies periodically take these issues into consideration to assess risks their management and staff are exposed or have the agency exposed. This leaf should be borrowed in corruption risk assessment of government agencies. Placek et al[50] opined that if corruption is an individual action arising from weakness of an individual and opportunities presented by the system, then a risk assessment should address not just the system but the individual. Electronic Privacy Information Centre (using the criminal justice risk assessment) suggests, that risk assessments consider "algorithms that use socio-economic status, family background, neighborhood crime, employment status and stability, and other factors to reach a supposed prediction of an individual's criminal risk."[51] A primary challenge in risk assessment like the justice system risk assessment, appears to be unmindful of isolated threats (by individuals) that are unobservable but multitudinous.[52]

3. Risk assessors should be cautious of attributing risks. Not every risk is a threat to an organization. Institutional risks may not be sectional risks or departmental risks. In identifying these risks, it is important to factorize and particularize them appropriately. Ryder and Pasculli[53] advise states to proceed beyond theories of state cultures and policies and evaluate existing regulatory remedies in the context of sector specific measures against corruption. Sector specific approaches will appreciate the ever-changing threats and vulnerabilities which each sector is exposed. CRA should vigorously explore preventive measures and protocols advocating poverty alleviating schemes and social structures that diminish corruption.[54]

4. Materials and tools on corruption risk assessment are growing by the day but as Petkov[55] noted, this also raises the challenge for practitioners and officials on identifying appropriate tool and approach for each case. He suggests a simplification by researchers and writers of the process of applying CRA by considering different methods and weighing the merits and demerits taking into account the particular circumstances and demands of each institution.

5. Regular training on intelligence, investigation techniques, data gathering, advocacy and behavioral analysis would

enhance officers' capacity and expertise on system studies and risk assessment assignments. More collaborations between the system study teams and risk assessors would improve field work and reports. Sousa[56] noted that a particular challenge of anti-corruption agencies) is a dysfunction of internal and external units not exploiting synergies from different expertise and specialized units for optimal service and efficiency.

6. The ICPC should give more consideration to these preventive tools as they form the fulcrum of other preventive or risk-averting measures against corruption, and continual review the tools and build capacity of staff to meet exigencies and realities of the day. Similarly, the deployment of these tools should move from formal routines and bureaucratic rituals to practical deliveries of objectives. They should be driven and monitored to meet set goals not routine rituals of cloaked tea meetings, file flips and get-well handshakes.

7. CRA should be conducted on government agencies at least once in four years while SSR may be conducted once in two years to monitor compliance and avoid relapse to former risks and vulnerabilities. Agencies not responding to advisories to review and implement changes suggested within 3 months of the receipt of notice, should be published in the media and appropriate investigative and prosecutorial actions taken against such agencies.

8. Impacts of CRA and SSR on systems and structures reviewed should be accumulated and measured annually through surveys on perceptions of the public, stakeholders and service users. Compliance with recommendations for review and implementation of integrity plans would be helpful to measure effectiveness of the tools in the MDAs reviewed in corruption risk management actions.

Conclusion

Approaches like the system study and risk assessment are helpful in checking corruption in government and private organizations and should address methodically the circumstances, purveyors and toxicity of corruption. Government, policy makers and anticorruption agencies must be inclined to equally adopt the indirect approach

strategy which suggests an attention on people and service inclined programmes not only measures to change incentives for corrupt officials and individuals[57]. As reports of the deployment indicate, the fight against corruption can only be successful and sustainable with a combination of enforcement and preventive approaches. Undeniably, it is beneficial to prevent than pursue curative or therapeutic measures after the harm.

The deployment of the discussed tools has also indicated that corruption could be better fought with the conceptualization and contextualization of this national and globally malaise by understanding the malady, the situation it thrives on and framework to deal with it. Corruption is a bulbous mass of innumerable corrupt practices, and preventing corruption demands a tissue of approaches and tools. Assessment of an institution must be complemented with individual assessment since officials abuse entrusted power, breach stated rules, directives and sell benefits.[58]

Though, reports of the deployments have been commendable, it would serve the nation, government, and people effectively, if the ICPC follows up on its advisories and assessment reports to ensure that observed unethical and corrupt practices do not persist in government ministries, departments and agencies so studied, assessed and reviewed.

Endnotes

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CHAPTER 7

EMPOWERING CITIZENS THROUGH TARGETED INFORMATION, ANTI-CORRUPTION EDUCATION AND ENLIGHTENMENT

RASHEEDAT ADUNNI OKODUWA & MUHAMMED ASHIRU BABA

Introduction

The negative effects of endemic corruption in any society are multifarious, cutting across all the development indices of education, health, life expectancy as well as erosion of societal values which form both the building blocks and mortar of social cohesion. Importantly, it is the ordinary citizen, the 'common man' who suffers the most from the effects of corruption. To quote the World Bank, 'Corruption has a disproportionate impact on the poor and most vulnerable, increasing costs and reducing access to services, including health, education and justice'[1]. PricewaterhouseCoopers in a 2016 report titled *Impact of Corruption on Nigeria's Economy,* portrayed a self-perpetuating cycle of corruption and poverty positing that corruption reduces investment and productivity; lowers economic growth; increases inequity, poverty and poor institutions which in turn result to further corruption[2].

The foregoing mirrors the experience of ordinary Nigerian citizens as the ultimate victims of endemic corruption in the country. According to United Nations Office on Drugs and Crime (UNODC) in its 2019 report Corruption *in Nigeria:*

> *Corruption has been identified as one of the main spoilers of Nigeria's ambition to achieve the 2030 Agenda for Sustainable Development and, in particular, of its aspiration to lift more than 100 million Nigerians out of poverty in the next 10 years.*[3]

From the grand corruption that stymies and stifles provision of quality education, health care, amenities, infrastructure, employment opportunities etc. to the petty corruption on the roads and in offices, where a life may be lost if a bribe is not given to the policeman and palms have to be greased to access social services, the citizenry has

no respite from the blood-sucking monster as poverty, crime and unrest escalate across the nation.

The Human Development Index (HDI) compiled by United Nations Development Programme (UNDP) is a summary measure for assessing long-term progress in three basic dimensions of human development: a long and healthy life, access to knowledge and a decent standard of living.[4] The 2018 HDI value for Nigeria was "0.534— which put the country in the low human development category positioning it at 158 out of 189 countries and territories."[5]

A correlation between the HDI value and Nigeria's score and ranking on the 2019 Transparency International's Corruption Perceptions Index (CPI) of 26 out of 100 and 146th position out of 180 countries[6] might not be too far-fetched.

Corruption and the Nigerian People

The people appear helpless in dealing with this situation as they have resigned themselves to the belief that corruption is a way of life and rather than strive to do something about it, they create a vicious cycle by encouraging it. They supplicate for divine intervention in overcoming societal problems caused by corruption, yet declare that it is 'the time' of the corrupt public official, so he should be left alone to enjoy it. They perversely hope for their own turn or the turn of someone they know from whom they can get some crumbs of the largesse.

The citizens have, as it were, accepted that public office is an opportunity for the office holder to 'make' money over and above his legitimate earnings. Thus, society expects the public officer occupying a 'juicy' position to acquire material possessions and live large. Opportunists see him as a source of inflated contracts[7], expect to have some of his new found wealth or want him to influence official decisions in their favour.

For the elected official, the electioneering process would have been strewn with huge amounts of money distributed to the 'common man'. His first order of business on attaining the office therefore is to recoup in multiples all that he had spent. However, the 'common man' is still not done with him. Citizens come in droves to ask for one favour or the other. The elected official or any 'big man' for that matter is the one to go to for expenses on weddings, naming

ceremonies, health care, children's schooling, house building and house-warming, etc.

The religious and traditional institutions also jostle for the 'big man's' attention and money. He is invited to every occasion as Special Guest of Honour in the expectation that he will donate very generously. Everyone of course knows the large life is in most cases not funded by the legitimate earnings of this public officer. Like the proverbial ostrich, citizens bury their heads in the sand to avoid looking at the problem or calling it by its name – Corruption, yet the impact of the cancer is killing everyone. Instances have been documented of communities alleging witch-hunt when their 'son' is arrested or arraigned for corruption and bringing out the drums when the corruption convict is released from prison. On 26th February, 2011 Sahara Reporters wrote on the release of one such convict:

> *Convicted Peoples Democratic Party chieftain, Olabode George, was released from Kirikiri prison today—to a festive reception organized by PDP officials as well as hangers-on… A Lagos high court …found Mr. George and five other members of the board of the Nigerian Port Authority guilty of contract inflation and embezzlement.*[8]

From Punch newspaper comes another report on 4th February, 2017:

> *One of Nigeria's most powerful men, who was jailed in Britain for money laundering and fraud in a landmark anti-corruption case, has returned home… "Chief James Ibori has arrived…," said Ighoyota Amori, a political adviser to Ibori, who was governor of the oil-rich Delta state between 1999 and 2007. "A chartered private plane will fly him to Warri and he will land at Osubi airfield operated by Shell," he added. The former politician would be received at the airstrip by supporters and sympathisers who have lined up to welcome him back, he added…Ibori was jailed in April 2012 for fraud amounting to nearly 50 million pounds…following a drawn-out extradition procedure and his evasion of arrest and prosecution in Nigeria.*[9]

Still on the Ibori reception as prison returnee, *News 24* reported on 7th February 2017 that:

> *Posters and giant billboards hailing the former governor sprung up throughout his hometown of Oghara and his return on Saturday was met with singing and dancing. "We are excited that our leader, mentor and son is now a free man. Ibori was a victim of political persecution and media trial," said community leader Chief Emmanuel Ighomena. "The people of Oghara and indeed the entire Urhobo race are happy to accord him a hero's welcome".*[10]

For the petty acts of corruption on the roads or in offices, it is not uncommon to find the victims being the ones making a fuss if someone refuses to give a bribe to a policeman or an official whose work it is to deliver a service.

Conversely, those who would want to call corruption by its name are scared. They are scared of victimization for reporting or skeptical that if they do report, nothing would be done about it. In the UNODC 2019 report, the study had found in relation to bribery that:

> *The low level of bribery reporting is largely explained by the fact that 51 per cent of those who reported a bribery incident experienced either no follow-up, were discouraged from reporting or suffered negative consequences.*[11]

At a micro level, this finding was aptly captured by a respondent in the study thus:

> *"Poor people in particular are not interested in reporting any corrupt or related criminal case because it will automatically increase their sorrows … either no action will be taken or the reporter will become the eventual victim since the poor are voiceless in Nigeria" (FGD, Female, Legal practitioner).*[12]

Empowering Nigerian Citizens to Fight Corruption

This scenario of citizen apathy and complicity in the perpetuation of corrupt acts was much more deep-seated at the establishment of ICPC in 2000, a time at which Nigeria was ranked the most corrupt country in the world on the CPI by Transparency International.[13] From inception, the Commission was faced with the daunting reality of endemic corruption on the one hand and an apathetic public on the other hand, which accepted and embraced this abnormality as 'normal'. To worsen matters, the collective psyche retained a long

memory of failed anti-corruption campaigns of different administrations. From the get-go, ICPC prioritized enforcement but the Commission knew by statutory mandate that enforcement alone would not do the job. The agency alone could also not do the job. As recognized by its establishment statute, the Corrupt Practices and Other Related Offences Act 2000 (ICPC Act 2000), it was necessary to secure the people's active involvement for an enduring campaign against corruption.

In addressing preventive measures against corruption, Article 13 of Chapter II of the United Nations Convention Against Corruption (UNCAC) provides for the participation of society thus:

> *Each State Party shall take appropriate measures… to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. [14]*

The African Union Convention on Preventing and Combating Corruption (AUCPCC) at Article 5 (8) enjoins state parties to adopt and strengthen mechanisms to educate the populace on the fight against corruption, including school educational programmes and sensitization of the media.[15]

These 2003 protocols are predated by the ICPC Act 2000 which at Section 6(e)–(f) mandates the Commission *"to educate the public on and against bribery, corruption and related offences; and to enlist and foster public support in combating corruption."[16]* Arising from this mandate and knowledge of the huge task of reaching Nigeria's teeming millions, ICPC in 2001 advertised a vacancy for the position of Head of its Education Department indicating an intention to split its fledgling Education and Public Enlightenment Department into two separate entities. This separation was consummated on 1st February 2002 when the new Head of Education Department reported for work.

While Education Department takes care of face-to-face sensitization of the populace, Public Enlightenment Department focuses on publicity and information dissemination through the electronic and

print mass media. The roles of the two departments are complementary and their separation by the pioneer board of the Commission must have been to serve the purpose of sharper operational focus and impact. The two departments started with no blueprints but evolved through the years, formulating and reviewing anti-corruption programmes aimed at positive re-orientation of the attitude and behaviour of Nigerians. The aggregate of their activities tell the story of ICPC anti-corruption sensitization and citizen mobilization.

To mobilize and empower Nigerian citizens to fight corruption, fears of victimization, uncertainty of official action and ignorance must, first and foremost, be eradicated from their minds, as well as turning them back to the age-old community values of service and integrity. An effective way of doing this is by deploying specific and targeted anti-corruption education and information. According to *www.newtactics.org*:

> *A key part of the process of empowerment is education. Citizens who are better informed of the corruption within their political systems are able to fight corruption more effectively as well as develop their own strategies to do so. It is also extremely important to educate people about their rights, especially those who have limited access to such information, such as those living in remoteness and poverty.*[17]

There are two main approaches to fighting corruption: the top-down approach and the bottom–up approach.[18] The top-down approach can facilitate changes to policies and strengthening of systems, because people at the top make and implement policies. However, this works best if there is support at the top level for the anti-corruption campaign. The drawback is that much of the crippling corruption is perpetrated at this level, therefore there is a high probability of lip service and resistance to reforms.

The bottom-up approach offers a higher chance of success as the pressure for reform will be from the masses who bear the brunt of corruption. This potential can be realized if the challenges of fear, uncertainty and lack of knowledge can be surmounted.

In spite of the challenges with both approaches, active participation of the citizenry in the fight against corruption through raising public

awareness regarding the existence, causes, gravity of and the threat posed by corruption, is *sine qua non* to a sustained and successful campaign. Thus, as recommended by international protocols, education and public enlightenment strategies remain good practices, anchored in the deployment of targeted anti-corruption information across all segments of society.

ICPC uses a mix of the top-down and bottom-up approaches in developing appropriate strategies for anti-corruption education and enlightenment. Audience segmentation is the foundation for these strategies, hence the population is classified into the three broad categories of Adults, Youths and Children. Sub-classifications are also developed for each broad category with differently packaged and targeted anti-corruption messaging.

The sub-classifications under Adults are: Public Officers, Members of the formal Private Sector, Religious and Traditional leaders; Grassroots citizens (encompassing the informal private sector and others); Members of Non-Governmental Organizations (NGOs) and Community-based Organizations (CBOs); Media personnel etc. The Youths are sub-divided into two classes namely: students of tertiary institutions and graduates on the National Youth Service Corps (NYSC) scheme while the Children category consists of pupils and students of primary and secondary schools.

For all the categories, the message is the same but the programming and channels are different. From inception, the focus of ICPC anti-corruption education and enlightenment has remained 1) sensitization on what corruption is, its causes and multifarious dimensions – this is customized to the context of the specific audience, thus examples in educational institutions are used for students, while common practices in public offices are used for public officers; 2) consequences of corruption on the society and the urgent need for values-reorientation, self-discipline and regulation; 3) the anti-corruption law and citizens' duty to hold public officers accountable; and 4) empowering citizens to engage through the reporting and information channels of the Commission.

The vehicles for propagating anti-corruption education and enlightenment for different audience categories are described below, with a number of them representing enduring legacies of the Commission:

A. Youth Development Initiatives

1. **National Values Curriculum (NVC):** This is ICPC's flagship anti-corruption intervention in the academic curriculum across all levels of education in Nigeria. It commenced in 2003 during the tenure of the pioneer board of the Commission (2000 – 2005) under the leadership of late Justice Mustapha Akanbi, CFR. The curriculum was developed in collaboration with the Nigerian Educational Research and Development Council (NERDC) and other stakeholders, to provide values-based learning in Nigeria's educational system. It was approved by the Nigerian Council on Education in December 2004 with 12 thematic areas namely: Honesty; Discipline; Justice; Right Attitude to Work; Citizens Rights and Duties; National Consciousness; Contentment; Courage; Regard and Concern for the Interest of Others; Role of the Family (Family Values); Religious and Spiritual Values; and Nigerian Traditional Values.[19]

   The objective of the NVC as captured by late Justice Akanbi, *"... is the formulation of a set of values to which Nigerians from all walks of life can subscribe and which hopefully would improve behaviour and strengthen societal bonds across the nation"*[20]

   Between 2005 and 2007 the thematic areas were infused into the existing curricula of English Studies, Business Studies, Social Studies, Christian Religious Studies, Islamic Religious Studies, Civic Education, Government, History, Food and Nutrition, Book-keeping and Accounts, French, Office Practice, and Stores Management, for teaching in Primary up to Senior Secondary Schools. The use of the infused curricula commenced from 2007/2008 academic session.

   In 2009, elements of the curriculum were infused into Colleges of Education Minimum Standards in English Studies; Social Studies; Christian Religious Studies; Islamic Religious Studies; Integrated Science; Cultural and Creative Arts; Early Childhood Care Education; Primary Education Studies, General Education and General Studies.[21] The thematic areas were also infused into the curriculum of Mass Literacy and Non-Formal Education in year 2010. Work on the infusion of

the NVC into university and polytechnic curricula is still pending.

To support the teaching of the curriculum, a Teacher's Guide on the NVC was developed and published. In year 2012 ICPC, working with NERDC, organized Teacher Orientation Workshops on the use of the curriculum for Master Trainers from all the 36 states of the federation, to cascade down to other teachers. This step-down training suffered a set-back due to paucity of resources but it was revived in 2019 with the training of teachers in Lagos and Kano States and the Federal Capital Territory[22]. As part of the requirements of the NVC, students visit ICPC and EFCC regularly on excursions to find out more about the work of these anti-corruption agencies.

2. **Students Anti-Corruption Clubs (SACs):** These are clubs for students of secondary schools aimed at building moral values in the youths during their formative years. Early on, the Commission forged a liaison with the All Nigeria Conference of Principals of Secondary Schools, now All Nigeria Confederation of Principals of Secondary Schools (ANCOPSS) and National Association of Proprietors of Private Schools (NAPPS) for a wide reach of SACs in the school system. Each SAC is supported with manuals to guide members on their behaviour at school, home and in the larger society. ICPC officials give periodic Integrity Lectures at host schools precedent to the formation of the club and as part of follow-up visits. The clubs provide a practical platform to showcase values taught in the classroom through the NVC. The SAC initiative which started in 2003 with a modest 12 clubs, has now grown to 1,125 clubs in various schools.

   Allied to SAC is the Students Anti-corruption Vanguards (SAVs) for tertiary institutions. Both SACs and SAVs contribute to the ethical tone of their environments as members are charged to be role models, serve as watchdogs and report corrupt acts.

3. **NYSC Orientation Lectures:** The initiative was introduced in September, 2002 in conjunction with the NYSC Directorate and still runs to date. From an initial visitation to seven NYSC Orientation camps, capacity grew to the visitation of all 37

camps nationwide. ICPC officials visit camps during orientation programmes, usually held three times a year, to sensitize corps members on what corruption is, how it affects them and encourage them to join existing Anti-Corruption Community Development Groups (CD Groups) at their various States and Local Government Areas of primary assignment. Members of the Anti-corruption CD Groups engage in advocacy and community sensitization against corruption, produce IEC materials, erect billboards, conduct rallies, work with SACs in their locations, etc. The groups are present in the 36 states and the Federal Capital Territory. Through this collaboration with the NYSC Directorate, ICPC mobilizes an average of about 145,000 corps members every year.

4. **Essay and Debating Championships:** The Commission rolled out this engagement in 2007, targeting youths from secondary schools and tertiary institutions, particularly those with SACs and SAVs. The championships are competitions on essay writing and debates on anti-corruption–related themes. Ideas on the effective engagement of youths and general direction of the anti-corruption crusade are garnered from these competitions to inform future initiatives. The championships continue to run, albeit infrequently. As an offshoot, a Youth Integrity Camp was introduced by the Commission in September 2013, the maiden and only edition of which was sponsored by the United Nations Development Programme (UNDP) at La Campagne Tropicana, Lekki, Lagos. It was a one-week gathering of youths from Anglophone West African countries including Nigeria, to deliberate on the problem of corruption in the region and propose in competition, solutions in the form of projects. The agenda included values-reorientation and citizen action sessions; physical exercises, drama, dance and other art forms. Projects proposed to fight corruption ranged from protests, rallies, budget monitoring to the use of ICT tools. An international panel assessed the proposals and recommended the best ones for funding by UNDP.

5. **National Conference on Youth Against Corruption:** The maiden edition of this conference was held on 24th - 25th November, 2015, to mobilize Nigerian youths against corruption. It brought together youths from tertiary

institutions, NYSC and Non-governmental Organizations (NGOs) to discuss how the youths could bring their creativity to bear on the anti-corruption work of the Commission. A follow-up edition of the conference has since not been organized.

6. **Rallies** are traditionally youth-oriented and ICPC uses this vehicle to great advantage time and again. The rallies are organized to mark the continental and global anti-corruption days as well as other significant events. They are often preceded by road walks against corruption that are executed with a lot of publicity and fanfare.

7. **ICPC Goes Social! –** In response to the changing landscape of information dissemination, the Commission went social in 2011 with handles on Twitter, Facebook, Instagram and YouTube, leveraging ICT to enable real time engagement with youths and like-minded adults. In recent times, posts on social media are accompanied with infographics, audio and video clips to capture and retain attention.

B. Community Outreach and Empowerment Initiatives

1. **Religious and Traditional Leaders Forum:** In Nigeria, Christianity, Islam and traditional religions are most widely practiced[23] and every Nigerian belongs to or is subject to a particular chiefdom in his locality. The tentacles of religious and traditional institutions extend to the nooks and crannies of local communities and leaders of these institutions exert a high level of influence and control over their followers and subjects. This level of reverence places these institutions in an eminent position to play an impactful role in the fight against corruption.

   Conscious of this potential therefore, ICPC introduced the religious and traditional leaders' forum in 2008 to sensitize these personages on bringing about attitudinal change among their followers and subjects through exemplary behaviour. The leaders are urged to speak on values re-orientation and anti-corruption in their sermons and community discourse,

encouraging the people to be interested in governance and demand accountability from public officers.

Thus far, the outreach has been organized in 20 out of the 36 states of the federation, in addition to the collaborative engagements with some religious organizations such as the Nigerian Supreme Council for Islamic Affairs (NSCIA), Lux Terra Foundation, The Baptist Convention, Federation of Muslim Women Association of Nigeria (FOMWAN), Al-Habibiyah Islamic Society, Dunamis International Gospel Centre, etc. Many of these religious associations add value to the crusade by mass producing anti-corruption materials for their adherents.

2. **Town Hall Meetings (THMs):** The Commission convenes town hall meetings at grassroots communities for sensitization against corruption and to enlist the support of ordinary citizens. This activity equips the 'common man' with information on the benefits of a corruption-free society, the need to desist from encouraging corruption, where and how to report corrupt acts. It allows a free flow of ideas from the people on ways to achieve a more effective campaign.

   Since 2008 when THMs were introduced, several meetings have been held over the years across the country. An umbrella anti-corruption sensitization programme for local governments involving public officers and the community named **Local Government Integrity Initiative (LGII),** initiated by the second board of the Commission (2006 – 2010) under Justice Emmanuel O. Ayoola, (Rtd), CON, was conducted under the THM model. Although the LGII was conducted only in a couple of states, the THM is a model that the Commission still finds useful. In addition to these open town hall meetings, there are meetings anchored in specific themes and actions. Examples are:

   i) **Capacity Building for the Grassroots on Budget Processes:** In a pilot programme supported by UNDP, ICPC in 2009 trained grassroots participants including local government officials in Sokoto, Delta and Niger States, on their civic right to demand for a needs-based and inclusive budgetary process. This empowerment

programme was hugely successful as the people's involvement resulted in tangible projects ranging from market stalls, water facilities, classroom blocks, health care centres and roads, to the provision of extra-mural classes for the community children.[24] Some of these results were achieved by people who did not even have formal education. In a rural community in Sokoto, the people were able to disprove the disinformation that the particular local government council never got money from the government.

A documentary, *Real People, Real Impact* and a book of the same title record this achievement for posterity. By 2017, the initiative had been replicated in 12 more states, all supported by UNDP, but could not go round the rest of the country because of funds.

ii) ***My Constituency, My Project!* –** Concerned by the number of funded but failed zonal intervention projects *aka* constituency projects strewn across the country, pointing to possible corruption, ICPC under the current board led by Prof. Bolaji Owasanoye, took a decision to track and investigate the implementation of these projects. The tracking was conducted in 12 pilot states in 2019 by a multi-stakeholder team named *Constituency Projects Tracking Group*, led by ICPC. The exercise was later expanded to include other government projects. A grassroots anti-corruption empowerment campaign tagged *My Constituency, My Project!* came into being as an outcome of the tracking exercise.

The campaign debunks the disinformation that politicians fund these projects as gifts to their constituencies and seeks citizens' active interest in the process. The people are enlightened on the source of project funds, need to demand involvement in determining projects, monitoring implementation and protecting the projects from vandals. They are informed of all access platforms of the Commission to make reports or enquiries on funding for their projects. This on-going community sensitization is executed in

collaboration with the National Orientation Agency (NOA) and support of UKaid. So far, it has been executed in 28 states.

iii) Sensitization forums with specific segments of the grassroots such as road transport workers are held, although at infrequent intervals. In 2008, an enlightenment forum tagged 'Curbing Corruption on Nigerian Roads' was organized for the National Union of Road Transport Workers (NURTW) and Road Transport Employers Association of Nigeria (RTEAN) at motor parks in Lagos and Kano States. A few years on, a couple more were organized for the Lagos State Traffic Management Authority (LASTMA). Thereafter, it was only in 2019 that another enlightenment campaign with NURTW was considered, which hopefully might materialize in 2020.

iv) From 2007, there have been a number of sensitization and training sessions held for members of the National Anti-Corruption Coalition, an alliance of NGOs coordinated by ICPC. These NGOs are targeted for the propagation of the anti-corruption message and engagements with them in past years were made possible with funding from UNDP.

v) The media has also not been left out. Over the years, it became obvious that the media needed to be trained to understand anti-corruption issues in order to report it effectively. From 11th -12th September, 2008, a *Capacity Building Workshop for Journalists Reporting Anti-Corruption Issues* was organized for media personnel for this purpose. This has not been repeated.

C. Anti-Corruption and Integrity Forums for Public Officers

As stated earlier, the Commission deploys the top-down approach together with the bottom-up strategy in targeting its anti-corruption education and enlightenment efforts. This is in the knowledge that there are islands of integrity even in the midst of endemic corruption. These ethical persons need empowerment with the right information and support to denounce corruption in their organizations. Additionally, as well public officers, being

policy initiators and implementers, require education on the anti-corruption law so they do not act in contravention out of ignorance.

The Commission's engagements with public officials target elected and appointed persons across the legislature, executive and judiciary. These engagements are usually in the form of conferences, seminars, summits and capacity-building sessions. In 2001, ICPC convened a seminar on Corruption and National Rebirth and held some other sensitization events in 2002, including a Bar and Bench Conference on Transparency and Integrity in the Administration of Justice, to facilitate shared understanding of the law and cultivate the support of judicial officers for the crusade. This has not been repeated. Two zonal conferences were organized in Kaduna State (North West) and Enugu (South East) targeting state officials for enlightenment. The conference was programmed for other geo-political zones, but the plan was truncated for funding challenges. At a sensitization held in 2006 for law enforcement agencies, participants took a decision to reduce incidences of corrupt offers and demands on the roads by making available to the public the documentation required of motorists by the different agencies.

Also in 2006, the Justice Ayoola board designed a project tagged 'Integrity First Initiative' (IFI), aimed at addressing integrity deficit in the public sector through enlightenment and an Integrity certification process for Ministries, Departments and Agencies (MDAs), using a peer and ICPC review mechanism. Unfortunately, after the launch of the project in Lagos State and a lame effort to have it take off in Ogun State, *IFI* became buried in institutional exigencies.

Some other efforts are described below:

1. **National Conference of Anti-Corruption Committees in Nigerian Legislatures and Heads of Anti-Corruption Units in Government Establishments (NILCAC/ACTU) –** This activity commenced in year 2006 and ran till 2010. It was organized in collaboration with the then Senate Committee on Narcotics, Drugs and Anti-corruption; and House Committee on Anti-corruption, National Ethics and Values. Each year, the conference was conducted in each of the six geo-political

zones of the country within a focal state. Targeted participants included legislators from the National Assembly and States Houses of Assembly, Chairmen of Legislative Councils in Local Government Areas, Auditors-General of States, Heads of the Civil Service of State Governments, Secretaries to State Governments; Commissioners for Justice, Finance, Works, Education, Women and Youth Development, Justices of the High Court, Court Registrars, members of Anti-corruption and Transparency Units (ACTUs) of MDAs, Media and Non-governmental Organizations (NGOs).

The conference sought to promote integrity in the conduct of government business; provide a platform for purposeful legislative actions against corruption; and enhance the operational capacity of ACTUs in MDAs. Over the course of five years, the conference had been convened in 30 out of the 36 states of the federation with a total participation of 15,656 top level elected and appointed government officials. The feedback from the conference was very positive and many states requested assistance to establish ACTUs in their own MDAs. The conference also promoted a good working relationship between the Commission and National Assembly Committees on Anti-corruption. Regrettably, the conference was discontinued due to funding issues.

2. **Local Government Training on Institutionalizing Integrity -** The training is a spin-off of the **LGII.** The local government system in Nigeria is infamous for the quantum of corrupt practices[25], therefore the training is aimed at educating local government functionaries on the dangers of corruption, provisions of the ICPC Act 2000, other integrity mechanisms of government and good corporate practices, to facilitate the institutionalization of integrity at that level of governance.
From July to December, 2007, a total of 1,329 participants from 484 local government councils (out of Nigeria's 774 LG Councils) attended the first phase of the training which was held in batches at the Commission's headquarters in Abuja. Subsequent editions were later conducted at the states and local government areas for wider coverage. In current times, the Anti-Corruption Academy of Nigeria (ACAN), the training and research arm of ICPC, has taken over the training as an on-going initiative.

3. **Good Governance Forum:** Introduced in 2007 and initially tagged Guest Forum, the event featured icons of leadership in the public or private sector who shared their achievements and integrity challenges with the audience of ACTUs, NGOs and the media. Some of the personalities who had been on the forum include former Governor of Lagos State, Raji Babatunde Fashola, SAN; Chief Afe Babalola, SAN and late Dr. (Mrs.) Dora Akunyili. The 11th session of the forum was held on 11th December, 2014 and since then none has taken place.

4. **Anti-corruption Summit:** In the tenure of the third board of the Commission (2012-2017) led by Mr. Ekpo Unaowo Nta, Esq, anti-corruption summits were organized at state level by ACAN in collaboration with an NGO, Foundation for Transparency and Accountability. A number of the summits were held targeting the executive machinery of the states. There was also a conference for principal officers of tertiary institutions in Nigeria held in 2014. The message remained the same – enlightenment on the anti-corruption law and the imperative for integrity in public service.

   The incumbent board also finds the summit model useful. A *Summit on Diminishing Corruption in the Public Service* was held on 19th and 20th November, 2019 in collaboration with the Office of the Secretary to the Government of the Federation. It targeted the top hierarchy of the federal government across the legislature, executive and judiciary; and was anchored on the reports of ICPC corruption prevention studies and exercises. This was however not a session on moral suasion to policy makers and implementers but a report card on the integrity quotient of the MDAs under their watch. Aware of the coercive powers of the Commission, the revelations engendered resolutions by participants to do things better and right.

5. **Paper Presentations:** Hundreds of these have been done over the years on invitation by stakeholders to anti-corruption events. This activity still continues with ICPC featuring in induction and retreat sessions for National Assembly members and Permanent Secretaries, amongst several others.

6. **ACTU Sensitization:** ACTUs established by the Commission in MDAs have authority to carry out enlightenment activities against corruption within their organizations. Periodically, these units are trained by ICPC and they also arrange for the Commission to deliver customized sensitization lectures for their organizations.

7. **Advocacy and Courtesy Visits:** From the tenure of the pioneer board, the Commission has used advocacy and courtesy calls to reach out to the top echelon of institutions and government to seek their understanding and support for the crusade. One such visit was made to the Chief Justice of Nigeria, Justice Tanko Muhammad and Supreme Court justices on 11th March, 2020.

D. Mass Media

i) **Television Programmes** *Fighting Corruption*, an enlightenment television programme in English language ran from 2001 to September 2002 and was rested due to paucity of funds. It was resuscitated in March 2003 and rested again after six months.[26] In December 2004, it metamorphosed into the current *Corruption Must Go!* (*CMG!*) which is beamed weekly to millions of Nigerians on Nigeria Television Authority (NTA) Network Service and NTA International. There was a 16-month hiatus from April 2015 to September 2016 for reasons of funding. Since that time however, the programme has been on air continuously.

The broadcast of *CMG!* in the three major local languages of Yoruba, Hausa and Igbo for the grassroots commenced in 2017. *CMG!* broadcasts activities of the Commission and enlightens the populace on the anti-corruption law. News of ICPC enforcement and prevention activities aims at deterrence and building confidence that the war is winnable. Information on access to the Commission is also provided.

ii) **Radio Programmes:** From January to March, 2002, *Corruption Today*, aired on Aso Radio 93.5 FM before it

was discontinued. It was revived as a drama series titled *Tight Rope* and aired with the Hausa version for 13 weeks in 2004 and got rested again. During the tenure of the second board, a collaboration was struck with a radio station in Ibadan named *Splash FM* aka *Integrity FM* to air ICPC stories but that arrangement fizzled out after about a year. Anti-corruption jingles in English and local languages that are placed on radio in the 36 states have been reduced to 18 states since 2015 due to funding constraints. However, the Commission appears regularly on television and radio on invitation or as part of its own specific campaigns.

iii) **Documentaries:** The Commission acquired the capacity from 2012 to produce its television programmes from scratch to finish. This ability was extended to documentaries. These days, sensitization sessions routinely have short documentaries built into the agenda and this has a big impact on the reception of the audience.

iv) **Drama sketches and skits:** The Commission has an in-house drama group *Integrity Players* which puts up anti-corruption drama sketches at events. It also collaborates with others to do the same. The Akin Fadeyi Foundation production, *Corruption, Not in My Country!* has ICPC endorsement and was televised for eight months on the UNDP support to the Commission. A number of 60second public enlightenment video clips produced by ICPC on Corruption and COVID-19 Funds are currently on air on NTA Network Service by a collaborative arrangement.

v) **News reports and releases on ICPC activities:** These are sent to media houses and uploaded on the **website** to give due publicity and keep anti-corruption issues on the front burner of public discourse. The Commission maintains a robust relationship with the media and in 2019 alone, ICPC was reported 1,143 times. The Commission's current newsletter ***ICPC News*** evolved from *ICPC Digest,* which was first produced in 2004. In addition to the hard copy, an electronic version was

added in May 2017. Production of a magazine titled *ICPC Monitor* started in 2006 but was stopped in 2011.

vi) **Production of IEC materials:** Branded IEC materials are usually produced for specific events. However, the quantities are never enough to sustain visibility for the Commission. Appreciable quantities were only produced at the times UNDP funded activities. Billboards (a mass enlightenment platform) were erected near city gates in all the states of the federation but over the years they became derelict and were not replaced for lack of funds.

vii) **Toll-free lines:** The Commission's toll free lines accessible through the smart number 0800-CALL-ICPC, are the backbone of prompt communication with citizens. Complaints of corrupt practices are received, feedback is given on old complaints and enquiries on other issues are answered. The lines became operational in year 2014.

E. Engagement with the Private Sector

Targeting the private sector for anti-corruption education is still very much uncharted. Generally, the enlightenment efforts of the Commission on mass media, target all citizens in both public and private sectors but more direct work needs to be done with the private sector as the supply side of corruption. The Commission accepts invitations to present papers at events hosted by some private sector players e.g. Institute of Chartered Accountants of Nigeria (ICAN) and there have also been efforts to infuse elements of the ICPC Act 2000 into the professional codes of conduct of some professional bodies but a lot more needs to be done.

F. Empowering Citizens Through Policy Development and Advocacy

In its role as the premier anti-corruption agency in Nigeria and in line with its public education and enlightenment mandate against corruption, the Commission in 2014 developed a draft National Ethics and Integrity Policy in collaboration with other stakeholders which is aimed at restoring public confidence in governance and influencing attitudinal change in the daily affairs of the citizenry. The objective of the Policy is to enhance transparency and accountability

in all sectors of the economy. It is designed to emphasize the role of personal responsibility in national development; empower the citizens on ways unethical practices can be controlled; and increase the commitment and participation of everyone in the fight against corruption.

Through the vigorous advocacy efforts of the current Board of the Commission under Prof. Bolaji Owasanoye, the government has shown tangible interest in adopting the policy framework before the end of 2020 and supporting the Commission and NOA in its dissemination and implementation. When adopted by the government, the Policy as a key strategy to improve public understanding about corruption prevention mechanisms, will enhance citizen power over elected and appointed leaders.

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Many of the initiatives on anti-corruption education and enlightenment by the Commission were made possible only with the support of development partners. UNDP from 2007 to 2017 supported ICPC with a cumulative assistance of about N460,000,000.00. Others such as the Swiss Embassy, UKaid, UNODC and MacArthur Foundation also deserve credit for past and on-going support to the Commission with specific regard to this function.

Lessons Learnt
Over the years, a number of lessons have been learnt in the process of empowering the people to own the anti-corruption crusade. These lessons shaped succeeding initiatives and hopefully should impact future efforts. Some of the issues are captured as follows:

i) Achieving a change in mindset and behaviour takes a long time. It takes a while for people to overcome their fears or cynicism about the system.
ii) People are basically selfish and for as long as they can get away with taking short cuts and subverting the system to their benefits they will not resist or take action against corrupt demands.
iii) Attention of the citizenry is better captured if the anti-corruption messaging focuses on the cost of corruption by demonstrating the alternative benefits that would have accrued to the citizens if money was not stolen or nepotism and self-dealing did not happen. ICPC started doing this only from 2019.

iv) Facts-based audio-visual messaging (e.g. short video clips; documentaries, television programmes) facilitates greater interest and anti-corruption activism.

v) Evidence of the enforcement and prevention actions of the Commission gives a great boost to education and enlightenment efforts. As someone once said "Education without enforcement is mere entertainment".

vi) Using local languages as appropriate contributes to the success of communication activities.

vii) Collaboration with relevant agencies and other institutional partners gives the enlightenment activities far greater impact than going it alone. Examples are in the impact generated by collaboration with NERDC on the National Values Curriculum; NASS on NILCAC/ACTU Conference; NOA on *My Constituency, My Project!* and NTA on Corruption and COVID-19 funds.

viii) Regardless of the level of formal education, citizens do take action when they are aware of their rights and are guaranteed protection against victimization. A good number of the trained persons under the Grassroots Budget Processes could not speak English language, yet they produced tangible results from their activism.

ix) Brevity, coherence and persistence are essential to effective anti-corruption messaging. To impact the collective psyche, the message has to be sustained over a long period of time using all relevant channels.

x) NGOs and other civil society mechanisms are indispensable to cascading the enlightenment to the nooks and crannies of the country.

xi) Human capital development in strategic communications driven by contextually relevant content and delivery is key to the initiation and implementation of effective anti-corruption education and public enlightenment strategies.

xii) Sustainability of initiatives is key to achieving long-term impact.

Challenges

In the two-decade experience of programming to enlighten and effectively mobilize citizens against corruption, some of the challenges that have been found to constrain a faster-paced citizen ownership of the crusade are:

1. Inadequacy of funding: it is a fact that education, publicity and enlightenment efforts cost money, even more so in a country with over 195 million citizens[27] The inadequacy of funding over the years for this very important function has been a major constraint to sustainability of initiatives, institutionalization of values, production of large numbers of IEC materials, follow-up on existing initiatives and wider reach through more television and radio stations.
2. Owing to the fact that initiatives are not documented as policy, succeeding boards do not readily adopt past activities for continuation and consolidation.
3. The cultural taboo of being the purveyor of ruin to others makes it an uphill battle to get citizens to report on corrupt persons especially when they are colleagues, friends or neighbours.
4. It is difficult to get citizens to change from incentivizing corruption, when palliative policies to reinforce values are not in place, or processes are cumbersome e.g. some people will continue to pay bribes for jobs because of soaring unemployment and very few job opportunities; they will grease palms to fast-track processes that take excessive time.
5. Little or no collaboration on the education and enlightenment functions among the major anti-corruption agencies. More impact can be made if ICPC, Economic and Financial Crimes Commission and Code of Conduct Bureau can pool resources and run initiatives together on mass mobilization against corruption.

Conclusion

Over the years, the Commission has grown in its function of educating and mobilizing Nigerians against corruption, learning lessons from what worked and what did not work. Progress in anti-corruption comes slowly but sustained commitment and vigilance from society will bring about the desired changes. When people are empowered with the right information and have confidence in the system, they will be emboldened to take purposeful action against corruption. Outside of its permanent initiatives such as the National Values Curriculum, ICPC in 2019 had a total of 667 sensitization sessions targeted at different categories of citizens nationwide, 74 editions of *Corruption Must Go!* (English and local languages) 22 Town Hall Meetings, 16 Road Walks and 16 Panel Discussions.[28]

Since it may not be easy to immediately measure the impact of sensitization activities on the human psyche, certain indicators lead one to a safe assessment that these efforts by the Commission are achieving steady impact. The fear or skepticism of the public about reporting corruption is shifting positively as is evident from a position of 264 petitions in one year[29] to 1,934 petitions in another year (2019)[30]. Another pointer is the conclusion of UNODC that its 2019 survey found that many people consider corruption to be unacceptable, young people in particular. In its words:

> *This seems to suggest that the efforts to introduce ethics and integrity-related content into the educational system, the establishment of anti-corruption and integrity clubs and similar measures targeted at young people have started to bear positive results.* [31]

The communities that achieved results from involvement in the budget processes and by holding their leaders accountable, will never go back to the old days of disinterest. So also are the persons who are fired up now to track government projects in their constituencies. The public officers who see top persons being hauled off to jail in practical enforcement of the anti-corruption law, realize it is no longer business as usual. The Commission's enlightenment against corruption has contributed immensely to the huge awareness on the ills of corruption and the need for everyone from top to bottom, to practice integrity and act against the cankerworm.

However, there is still a lot more to be done.

Endnotes

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CHAPTER 8

STRATEGIC PLANNING IN AN ANTI-CORRUPTION AGENCY: THE ICPC EXPERIENCE

BALA U. MOHAMMED

Introduction

Established in June 2000, the Independent Corrupt Practices and Other Related Offences Commission, ICPC, came into existence at a time when Nigeria had developed a reputation for endemic corruption. This perception was further reinforced by the Corruption Perception Index (CPI) developed by Transparency International (TI) which ranked countries of the world on the prevalence of corruption on an annual basis. The country had in 1999 inaugurated a democratic President with a lot of expectation by citizens for the delivery of dividends of democracy as democracy was seen as a form of government that would deliver a better living condition for the people. Accordingly, there was a lot of expectation that the newly created ICPC would provide a considerable fillip to the successive efforts made over the years to no avail to control corrupt practices that were prevalent in governance in Nigeria. It was also generally felt that tackling corruption is a necessary condition for the delivery of good governance by way of improvement in the provision of public goods and services to citizens in the new democratic dispensation.

This expectation of the Commission to tackle the menace of corruption was not being met four years after the Commission was set up, and regrettably so, the TI consistently maintained Nigeria's rating at the lowest percentile of the Corruption Perception Index. It also became obvious that the Commission according to the 2004 Strategy document "faced enormous challenges from those who do not wish to be checked from looting government funds and as purveyors of corruption". This was in addition to the internal challenges facing the Commission which included inadequate resources and capacity to confront a malady that had become systemic in the form of pervasive rent-seeking that impinged on the capacity of the bureaucracy to provide good governance.

To overcome the challenges, the Commission adopted the Strategy Planning process as a way of improving its capacity to deliver on its mandate to tackle the endemic corruption in Nigeria. In The Strategy-Focused Organization, Kaplan and Norton (2001) noted that the concept of the Balanced Scorecard which they introduced in the 1990s allowed private companies to achieve results of such magnitude and speed that affected the entire organization. An outcome of introducing a Balanced Scorecard to business enterprises they asserted further is that companies re-defined their relationship with their customers, re-engineered their fundamental business processes, taught their workforce new skills, and deployed new technology infrastructure which improved results. In the same vein, Kaplan and Norton (2001) affirmed that the same results would ensue for public sector organizations as the fundamental principles are applicable, and will involve including the incorporation of performance management and feedback mechanism to serve the interest of the public to better improve public service delivery in non-profit organizations. Public sector agencies are set up based on their enabling Acts to deliver goods and services to citizens. The maximization of profit is not the *raison d'etre* for setting up such agencies, a fact that makes public service delivery the balance sheet of public sector agencies. In the case of ICPC, it was set up to help rid the country of corruption.

The ICPC, a public agency with corruption enforcement and prevention mandates, by adopting the balanced scorecard methodology in the areas of its operation and internal processes could improve its performance as an Anti-Corruption Agency. It is noteworthy that Kaul (1997:15) cited in Andrews and Shah (2005:172) highlighted that results-based planning and incentive schemes for performance have a very positive effect on public organizations. Keilitz *et al* (2018) noted that a performance measurement and management system is intended to reflect outcome rather than output measurements, this brings about an outcome orientation in an organization which ensures that defined objectives are measured rather than the means to achieve them.

The move by the ICPC to adopt strategic planning to improve performance required organizational changes and the alignment of work processes with newly identified objectives. According to Suhomlinova (2006) cited in Ovadje (2014), organizations change for relevance because organizational survival depends on the "fit"

between an organization and its environment. We have noted how the external environment yearned for a more effective ICPC to tackle the perceived endemic corruption in Nigeria. This external pressure necessitated the Commission to seek a more robust strategy to improve service delivery to fulfil the mandate of the Commission as encapsulated in the Corrupt Practices and Other Related Offences Act, 2000. Ovadje (2014) states that the drivers of organizational change may be internal or external, and in the case of ICPC both the internal and the external environment were favourable for the anticipated change.

Thus, it is noteworthy that change is more enduring if there is a convergence of both internal and external consensuses for the relevance of the expected change. The fundamental outcome of a strategy process entails the incorporation of a performance management system to measure organizational performance and provide accountability to both internal and external stakeholders. Also, the availability of a transparent framework to monitor and evaluate progress provides a foundation for improvement in accountability as information on inputs, output and outcomes provide a measure to evaluate resource utilization and service delivery.

Strategic Action Plan, 2004-2008

The first Strategic Action Plan undertaken by the Commission was done in collaboration with the International Bank for Reconstruction and Development (IBRD) or The World Bank, British Council/UK Department for International Development (DFID) with support from the United Nations Office on Drugs and Crime (UNODC). A Strategy Planning Workshop was held in Lokoja, Kogi State, from 2nd-4th June, 2004. The main purpose of the Workshop according to the Strategy Document was to "bring various stakeholders together to develop a more comprehensive and inclusive strategic framework for the ICPC". There was a Strategy Workshop that was facilitated by Mr. Tony Kwok, a retired Deputy Commissioner from the Hong Kong Independent Commission Against Corruption (ICAC). Hong Kong has had a very successful anti-corruption war and to have had the facilitation of the Workshop by an experienced practitioner proved invaluable to the strategic repositioning of the ICPC.

The Workshop which was very successful, and thus provided a firm foundation for the institutional strengthening of the Commission. The

methodology adopted for the workshop involved a review of the external environment of the ICPC using PESTLE analysis, review of the internal dynamics of the ICPC using SWOT Analysis and the McKinsey 7S System Analysis Model. The Workshop participants in addition to the management staff of the Commission included key stakeholders from the judiciary, law enforcement, development partners and non–governmental organizations. In the course of applying the aforementioned tools to scope the Commission, key strategic problems and solutions were identified.

A Technical Group (TG) comprising ICPC staff and international consultants was set up after the Workshop to further deliberate on the findings and come up with an action plan for implementation. The TG recommended 77 actions to be undertaken by the ICPC as highlighted in the Outcome Document. The Workshop also recommended that a high powered Steering Committee be set up to prioritize action plans and produce a workable 5 -year plan to achieve the objectives set out in the document, namely, mapping out the implementation process that included identification of the Results Framework and an Operational Plan. The Steering Committee set up to develop an operational plan did not conclude the assignment as envisaged by the Strategy Document.

The failure to develop an operational plan for the 77 Action Plans meant that a Monitoring and Evaluation framework was not made to follow up on the success of the workshop planning. The tools to measure the execution of the strategy were missing, and this made the first strategy to be unimplemented holistically. However, it is worthy to note some of the actions identified for execution like the plan for a training school or unit inside ICPC- Action Plan 21 was implemented spectacularly well. The Anti- Corruption Academy of Nigeria (ACAN) is today a leading anti-corruption education resource centre and is recognized as one of the critical infrastructures in the implementation of the National Anti-Corruption Strategy (2017-2021).

Strategic Action Plan, 2013-2017

The second Strategic Action Planning Workshop was part of the Justice for All (J4A) Anti –Corruption Intervention support to Anti-Corruption Agencies (ACAs) in Nigeria by the DFID under the leadership of Dr. Bob Arnot. The anti-Corruption component was managed by Juliet Ibekaku and Emmanuel Uche of the DFID. The Plan

Workshop tagged ''Workshop on the Development of Organizational Strategy for the Independent Corrupt Practices and Other Related Offences Commission'' was held at Sheraton Hotel Abuja from 6th-8th December, 2011. Due to the experience of the first plan which was partially implemented as a result of the absence of an operational matrix, the Plan Workshop was followed by a Plan Implementation Training Workshop with the theme "Implementation of the Strategic Plan" held from 11th-15th June, 2012. The lead resource persons were Dr. Paul Beggan and Ms. Saghar Faroughi of the DFID. The Strategic Plan (2013-2017) document was written by the Management Staff of the Commission with the technical support of the UK Department for International Development (DFID) under the Justice for All (J4A) programme. The document detailed the procedure and assumptions behind the strategy. This includes the identification of activities made following change management principles after a painstaking SWOT analysis and assessment of the Commission's past performance.

Arising from the outcomes of the SWOT analysis, considerable attention was given to improving management capacity and setting up a mechanism to review policies, procedures, systems and processes that will drive implementation and measure performance. This is why an Implementation Training immediately followed the Planning Workshop to latch on the momentum created. The Implementation Training was principally geared to inculcate Action Planning tools into the work processes of the Commission, and was initially conducted for the senior management team of the Commission to prepare them for full implementation of the strategy. Unlike the first plan which was partially implemented as a result of lack of operational planning, the operational planning training was cascaded to all Departments and Units of the Commission. This involvement of all Departments and Units was to enable them to plan on how to deliver their respective activities in terms of objectives, outcome, output, activity, target and responsibility for delivery. This way a lot of hands-on learning permeated the entire Commission. However, in the course of the operational planning exercises, the absence of baseline data as a guide to measuring plan performance presented a challenge which was solved by a consensus of relevant Departments and Units setting targets for performance.

The Plan had a well-structured Monitoring and Evaluation planning framework which served as a constant reference in assessing the performance of the Plan Implementation. Monitoring which is the

collection and analysis of information aims at keeping track of the planned activities to eliminate bottlenecks that could hinder performance. Evaluation, on the other hand, is the assessment of the impact of the intervention in terms of the strategy employed to find out whether the results measured to the expectations of Plan Implementation. The Operational Plan of the second strategic plan incorporated as part of the M&E planning framework, a mid-term evaluation report at the end of the first two and half years of the Plan Implementation as well as a final evaluation at the end of the plan period. The collection of data was done monthly by the plan performance management unit of the Planning, Research and Review Department, and a quarterly report of progress was disseminated to relevant stakeholders. The collection of effective performance measures ensured that the Commission focused on the ends delineated in the operational plan and not on the means to achieve them which had hitherto been the norm.

Also, mid-year and annual evaluation reports that assessed performance were regularly prepared to keep track of the implementation progress. In this regard, surveys were also conducted to assess staff and management alignment to Plan Implementation during the plan period. The surveys conducted provided the necessary feedback that improved implementation.

For the most part, these M&E reports assessed how the Commission fared towards the realization of the Strategic Plan Objectives. The reports also examined the effectiveness and efficacy of the Commission's strategy, the relevance of the strategy, and identified successful and unsuccessful activities within the period under review. Besides, the reports examined the challenges to effective implementation and also proffered solutions where possible for better performance. These reports provided the Commission the opportunity of learning from experience, improved the planning and allocation of its scarce resources, improving service delivery, and demonstrated to stakeholders its commitment to deliver on its mandate.

The Strategic Action Plan 2013-2017 had the Vision and Mission statement thus: *A Nigeria free from all forms of corruption and corrupt practices* and, *To rid Nigeria of corruption through lawful enforcement and preventive measures* respectively. These formed the broad impact that the Commission envisaged from the implementation of the 5-

year plan. In line with the ICPC Mandate and from the Vision and Mission statements were the 3 key strategic objectives which are as follows:

- **i.** A more effective reportage, investigation and prosecution of corruption cases.
- **ii.** Reduction of the system – induced corrupt practices.
- **iii.** Increase managerial effectiveness of the ICPC.

The CORE VALUES that would guide the staff of the Commission in the performance of their duties are Professionalism, Integrity, Dedication and Tenacity, Excellence and Teamwork. (PIDET). The Mission flowed from the ICPC mandate as encapsulated in section 6 (a – f) of the Corrupt Practices and Other Related Offences Act (2000): Enforcement, Prevention and Public Enlightenment & Education of Nigerian citizens on the ills of corruption. The Plan envisaged that the attainment of these key objectives would help to realize the mission of the Commission.

The Plan as we noted earlier incorporated a Result Framework with a well-articulated M&E framework that provided the basis to assess the progress of the plan and ensure an effective and efficient implementation process. This M&E planning framework was distilled into three components namely:

- **i.** The Result Framework which captures the results logically showed the causal linkage between the mission, objectives and expected impact on the Commission.
- **ii.** The Performance Management Matrix (PMM) which detailed the key performance indicators for the expected result. The PMM defined the indicators to be used, units of measurement as well as provided a plan for collecting data and reporting performance data regularly.
- **iii.** The third is the M&E Operational Plan which laid out specific targets to be delivered and key activities required to improve the performance and the contribution of the Commission's Operational Units. It also incorporated an information building and analysis system to ensure that results were monitored and implementation was on course.

The examination of the strategy revealed that it was all-encompassing and aimed at ensuring a very smooth implementation throughout the plan. There is no doubt that the Commission set out a viable mechanism to ensure that the implementation plan was effectively and efficiently achieved. The inclusion of the M&E planning framework in the plan was an added advantage over the first strategic plan of the Commission which was not implemented because the operational plan did not follow the strategic plan workshop. The Strategic Plan (2013-2017) outlined fifty-seven (57) strategic activities that were expected to be accomplished within the five years of the plan. The Commission made some appreciable progress towards the realization of the strategic objectives set out in the Second Plan. At the developmental stage of the Plan, the SWOT analysis carried out by the Commission revealed that part of the internal challenges facing the Commission included the lack of up-to-date policy documents, lack of procedural manuals and guidelines for operations, non-existence of up to date infrastructure including modern information technology to aid operations among other challenges.

To this end, Key Objective 3- *Increase Managerial Effectiveness of ICPC* was intended to strengthen the Commission through the inclusion of activities and development of policies and procedures in line with international best practices for enhanced performance. Thus, to assess the performance plan implementation, the Commission in collaboration with the J4A UK DFID organized a plan implementation Retreat in Kaduna from 3-7th April 2017. The objective of the retreat was to review performance and identify the deliverables expected of ICPC in the National Anti-Corruption Strategy (2017-2021). One of the outcomes of the retreat was to further align the Commission to the National strategy against corruption. The data requirements of the National Bureau of Statistics for anti-corruption agencies was also examined with a view to incorporation in the subsequent plan for ease of reporting on National Corruption data.

Some Achievements of Implementation

Some of the recorded achievements of plan implementation are as follows:

i. The Development of Standardized and Systematic Procedural Manual for the Conduct of System Study and Review of MDAs by the Commission. As a result, the

conduct of system study and review is more systematic, and the Commission follows-up on the outcomes of the studies by inviting and discussing the findings with the relevant MDAs as well as setting out a framework for the enforcement of reviewed organizations.

ii. The Commission's Intelligence Unit in charge of intelligence gathering and analysis developed a Procedural Manual for intelligence gathering and analysis to guide investigators.

iii. The Commission developed a procedural manual for identification and handling of intelligence-led cases. This was a follow-up to the establishment of an Intelligence Unit to ensure that the identification process is systematic and professionally executed.

iv. The development of the Reporting Template for Anti-Corruption and Accountability Compliance Initiative (ACACI). The Plan provided a platform for the development of the reporting template for ACACI for MDAs to report on compliance with anti-corruption and accountability regulations and legislations.

v. The Development of an in-house Whistle-Blower/ Protection Policy. A Whistle-Blower/Protection Policy was developed by the Commission following thorough and painstaking research to boost the confidence of patriotic citizens who might be victimized or endangered for reporting corruption.

vi. Following the establishment of Asset Tracing, Recovery and Management Unit (ATRM) it became imperative that a codified guideline for such tactical work be developed for proper guidance of operatives. It is noteworthy that one of the Key Performance Indicators is the value of assets recovered which have been identified as a vital performance measure for the Commission.

vii. A more standardized petition reporting format was also developed. The implementation of the plan led to an improved Petition Reporting Format for petitioners through the introduction of e-petition via ICPC website. It also provided a platform for petitioners to follow up on petitions submitted to the ICPC.

viii. The Commission also developed an external communication strategy that improved proactive and regular communication on the activities of the

Communication. The external communication strategy helped the Commission channel its scarce resources to leverage on areas where it has a competitive advantage.

ix. The Commission also developed an Internal Communication Strategy for the staff of the Commission. There is an internal communication strategy to guide staff on information management that is a consequence of plan implementation.

x. The implementation of the strategy also led to the review of Operational Modalities of the National Anti -Corruption Volunteer Corp (NAVC).

xi. The Commission within the plan period reviewed its ACTU Standing Order to ensure effective and efficient service delivery of ACTUs' mandates.

xii. The Commission developed the Ethics and Integrity Compliance Scorecard for MDAs. The Scorecard is used by ACTUs to report on their performance to be published annually and this has made ACTUs more proactive in their various MDAs.

xiii. The Strategic Plan facilitated the timely review of the Commission's APER Form for the assessment of the performance of the staff. The newly designed APER which has since been operationalized is utilized bi-annually for staff performance assessment.

xiv. The operationalization of the Commission's Training Policy was done. Although the Commission had an existing training policy for its staff before the implementation plan, the Strategic Action Plan made it to be reviewed and operationalized.

xv. The Commission successfully formulated an Information Communication and Technology (ICT) Policy to be used as a guide in the application and usage of ICT Software and infrastructure in the Commission.

xvi. An Information and Communication Technology (ICT) Strategy which spelt out the strategy of the Commission in ICT in terms of infrastructural development for the 5- year plan period was developed. The Strategy also detailed the infrastructure and the maintenance plan that has assisted the Commission to meet the current trend in ICT advancement.

xvii. A new Staff Handbook for orientation of newly recruited staff was developed. This was done to ensure that newly

recruited staff obtain the required orientation necessary to face the challenges of work.

xviii. The Commission introduced 5 toll-free lines for effective reporting of corrupt practices. This is one of the key cardinal activities of Objective I of the Strategic Action Plan. The lines were successfully introduced in 2013 and are still providing support to stakeholders.

xix. The Commission also enhanced its website into an interactive web portal for reporting of corruption cases. Other social media platforms like Twitter, Facebook, WhatsApp, etc. were also established for better engagement with the public.

xx. The Strategic Plan had the launching of ICPC Academy as one of the activities in the operational plan. The academy though in existence became a priority and its development was fast-tracked leading to the completion of infrastructural development as well as the commencement of its operation.

Challenges to Second Plan Implementation

There were challenges to full implementation of the Plan according to the evaluation conducted after the plan. The most critical challenge being the inability to secure adequate resources to fund implementation. Besides, the meagre resources available were also not optimally allocated to core result areas of performance to enhance execution. The failure to cascade Strategic Objectives from Departments/Units to individual staff as part of a seamless performance management system was also seen as a challenge to the plan implementation. The organizational objectives assigned to various Departments and Units were to be further assigned by them to individual staff and teams as a measure of individual performance accountability. This was not done in most of the key results areas and may have affected the overall performance of the Departments and Units. Other challenges identified are poor attitude to the provision of relevant data by departments and Units. A robust M&E system relies on adequate and timely availability of data. The availability, timeliness and reliability of data was a challenge in implementation. The need to also properly align the Commission's 15 state offices to the Commission's performance objectives became obvious as performance data from state offices were not very encouraging.

The Third Strategic Action Plan, 2019-2023

The Commission in collaboration with the J4A UK DFID had organized a plan implementation Retreat in Kaduna from 3rd-7th April, 2017. The objective of the retreat was to review performance and identify the deliverables expected of ICPC in the National Anti-Corruption Strategy (2017-2021). This was done in the last year of the second strategic plan to bring the Commission to appreciate recent developments for incorporation into the next plan. As a consequence of this, the third plan incorporated key performance indicators that would provide relevant data to meet the requirements of statistical template of the National Bureau of Statistics and ICPC organizational performance statistics to measure the National Anti-Corruption Strategy (NACS).

The Third ICPC Strategic Action Plan (2019-2023) was supported by the Rule of Law and Anti-Corruption (ROLAC) programme under the 11th European Development Fund (EDF) of the European Union (EU) with the British Council as the implementation partner. The development of the Plan was a sequel to the conduct of a Workshop for the development of an organizational strategy for the ICPC. The 3-day workshop was held at Dennis Hotel Abuja from 21st-23rd November, 2018. The Workshop reviewed the implementation of the Strategic Plan (2013-2017) with the Facilitator, Dr. Paul Beggan commending the Commission for being among the few organizations supported in 2012 by UK DFID J4A programme to develop organizational plans which remained focused in implementation. The fact that the Commission implemented its strategy and provided up-to-date data for a review at the Workshop showed that the ICPC has improved tremendously in its institutional capacity to deliver on its mandate.

During the development of the third Plan, the Workshop applied the methodology of strategy development sessions through the conduct of a PESTLE, SWOT, and McKinsey 7S environmental scan to assess the present condition of the Commission. The participants retained the Vision, Mission and Core Values of the last Plan as they were found relevant to the prevailing circumstances. The Key Strategic Objectives of the previous plan were also retained with some slight modifications, but the Results Framework and both the operational and M&E plans retained their basic assumptions of the strategy and deliverable mechanism for meeting organizational objectives. However, there were modifications in the KPIs as highlighted in the

plan document, some of these are in Key Objective (1). The KPI increased capacity to investigate cases was reviewed to *increase capacity to investigate and prosecute cases*. Under Key Objective (2) the KPI from Reduction of system-induced Corruption to *Reduction of system-induced corruption and increased empowerment of the citizenry.*

There were key performance indicators that were not in the second strategic plan which were included in the new plan and some of these include; (1) Number of monitoring and evaluation activities undertaken by ICPC, (2) Number of MDA's assessed with Ethics and Compliance Scorecard. Others are, (3) Number of MDA's assessed with ACTU Scorecard and (4) Number of individuals trained by the Anti-Corruption Academy of Nigeria. In the course of the Workshop, strategic activities were reviewed and those concluded in the last plan were eliminated while those outstanding were reviewed and assigned to the relevant Departments and Units to execute. It is also noteworthy that an activity that is of utmost importance to implementation was identified as *the organization of a financial exercise to cost the implementation of the strategic plan*. This is essential to guide the Commission in sourcing support from the government and stakeholders to mitigate the risks to poor implementation.

The Strategic Plan (2019-2023) was concluded in 2018 and kept for the incoming 4th Board to approve before implementation. The new Board which assumed duty on 4th February 2019, bought into the strategic direction of the road map and subsequently approved it for implementation. In addition, the Board introduced new interventions like Constituency Projects Tracking Group (CPTG), enhanced collaboration with relevant stakeholders, increased training for prosecutors and investigators leading to certification of some officers in various professional fields that have enhanced service delivery. The scorecard of the Commission for 2019 virtually exceeded all the targets set in the plan document for 2019. This is a testimony of the vibrancy of the Board in providing leadership and willingness to take charge for creation of a new dawn at the Commission. The 2019 scorecard indicates that with adequate funding available to the Commission, the implementation of the current strategy will exceed expectations.

Third Strategic Plan Implementation: 2019 Scorecard

There was a phenomenal increase in the key performance indicators of the Commission in 2019. The most significant being the value of assets forfeited/recovered by the Commission. The target set for the year was a recovery/forfeiture of N15 Billion from the proceeds of corruption from those under investigation/prosecution. As at the end 2019, the value of assets recovered was N81.23 Billion representing 540% of the target for the year.

In terms of number of cases filed in court, 105 cases were filed as against a target of 80 and this represents 131% of the target for this key performance indicator. The number of convictions secured was 25 representing 83.3% of the target of 30 convictions.

On the number of Ministries Departments and Agencies(MDAs) assessed on Ethics and Integrity Compliance Scorecard, 280 were assessed by the Commission against the target of 60 for 2019.This figure indicates that 466% of the target was accomplished.

The Commission has a robust website for engagement of stakeholders, in 2019 a target of 1,000,000 hits was targeted, and the Commission had 1,027,032 visits representing 102% of the target for the year.

A key performance indicator in the Plan is the number of sensitization sessions held by the Commission every year. In 2019, 667 sensitization sessions were held against a target of 660 sessions. This represents 101%, as the Commission met its target.

The target for the number of new petitions to the Commission in 2019 was 2040, while the number received was 1934 petitions representing 94.8% of the target.
The number of concluded investigations for the year was 588 representing 61.25% against a set target of 960.

The new Board introduced new initiatives that contributed immensely to the achievements highlighted above. The target for the number of staff to be trained for 2019 was 300 but 460 were trained locally and 53 internationally in 2019.The number of participants in training conducted by the Anti-Corruption Academy of Nigeria was 1927.

The introduction of the Constituency Projects Tracking Group (CPTG) which tracked 424 projects in 2019 and the System review of personnel and capital expenditure of 201 Ministries, Departments and Agencies of government contributed a lot to the value of assets recovered/forfeited in 2019. It is noteworthy that 2019 is the commencement year of the Third Plan, this points to the successful implementation of the current plan.

Steps for Successful Implementation of Strategic Plan, 2019-2023

The focus on plan implementation can be maintained only if the resources are available to fund the various activities that would produce intended results. Although government had prioritized the funding of the Commission, the depressed economy due the global COVID-19 challenge and its effect on the revenue of the country is already affecting the Commission's budgetary releases. The Commission needs to identify the resources necessary and adopt a strategy on how to obtain the resources in order to fully implement the plan.

The Commission also needs to improve the level of engagement of management staff to performance or outcome orientation in order to maximise resource allocation as a means of achieving what is more important. The Plan delineated activities for sensitisation of staff to keep focus on the objectives set in the document, it is important that these activities are held at intervals to get staff buy-in.

The Plan Performance Management Unit of the Planning Research and Review department should be supported adequately to collect and analyse relevant data for Monitoring and Evaluation. There is also the need for quarterly review sessions of performance. This will provide positive feedback, and an objective yardstick for recognition and reward to departments/units.

Conclusion

In this chapter, we have examined the institutional reforms of the ICPC through the visioning and implementation of the three Strategic Plans that the Commission has had in its 20 years of existence. These Plans were the road maps that guided the Commission along the way to the milestone of the twentieth anniversary that necessitated the publication of this book. From the first plan which did not have an operational plan to the current plan that is on course to deliver the

targets of the expected performance, the Commission has made tremendous progress in building the foremost Anti-Corruption Agency in Nigeria that it is today. The Commission is not only fully committed to realizing its mandate but to be at the forefront of providing leadership in the cause to enthrone a just and equitable society. An institution is like a building requiring a strong foundation to carry its objectives, that foundation is in place, and the current plan which is built on the foundations of the two earlier plans under the leadership of the Commission's Board is poised to exponentially enhance the performance of the Independent Corrupt Practices and Other Related Offences Commission.

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CHAPTER 9

BUILDING CAPACITY FOR ANTI-CORRUPTION AND GOOD GOVERNANCE

RICHARD A. BELLO

Introduction

The discourse on corruption and governance has come to the fore in the recent past, than ever before. While the term governance can be used specifically to describe changes in the nature and role ofthe institutions of government, corruption, though in different forms, levels and methods of perpetration, is the same everywhere. Many authors view corruption as dishonest or illegal behaviour. It is also synonymous with bribery, fraud, duplicity, extortion and unscrupulousness, among others. Corruption is defined the "abuse of public office for private gain."[1] Perhaps since it is not limited to public office, it has also been defined as the "abuse of entrusted power for private gain."[2] On the other hand, governance is defined as "the manner in which power is exercised in the management of a country's economic and social resources for development."[3] It refers to the traditions and institutions by which authority in a country is exercised for the common good. This includes the process by which those in authority are selected, monitored and replaced (the political dimension); the government's capacity to effectively manage its resources and implement sound policies (the economic dimension); and the respect of citizens and the state for the country's institutions (the institutional respect dimension).[4]

Governance could also be described as good or bad, depending on how power is exercised in the management of the resources at the disposal of a State. While bad governance is not necessarily predicated on corruption, research has shown that corruption has a correlation with governance. Therefore, addressing corruption incontrovertibly impacts governance.

Anti-Corruption and Good Governance: The Nexus

Although different meanings of good governance exist, the term is generally associated with political, economic and social goals that are deemed necessary for achieving development. According to the World Bank, good governance is "the manner in which public officials

and institutions acquire and exercise the authority to shape public policy and provide public goods and services."[5] In 1996, the International Monetary Fund (IMF) declared that "promoting good governance in all its aspects, including by ensuring the rule of law, improving the efficiency and accountability of the public sector and tackling corruption, [are] essential elements of a framework within which economies can prosper."[6] Good governance has also been defined as "the system of values, policies and institutions by which a society manages its economic, political and social affairs through interactions within and among the state, civil society and private sector."[7] On the other hand, anti-corruption efforts, just like corruption, vary in scope and strategy. The word anti-corruption means: opposing, discouraging or punishing corruption.[8] It entails activities carried out to oppose or inhibit corruption.

One of the prevailing "myths" about governance and corruption is that "governance and anti-corruption are one and the same."[9] Others argue to the contrary, that they are not the same but each influences the other. Generally, the concept of good governance indicates the effort of government to turn around the standard of living of its people and is considered key to achieving sustainable development. Conversely, the control of corruption affects the standard of living directly and indirectly. The absence or reduction of corruption has been shown to be directly linked to the efficiency of public and private sector organizations, which in turn provides favourable conditions for economic growth.

The import of good governance and anti-corruption cannot be over-emphasized. The aggregate governance indicators of the World Bank (covering more than 200 countries and over 350 variables obtained from dozens of institutions worldwide) has helped in improving empirical research in recent past. A number of researchers have examined the effect of governance on development and discovered that generally, countries that improved significantly on governance indices also did well in controlling corruption. "When [good governance] doesn't exist, many governments fail to deliver public services effectively; health and education services are often substandard; corruption persists in rich and poor countries alike, choking opportunity and growth."[10] For Paul Kagame, "There is no doubt that corruption is very costly to both governments and businesses and as such impacts negatively on our development efforts. It therefore makes economic sense and good politics to fight

corruption. Equally not in doubt is the fact that success of the fight against corruption depends on good governance."[11]

However, it is no secret that corruption is more often than not, country-specific. Therefore, applying same policies and instruments to countries in which there is a considerable divergence in corruption and quality of governance may not yield needed results. In other words, attempting to foster anti-corruption and good governance by transferring institutional models from developed to developing countries or from rich to poor nations may not be effective. Indeed, it is expedient that the local circumstances that allow or encourage public and private sector officials to be corrupt are clearly understood.

Perhaps, the key to more effective anti-corruption strategies is to think differently about governance; for instance, unearthing the underlying factors responsible for bad governance and high levels of corruption and how to entrench integrity, transparency and accountability in public and private institutions.

The Need for Capacity Building for Anti-Corruption and Good Governance

Corruption undermines human and national capacity for reforms and collective development and may become increasingly difficult without the active involvement of the capability of different aspects of the society and key stakeholders. Capability in the business of anti-corruption is primarily linked to three core areas, namely: the commitment of government and by extension, the independence of anti-corruption agencies to successfully wage war on corruption; the core competency of anti-corruption agencies and their ability to build and strengthen personal and institutional capacities of public and private institutions to prevent and expose corruption; and the ability to enlist and foster support for the fight against corruption across all strata of society.

Essentially, this is for the purposes of service delivery and continuous development of anti-corruption mechanisms in the public and private sectors. Consistent with the principle of first-thing-first and the dictum that one cannot put something on nothing, it is predictable that like other public sector agencies, if anti-corruption agencies must be broadly impactful with positive change, their human

resources must possess the underlying capacity to fight corruption in all its ramifications.

Furthermore, dealing with a complex problem like corruption, requires organizational learning and adaptation to governance best practices, with capacity building as a critical resource. The existence of corruption in any organization suggests that the human resource capability to achieve their primary objectives is weak. Not oblivious of this historical fact, the Independent Corrupt Practices and Other Related Offences Commission, ICPC, established the Anti-Corruption Academy of Nigeria, ACAN.

Capacity building and development are at the heart of governance in both the public and corporate sectors. To effectively fit into this role, ACAN was established to be a model anti-corruption resources development centre in Africa. To drive this vision, it has developed a Strategic Plan, 2019 – 2022, with an Implementation Plan as well as a Monitoring and Evaluation Framework. ACAN's Strategy is consistent with international, regional and sub-regional Conventions and Protocols including the United Nations Convention Against Corruption (UNCAC), African Union Convention on Preventing and Combating Corruption (AUCPCC) and Economic Community of West African States (ECOWAS) Protocol to which Nigeria is a party. The National Anti-Corruption Strategy (NACS), 2017 – 2021, which is the framework for tackling corruption in Nigeria, has ICPC as a major stakeholder in its development and implementation. The capacity building components of the responsibilities assigned to the ICPC in the NACS in the Strategy by ICPC, are justifiably led by ACAN.

As the foremost anti-corruption agency in the country, the ICPC, through its research and training arm, is helping Nigeria and indeed the African region to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and other non-elected public officials as well as promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions.[12]

UNCAC provides that *"Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its*

personnel responsible for preventing and combating corruption."[13] This further underscores the importance of capacity building in anti-corruption and governance. In the same vein, NACS, 2017 – 2021, recognizes that the administration of development in public sector governance, which is done by Ministries Departments and Agencies (MDAs) of government, would be difficult without the development of skills and knowledge, including the integrity of processes and systems required for good governance. The Strategy recognises the import of "reducing the negative impact of corruption on governance and government service delivery in general and more specifically, on the achievement of the Sustainable Development Goals (SDGs)"[14]. The capacity building of MDAs is thus critical, premised on the credible and practical assumption that well-trained human resources ensure integrity of processes, regulatory quality, rule of law and accountability, including minimising opportunities for corruption in the formulation and implementation of policies, programmes and projects.

It is in fulfilment of the foregoing, among other imperatives, that the Anti-Corruption Academy of Nigeria is critical and indeed pivotal to building capacity for anti-corruption and governance in Nigeria and beyond.

The Evolution of the Anti-Corruption Academy of Nigeria

The Academy was first established in 2004 as a training unit by the pioneer Board of the Commission, headed by late Justice Mustapha Akanbi and later renamed ICPC Training School by the same Board. The Training School was headed by an American, Ms. Margo Brady. Early in 2005, it was renamed the ICPC Academy and the Commission put a bite to its commitment to human capacity development by designating a location within its premises as a temporary Training Academy.[15] The ICPC Academy also enjoyed the support of the second Board of the Commission, led by retired Justice Emmanuel Ayoola. Its mandate remained essentially to facilitate the effective implementation of the Commission's functions as encapsulated in Section 6 (a – f) of the Corrupt Practices and Other Related Offences Act 2000. This was to be achieved by equipping ICPC Staff with necessary skills and knowledge that would enable them to perform at required levels. By this time, Ms. Brady had left and a former Head of Investigation, Mr. Matthew Ameh, was appointed as Coordinating Consultant to oversee the Academy. In 2011, the Academy was moved to a more spacious location at the ICPC Headquarters Annex in Wuse

II, Abuja. However, work was already in progress for relocating the Academy to its permanent site, a more serene environment in Keffi, Nasarawa State. This move was accomplished in 2012.

The activities of the Academy were limited essentially to hosting trainings and induction of new staff. However, in line with the recommendation of UNCAC for State Parties to establish institutions for building capacity to fight corruption, the Board, in late 2012, set up a Committee to advise on transforming the ICPC Academy into an Academy for Corruption Studies. The committee was led by Professor Olu Aina, OFR, a member of the Board who was overseeing the education-related activities of the Board. The other members were:

1. C.I Onuogu, Head of Legal Department
2. S. Wakama, Head of Investigation
3. G.N. Bako, Head of SIT Unit
4. Kayode Adedayo, Head of Financial Intelligence Unit
5. Mohamed Ali, Head, Special Duties Department
6. Ameh Mathew, Coordinating Consultant (Training)
7. Demola Bakare, Education Department
8. Sharon Ogiri-Okpe, Investigation Department
9. Azuka Ogugua, Education Department
10. Kingsley Obi, Education Department, and
11. Habiba Umar, Administration Department.

The committee, which submitted its report in January 2013, produced a Manual for the Establishment of a Nigeria Academy for Corruption Studies and recommended a series of training activities and certification courses for the proposed Academy to implement. However, the recommendations of the Committee remained in abeyance until the convening of the National Conference on Transparency, Accountability and Ethical Values in Tertiary Institutions for Sustainable Development.

The Conference was the culmination of a series of activities that started in July 2012 with the setting up of an ICPC-NUC panel to conduct a pilot System Study and Review of the Nigerian University System. The findings of the Study revealed serious infractions and corrupt practices that were sufficiently damaging to the smooth functioning and the ability of the institutions to achieve their mandates. The findings were initially presented to stakeholders including the Tertiary Education Trust Fund, TETFUND, a major

sponsor of physical development in these institutions, which projects were victims of sharp practices. The seriousness of the findings caused the ICPC to collaborate with TETFUND and the Office of the Special Adviser to the President on Ethics and Values to convene the National Conference targeted at the Principal Officers of Federal and State tertiary institutions, who were beneficiaries of TETFUND grants. Discussions at the conference revealed serious knowledge gaps on the part of the operators of tertiary institutions in matters relating to national integrity laws and the need for capacity building on their part.

One of the principal recommendations of the Conference was for the ICPC to conduct more training such as those done during the Conference through its training school, which should have its functions expanded from simply training ICPC staff into engaging with stakeholders in the war against corruption across the spectrum. The leadership of the Commission easily bought into the idea as it coincided with what it was trying to do when it set up the committee that recommended the establishment of the Nigeria Academy for Corruption Studies. Following the National Conference on Transparency, the Board invited Professor Sola Akinrinade to consider taking up the challenge of starting the new Academy. Professor Akinrinade was then about concluding his tenure as Visiting Professor with the NUC and had played key roles in the University System Study and Review as NUC Lead in the ICPC-NUC team, and had served in the Planning Committee that convened the National Conference on Transparency.

Professor Akinrinade assumed duty as Head of the Academy in October 2014, and was subsequently invited to develop and present a roadmap for transforming the Academy idea into reality. His presentation, made to the Board late in October, took into consideration the ideas contained in the Establishment Manual as well as the experiences of similar Academies in other parts of the world. Thereafter, the Board approved the change in the nomenclature from the ICPC Training Academy to the Anti-Corruption Academy of Nigeria and approved the nomenclature "Provost" as Head of the Academy. The template presented by the new Provost and approved by the Board reflected the direction which the Board was taking in pursuit of the war against corruption. There is an expansion of the mandate from just providing capacity building for the Commission's staff o developing the capacity of public officers,

public servants and the general public on good governance, accountability, transparency, integrity, ethics and all issues relating to corruption and corrupt practices. The new mandate also incorporated building up a body of knowledge that will facilitate the development of knowledge-based anti-corruption policies in the country.

The establishment of the Academy was the high point of the Commission's determination to utilise research and training to guide national anti-corruption policy formulation and capacity building. This core mandate is critical to achieving long term impact in the national war against corruption, in a systematic and sustainable manner. At the Academy, developing institutional capacity to prevent and expose vulnerabilities for corruption, is considered critical to the fight against corruption and a sine qua non for good governance. Hence, the Academy commenced with building the capacity of ICPC officials on areas relevant to improving their performance on the job and maximising productivity. Expectedly, it had since extended its mandate to include providing top-notch law enforcement and anti-corruption training for professionals and administrators in the public and private sectors in Nigeria and beyond. ACAN's responsibility also includes improving decision making and the implementation processes, procedures and systems of MDAs. The Academy is steadily evolving into a think-tank for policy formulation and implementation in the law enforcement and anti-corruption sector, and a mainstay for the provision of good governance in Nigeria and the African region.

Capacity Building Efforts of the Anti-Corruption Academy of Nigeria and Programming Activities from January 2015 – March 2020

i. Capacity Building Efforts of the Anti-Corruption Academy of Nigeria

ACAN is progressively evolving into a model anti-corruption resource development centre in the African region and has been recognised by the President of Nigeria, Muhammadu Buhari as the leading anti-corruption institution in the country.[16] The Academy is also strategic to the successful implementation of the National Anti-Corruption Strategy, NACS, 2017 – 2021, particularly in developing capacity at the national and sub-national levels and relating to the key activities outlined for the ICPC in the implementation plan. Worthy of note, is that prior to the development of the Strategy, ACAN had been

involved in the strengthening of institutional frameworks designed to prevent corruption in Nigeria, through capacity development.

The Academy's training programmes are in line with minimizing corruption and providing good governance. According to the United Nations Office of the High Commissioner for Human Rights (OHCHR), the core elements of good governance include transparency, integrity, lawfulness, sound policy, participation, accountability, responsiveness, and the absence of corruption and wrong doing. ACAN's trainings are also in tandem with trainings recommended by UNCAC, such as "Effective measures to prevent, detect, investigate, punish and control corruption; development and planning of strategic anti-corruption policy; evaluation and strengthening of institutions, public service management and the management of public finances, including public procurement, and the private sector; surveillance of the movement of proceeds of offences and methods for facilitating the return of proceeds of offences.[17]

ACAN is being developed as a last-stop institution for training of high-calibre anti-corruption professionals including administrators, compliance officers, investigators, procurement officers, and general integrity practitioners by offering programmes at post graduate levels. The programmes of the Academy are in four broad areas, viz.:

a. Training/Capacity Building of ICPC Staff (open to staff of other anti-corruption agencies);
b. Training programmes and workshops for public and private sector officials, including staff of MDAs, and customised/specialised and sector-specific training programmes;
c. Research and knowledge dissemination – generating knowledge to affect policymaking on corruption and anti-corruption;
d. Certification Programmes: Certificate and diploma courses in anti-corruption for operators, and a planned Master's degree in Anti-Corruption Studies (in collaboration with a partner University).

The Academy's programmes address the institutional gaps in anti-corruption on a gamut of issues in public and private sector, including the three arms and three tiers of government. Apart from capacity building, ACAN is dedicated to research and policy advocacy.

Perhaps, this is what distinguishes it from other Academies within and outside the country. The import of knowledge-driven policies on governance, cannot be overemphasised.

ii. ***Programming Activities from January 2015 – March 2020***

Since the new vison was set in late 2014, ACAN has been refocused to build capacity in anti-corruption and deploy knowledge driven research in policy formulation. The Academy has engaged in several interventionist activities, some of which are discussed hereafter:

a. ***Training/Capacity Building Programmes for ICPC staff***: The Commission considers staff performance as critical to the fulfilment of her mandate. Staff development is therefore accorded priority. Staff trainings at ACAN are top-notch and border on law enforcement and anti-corruption education, making professionals of operatives and administrators. Apart from other local and international trainings to which staff are exposed, 26 staff trainings had been conducted as at March 2020 with 1,437 participants in attendance.

b. ***Open Training Programmes***: The Academy carries out open programmes on topical issues bordering on ethics, integrity, transparency, accountability and anti-corruption, geared towards achieving zero-tolerance for corruption and institutionalising integrity in MDAs. These trainings are aimed at developing the institutional capacity of government agencies as well as the private sector to develop responses to corruption. ACAN's flagship Leadership programmes (Anti-Corruption Leadership Course and Senior Executive Course in Organisational Integrity Management) that commenced since 2016 are also testament to the Academy's commitment to developing a crop of leaders to champion the anti-corruption war in their respective agencies. In addition, other anti-corruption agencies are invited to be part of training programmes directly relevant to the anti-graft war. In the Higher Education Sector, Academic and Procurement Integrity Workshops for Universities, Polytechnics and Colleges of Education and allied institutions have also been carried out. A total of 1,933 participants attended open programmes during the period.

c. ***Bespoke Programmes***: Bespoke capacity building programmes give room for organisation-specific trainings, affording them the opportunity to develop specific responses to their anti-corruption and related needs. For instance, officers of Kano State Public Complaints and Anti-Corruption Commission were trained in Anti-Corruption Intelligence and Investigation Skills. Bespoke training programmes were also organised for officials of the Universal Basic Education Commission (UBEC); Port Harcourt Refining Company Limited (PHRC); National Information Technology Development Agency (NITDA); National Broadcasting Commission (NBC); Nigerian Institute of Mining and Geosciences (NIMG), Jos; National Hajj Commission of Nigeria (NAHCON); Olabisi Onabanjo University, Ago Iwoye, Ogun State; Nigerian Communications Commission (NCC); Joint Admissions and Matriculation Board (JAMB); and National Pension Commission (PENCOM). A total of 1,598 participants were engaged.

d. ***Collaboration/Joint Programmes***: By collaborating with other agencies, the Academy has been able to develop anti-corruption champions to lead the war in their respective domains. Within the period, a training on corruption in the financial services sector was held in collaboration with Chartered Institute of Bankers of Nigeria (CIBN). Legislators in State Houses of Assembly in the six geopolitical zones were also trained, in collaboration with Foundation for Transparency and Accountability, on Entrenching Integrity in Legislative Functions. Besides these, the Academy also collaborated with the Ministry of Aviation to conduct trainings on Ethics and Integrity for Aviation Sector workers. Universal Basic Education Commission (UBEC); National Board for Technical Education (NBTE); Bursars' Association of Polytechnics and Colleges of Technology (BURSCON), among others also collaborated with the Academy. In the process, a total of 1,362 participants were reached.

e. ***Trainings for Anti-Corruption and Transparency Units (ACTUs)***: ACTUs are established as the eyes and ears of the ICPC in MDAs. Since they are better placed to understand their systems, they assist their respective organizations to tackle corruption internally and to entrench institutional integrity.

Organizations with ACTUs are also able to respond to their requirements in NACS, 2017 – 2021. To effectively carry out their assignments, trainings are organized twice-yearly for ACTU members. 10 training programmes have been organized for ACTUs from 2015 to date with an attendance of *1,789* participants.

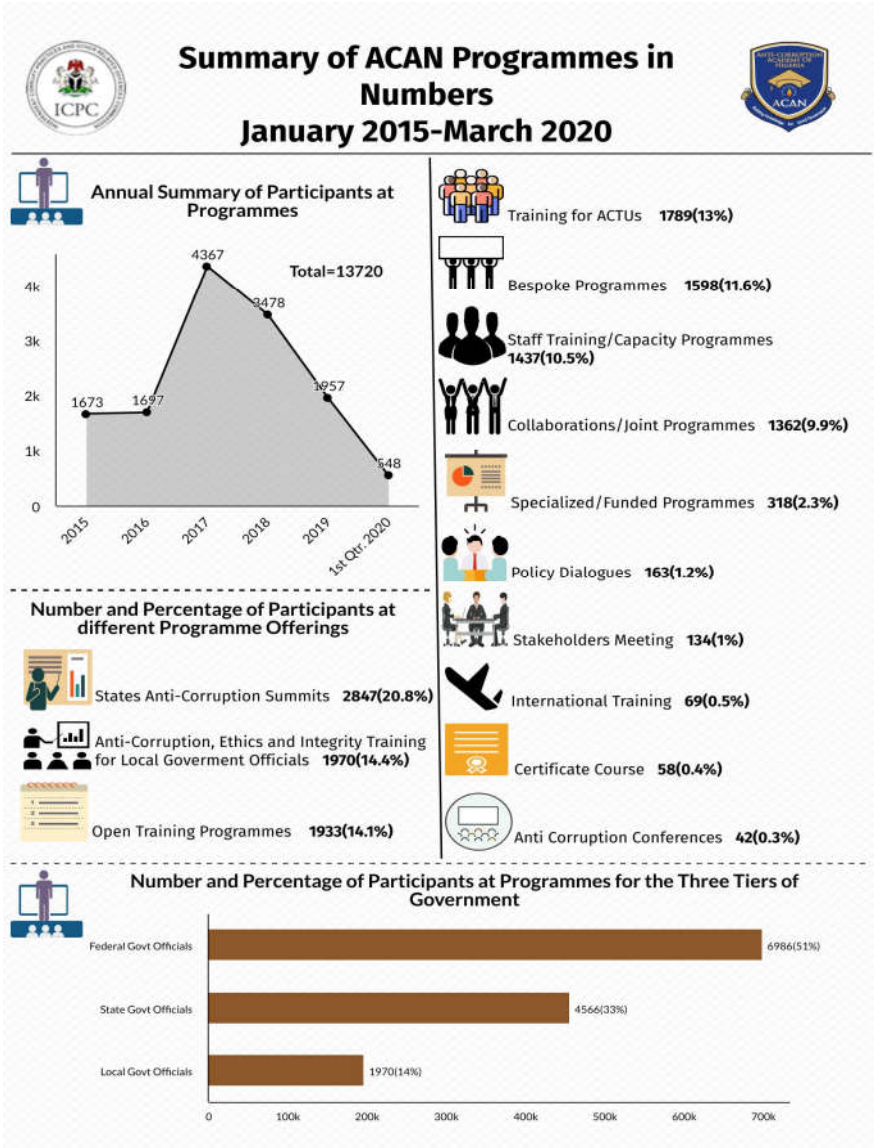
f. ***Certificate Programmes***: The Academy's certificate programmes have been designed to build the capacity of anti-corruption practitioners and others, to better understand the intricacies of corruption and the array of responses to tacking the menace. ACAN has commenced with the Certificate Course in Corruption Prevention and has hosted two editions: one in 2018 and the other in 2019 with a total of *58* participants. Certificate courses in Ethics and Compliance, and in Corruption Investigation and Intelligence have also been rolled out.

g. ***State Anti-Corruption Summits***: The anti-corruption drive has been largely at the national level. To take the fight to the subnational levels, a key outcome required in the NACS, the Academy has convened State Anti-Corruption Summits in eight states, in collaboration with the Foundation for Transparency and Accountability. During the period being reported, Bauchi, Plateau, Abia, Akwa Ibom, Delta, Bayelsa, Ebonyi and Cross River states have been reached. A total of *2,847* participants were at these summits.

h. ***Anti-Corruption, Ethics and Integrity Training in Local Government Administration***: The local governments are directly responsible for bringing government's presence and initiatives to the local communities. Arguably, corruption cases are most manifest at this level. To address this scourge, Integrity training programmes are conducted for Chairmen and Secretaries of Local Government Service Commissions as well as the principal officers of local government councils. The Chairmen, Secretaries and other principal officers of the Local Governments in 7 states, including Abia, Ebonyi, Bauchi, Yobe, Akwa Ibom, Enugu as well as the 6 Area councils in the Federal Capital Territory have been trained by the Academy. A total of *1,970* officials were in attendance at the training programmes.

i. ***Specialised Programmes and Sponsored/funded Programmes***: Sponsored/funded Programmes carried out in this category include 4-nos UNDP-sponsored training on Grant and Project Management for CSOs; UNDP-sponsored General Corruption Risk Assessment training for staff of Anti-Corruption Agencies and Civil Society Organisations; and UNODC-sponsored Corruption Risk Assessment of Nigeria's e-Governance System. Specialised trainings executed are Gender Sensitive Early Warning and Early Response (EWER) and Peace Architecture and EWER Implementation and Strategy Planning for Plateau State Peacebuilding Agency; Adamawa and Gombe States Commands of the Nigerian Security and Civil Defense Corps, and State Emergency Management Authorities, SEMA, of Adamawa and Gombe States. Other specialised programmes carried out include UNDP-sponsored General Corruption Risk Assessment training for staff of Anti-Corruption Agencies and Civil Society Organisations; and UNODC-sponsored Corruption Risk Assessment of Nigeria's e-Governance System training for staff of Anti-Corruption Agencies. A total of 318 participants were trained in this category.

j. ***International Trainings***: Besides the progressive value-addition of ICPC and ACAN to the public and private sector in Nigeria, the Academy had a unique opportunity of training the leadership of Anti-Corruption Agencies in the African Union (AU) on corruption prevention, using the Corruption Risk Assessment (CRA) methodology for improved systems and processes of their MDAs.



With support from the Office of the Secretary to the Government of the Federation, the training, which had the honour of been declared open by the President of Nigeria, Muhammadu Buhari, was translated in three languages. There is no doubt that the knowledge shared and the capacity development experienced is tremendously helping the anti-corruption agencies of 26 African countries involving 39 participants, to identify corruption risks in their respective

> countries, with a view to minimising institutional vulnerabilities and developing appropriate response plans. The Academy also facilitated an ECOWAS-sponsored training for the Network of National Anti-Corruption Institutions in West Africa (NACIWA) with 30 participants in attendance.

As may be observed in the "*Annual Summary of Participants at Programmes*" following, there was a rise in the number of participants that attended the Academy's programmes from 2015 to 2016. In the last quarter of 2016, the Academy took the war against corruption to the subnational level. This culminated in the hosting of Anti-Corruption Summits in two states with 336 participants in attendance. The success of these summits opened the doors of six more states to the Academy in 2017 with 2,511 participants in attendance, causing a leap in the total number of participants reached in 2017. Although the number of programme offerings in 2018 increased to 27 as against 24 in 2017, there was a drop in participation occasioned by the absence of such summits which usually attracted large gatherings, even with the scope of the programme offerings extended to include the Civil Society Organisations and international trainings. A similar scenario played out in 2019, causing a drop in the number of participants to 1,957.

Research and Publications

The long-term impact of the Academy on the war against corruption is a function of its ability to influence the anti-corruption policymaking process through informed research and policy analysis. To this end, the Academy has developed a Research Policy to guide research activities by staff and consultants. The general goal of the research policy is to encourage quality research activities in the Academy in line with its vision to be a world class anti-corruption institution, distinguished by its research and training programmes. The emphasis of the policy is to promote research and training in the field of anti-corruption by staff, trainees, visiting scholars and external resource persons in all areas that will enhance the ongoing campaign against corruption at the local, national and global levels.

The Research Policy is being complemented by a *Research Fellowship Programme* designed to bring researchers and scholars in corruption and anti-corruption studies to the Academy for a period ranging from six months to three years. Scholars on the programme are expected to submit research plans that will cover the proposed period of stay

at the Academy. The Academy received for researchers/scholars within the period.

Along this line, the Academy was also involved in other activities. The following are on-going research and policy-related activities concluded or commenced during the period:

i. ***Nigeria Corruption Index***: The Research and Policy Department is coordinating the take-off of the *Nigeria Corruption Index (NCI).* The NCI is a novel initiative of ICPC/ACAN for anti-corruption work in Nigeria. The NCI is not meant to condemn the existing Corruption Perception Index but rather to help produce a comprehensive index that is home-grown through stakeholder collaboration. While adding to the body of knowledge in existence, data on the peculiarities of corruption in Nigeria would be made available to assist in policymaking process.

ii. ***Policy Dialogues and Policy Briefs***: To contribute its quota to Safeguarding Integrity in the election process in Nigeria[18] a Policy Dialogue on Eradicating Electoral Corruption with Focus on Vote Buying was conducted in 2019. The Policy Brief on the exercise was also presented to the pubic within the year. In the same vein, a second Policy Dialogue on Accountability for Security Votes was held in 2019, albeit the Brief has not been made available to the public.

iii. ***Behavioural Surveys***: The Academy carried out two behavioural surveys during the period. These are:
   - Corruption Attitude and Perception (CAP) Survey of public officers; and
   - Corruption Awareness Attitude and Susceptibility Survey of Students of Tertiary Institutions, 2019.

While the reports of the two surveys are ready, only the Corruption Awareness Attitude and Susceptibility Survey of Students of Tertiary Institutions, 2019 has been presented to the public.

iv. ***National Anti-Corruption Conferences***: Two National Anti-Corruption Conferences (2015 and 2016) held during the period. The 2015 edition was convened in partnership

with the UNODC. The conferences had 42 participants in attendance. The 2017 edition could not hold despite securing funding support from the Embassy of the United States of America as approval could not be secured from the Federal Ministry of Justice.

v. ***Stakeholders' Meeting***: The Academy held a National Stakeholders' Meeting on the proposed Nigeria Corruption Index (NCI) in 2019. A total of 134 stakeholders were in attendance.

vi. ***Nigerian Journal of Anti-Corruption Studies***: The Research and Policy department is currently coordinating the take-off of the Nigerian Journal of Anti-Corruption Studies.

The increasing demand for leadership, management and employee training by MDAs is an implicit feedback that ACAN is of immense value-addition, motivation for performance and a vehicle for increased social accountability and improved processes and systems for service delivery. The Academy is also steadily pursuing its research and policy mandate. However, as with any emerging institution across the globe, especially those with similar mandate, the Academy faced some challenges in its capacity building and policy advocacy programmes.

Challenges to the Capacity Building and Policy Advocacy Efforts of the Academy

While for the age of the Academy, it has made fairly good progress, it still has a long way to go in fully achieving its mandate, particularly in terms of providing intellectual support for anti-corruption policymaking through informed research. As the Academy transits from short-term training activities to more sustained certification programmes that will produce the requisite manpower to drive the anti-corruption agenda in various sectors of national life, it is important to address identified challenges. These include:

- *Post-training Impact Evaluation*: The evaluation of each training programme by participants is common practice in the Academy since inception. While the implementation of pertinent recommendations from the analysis of findings from the evaluation process has progressively positioned the Academy to

better achieve its mandate, the Academy also commenced pre-training and post-training evaluation in 2019. However, though value-addition and increase in knowledge is manifest, the Academy would be delighted to take a further step of evaluating the impact of its programmes on the job-functions of participants in particular and on the various agencies they represent in general.

- *Academic-inclined personnel for research:* There is need to build the capacity as well as strengthen the number of the current staff to meet the challenge of academic-inclined research and the ability to run Postgraduate Certification and Masters Programmes.

Moving Forward

Since 2014, the Academy has striven to make its contributions to deepening the war against corruption in the country by supporting the Commission's public education, enlightenment and prevention mandates. This has been more so since the change of nomenclature to the Anti-Corruption Academy of Nigeria, a process that involved the present leadership of the Academy. In line with this new direction, the vison and mission statements of the Academy were redesigned. The inauguration of the fourth Board of the Commission, led by Prof. Bolaji Owasanoye, has further positioned the Academy to enjoy excellent leadership and support for its programmes and activities. The leadership of the Academy is appreciative of the support it has received so far from successive leadership and Boards of the Commission.

In its quest to achieve its objective of becoming "A model manpower development institution, sustainably providing the necessary connection between theory and practice to drive the fight against corruption and related crimes in Africa and beyond", all hands must be on deck. The success of the Academy, particularly in the area of impacting on the policymaking process will greatly enhance the process of achieving long term abatement of the phenomenon of corruption and launching the country on the path of sustainable development.

To complement the Certificate Course in Corruption Prevention, the Academy has finalized plans to conduct the following certification programmes in the years ahead:

i. Certificate Course in Ethics and Compliance
ii. Certificate Course in Corruption Investigation and Intelligence
iii. A 9-month Diploma Programme leading to Fellowship of the Integrity Institute (FII) to be moderated by a collaborating University;
iv. General Studies in Anti-Corruption for Nigerian tertiary institutions (to be introduced in collaboration with the three regulatory authorities, viz., National Universities Commission, NUC'; the National Board for Technical Education, NBTE; and the National Commission for Colleges of Education, NCCE);
v. M.Sc. in Anti-Corruption Studies in collaboration with a partnering University.

The Academy has made progress in developing the curricula for all these courses. However, the developed curricula will benefit greatly from stakeholder validation before being submitted for regulatory approval. Upon finalisation, the Academy also plans to digitize the contents of all its certification programmes as part of the process to make the courses available online for open and distance learning. Furthermore, the National Corruption Index is expected to commence within the year 2020.

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CHAPTER 10

SIGNIFICANCE OF KNOWLEDGE-DRIVEN AND EVIDENCE-BASED ANTI-CORRUPTION INTERVENTIONS

ELIJAH OLUWATOYIN OKEBUKOLA

Introduction

The Independent Corrupt Practices and other Related Offences Commission (ICPC), strengthens its preventive end enforcement actions through knowledge derived from research. The Anticorruption Academy of Nigeria (ACAN) is the research and training arm of the ICPC. The Academy conducts anti-corruption research to support the work of the Commission. The research outputs of the Academy also help to enhance the knowledge and evidence base of the anti-corruption community.

In addition to formal research conducted at ACAN, the Commission also deploys applied research methods in reviewing systems, conducting risk assessments, etc. While the systems review and corruption risk assessments are not conventional research activities, the Commission applies certain formal research approaches in conducting the systems review and corruption risk assessments. Since other chapter(s) in this book are squarely on systems review and corruption risk assessments, this chapter will focus on formal research conducted at ACAN.

"The 'hidden' nature of corruption means that much corruption remains undetected."[1] The cases of corruption that are reported or investigated amount to a tiny fraction of incidents of corruption. Research, however, can serve to determine the nature and frequency of various manifestations of corruption in the country. Moreover, unlike investigations and prosecutions which are necessarily triggered by the alleged or actual occurrence of corrupt practices, research can provide the required knowledge and evidence to prevent future acts of corruption.[2]

Corruption allows people in power to confer unlawful benefits or corrupt advantages on themselves or their cronies. These unlawful benefits operate to not only empower the corrupt officials in perpetrating and perpetuating their corrupt practices, but also provide them with the resources to resist anti-corruption efforts. In this context, the corrupt official has two strong bases of operation. First, s/he has the power conferred by law, office or role (position). Second, s/he has the power acquired through the proceeds of corruption. So, the corrupt official is a powerful adversary that cannot be underestimated by anticorruption agents and agencies.

Given the power wielded by corrupt officials, anticorruption agents and agencies necessarily require sufficient power to be able to prevail in the clash between the forces of corruption and those of anti-corruption. Although it has been said that 'power flows from the barrel of the gun,' firearms, handcuffs and jail terms are not sufficiently powerful to overcome corruption. In addition to all other resources and tools, forces of anti-corruption require the power of knowledge. As it is said, 'knowledge is power.'

Knowledge empowers the forces of anti-corruption to appropriately and effectively utilise all the other tools and resources available against corruption. The required knowledge can be discovered during unplanned eureka moments; but the fortuitous and uncoordinated nature of this kind of knowledge makes it unreliable as a source of power for anti-corruption efforts. For example, after many years of investigating numerous cases, investigators may discover that suspects of a particular gender or age group are more likely to be protected by their communities.

Reliable power comes from knowledge produced by systematic research. ACAN conducts research projects using quantitative, qualitative and mixed methods to produce knowledge. This chapter highlights the significance of research projects at ACAN in the fight to diminish corruption. This introductory part gives an overview of the subject of discussion. The next part highlights the factors that allow ACAN to align its research to policy and decision making. Among others, it is noted that ACAN research succeeds in informing decision and policy making because it is near and accessible to decision and policy makers; it focuses on areas that are directly relevant to existing mandates and plans; it encourages input from a broad spectrum of stakeholders; it is not aimed at securing funds from sponsors and it

is disseminated in a manner that is usable by the decision makers concerned with the subject matter of research. The third part illustrates the nature of research at ACAN by highlighting four recent research projects conducted by ACAN. Finally, the fourth part rounds up with concluding thoughts and recommendations.

Alignment of ACAN's Research to Policy and Decision Making

Primarily, all ACAN research projects are evaluated by the extent to which they impact anti-corruption policy and decision making. Unlike research outputs that are measured by their degree of visibility, ACAN research is measured by the degree to which its findings and recommendations are applied by decision and policy makers. Therefore, "right from the point of conceptualising ACAN as a research and training institution, it was envisioned that the Academy should not focus on training alone but should also engage in the kind of research that can inform anticorruption policies" and guide decisions.[3]

ACAN research succeeds in informing decision and policy making because it is near and accessible to decision and policy makers; it focuses on areas that are directly relevant to existing mandates and plans; it encourages input from a broad spectrum of stakeholders; it is not aimed at securing funds from sponsors and it is disseminated in a manner that is usable by the decision makers concerned with the subject matter of research.

It should be noted that intelligence, at both tactical and strategic levels, is also relevant to decision making. However, intelligence operates on a different spectrum from research. So, while ACAN deals with research and training, other departments and units of the ICPC deal with intelligence. The ICPC's separation of intelligence from research functions allows ACAN's research to meet ethical standards of research, especially those relating to protection of participants and subjects of research. In addition, it encourages the participation of peers, respondents, key informants, persons in conflict with the law, discussants, and stakeholders who would be willing to engage in a research project but may be averse to supplying intelligence for law enforcement purposes.

Avoiding Obstacles to Availability and Acceptability of Research to Policy and Decision Makers

Certain obstacles make it difficult for policy and decision makers to use evidence produced through research. ACAN research projects are purposely designed to avoid the stumbling blocks which are highlighted below.

"**Misalignments between the research conducted and the evidence that is needed for decision-making.**"[4] For the evidence or knowledge obtained by a research project to be relevant to policy and decision makers, the research components consisting of subject matter, research questions and objectives must be relevant to plans, programmes, projects and activities of policy and decision makers. Unless the previously mentioned research components are aligned with plans, programmes, projects and activities, any evidence or knowledge contributed by the research will be of no use to policy and decision makers.

As a first step to avoiding disconnecting research outputs from the evidential needs of policy and decision makers, the subject matter of ACAN research projects are determined by two primary considerations. First, they are relevant to the statutory mandate of the ICPC and other ACAs. Second, they relate to international anticorruption obligations of Nigeria. So, as a starting point, ACAN research projects have subject matter relevance to the ICPC, ACAs and Government offices required to implement Nigeria's international anti-corruption obligations.

As a second step to making ACAN research projects directly relevant to decision and policy makers, the research questions, objectives and timelines are geared towards providing the evidence-base to guide specific actions that are demanded by law, strategy plans, and international documents. Thus, ACAN research outputs are positioned to provide timely evidence and knowledge required to guide policies and decisions. The research conducted at ACAN is geared at answering questions that policy and decision makers must tackle to make informed decisions. These answers are to be provided in good time to be relevant for the specific intervention in focus. Whereas, regular academic research can be done on any subject at any time, research at ACAN is required to be done within the time period that makes its output relevant to decisions or polices to be made on an existing or future action.

Input from Stakeholders. Most academic research projects are conceptualised, designed and executed by researchers without input from stakeholders. At best, some components of the research may be peer reviewed. On the contrary, virtually every phase of ACAN research is amenable to input from stakeholders. At the time the subject matter is being chosen, stakeholders have an input in suggesting if the subject is relevant to anticorruption in Nigeria. For large scale empirical research, ACAN research procedures require that stakeholders' comments are compulsory during conceptualisation, design and presentation of findings.

In selecting the stakeholders to contact for responses and comments, a balance is struck between actors from governmental offices, civil society, development partners, academia and general society. The method of interaction is usually electronic correspondence to individual stakeholders. However, if the research project requires cross-review of stakeholders' input, interaction will involve discussions between invited stakeholders.

Focused on the Sole Aim of Advancing Anti-Corruption Interventions. Researchers sometimes select the subject matter of research based on its potential to be funded by sponsors or donors. Areas may also be selected for research because of the passion of the researcher to further some personal courses or agenda. Naturally, the research publication in the above instances will not indicate these incentives for the research. Yet, the undeclared underlining incentives, which may well be legitimate, would have some influence on the researchers and their work.

Contrary to the above scenario, the research mandate of ACAN is limited to provision of knowledge and evidence for anticorruption work. Therefore, a subject cannot be chosen for research because of its potential for sponsored funding or merely because it is interesting.

Communication of research outputs and results to policy and decision makers. Researchers in ivory towers and think tanks frequently conduct research projects which end up as publications out of sight and reach of decision makers. "Researchers are often unprepared or unwilling to communicate their results to the public or to decision-makers; they expect that publication of results in scientific journals is sufficient to bring them into eventual use."[5] Moreover, research findings are written in academic language of the

field of research and published in academic journals which are not ordinarily accessed by decision and policy makers.[6]

The reverse, of the above, is the case with the presentation of ACAN research findings. Findings, conclusions and recommendations are presented in a language and style that is generally understandable and not academia-speak. In addition, aspects that particularly relate to specific stakeholders are highlighted for their attention.

Significance of Some Recent Research Projects Conducted by the Academy

ACAN research projects help policy and decision makers by helping them know what exactly the matter is; the exact problem with the matter; and the appropriate solution to the problem, instead of one size fits all. In addition, the research projects evaluate the effectiveness of existing interventions. They also provide evidence to inform the continuation, modification or cessation of existing courses of action. Four recent ACAN research projects can be applied to demonstrate the workings discussed above.

1. **Research on Electoral Fraud, with Focus on Vote Buying**

At the global level, Nigeria has an obligation under the United Nations Convention against Corruption (UNCAC) to prevent corruption in the public sector. In this regard, one of the actions prescribed by UNCAC is the enactment of legislation and adoption of administrative measures to prescribe criteria concerning candidature and election into public office.[7]

Similarly, at the regional level, the African Charter on Democracy, Elections and Governance (ACDEG) requires that the principles that should govern elections and governance include the "[c]condemnation and rejection of acts of corruption, related offenses and impunity."[8] The obligation to prevent corruption in the electoral process is also inherent in the African Union Convention on Preventing and Combating Corruption (AUCPCC),[9] which is incorporated by reference in the ACDEG.[10]

Again, at the sub-regional level, there is the obligation to prevent corruption in the electoral process. This obligation arises from the ECOWAS Protocol A/SP1/12/01 on Democracy and Good Governance (ECOWAS PDGC),[11] Supplementary to the Protocol

relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security.

Domestically, the National Anti-Corruption Strategy (NACS) 2017-2020 requires the prevention of corruption in the electoral process.[12] It also requires the proactive steps to prevent corruption in public and private institutions.[13] The Electoral Act 2020 also provides for domestic measures against electoral fraud.[14]

ACAN researchers reviewed literature and reports on electoral fraud and found that there were widespread reports of votes being exchanged for cash and other materials. While some stakeholders in the electoral process considered these exchanges to be voter mobilization, others considered it to be vote buying. The Electoral Act 2010 (as amended) does not expressly mention vote buying. However, the Code of Conduct for Political Parties prohibits "buying votes or offering any bribe, gift, reward, gratification or any other monetary or materials consideration of allurement to voters and electoral officials."[15]

In the context of combating corruption in the electoral process, ACAN researchers conducted a comparative and in-depth review of existing laws, decided cases and literature to determine the following issues:

- Definition of Vote Buying
- Procedures and Mechanisms for Reporting Vote Buying
- Best Approaches to Mobilising the Public Against Vote Buying
- Procedures and Mechanisms for Sanctioning Vote Buying

Following the in-house research and presentations at ACAN, stakeholders from the public and private sector were invited to a "Policy Dialogue on Eradication of Electoral Fraud: Focus on Vote Buying".[16] Stakeholders at the Policy Dialogue were from the Independent National Electoral Commission (INEC), Security and Law Enforcement Agencies (SLEA), Anti-Corruption Agencies (ACAs), political parties, Popular Mobilisation Agencies (PMAs), academia and Civil Society Organisations (CSOs). In all about 63 registered attendees participated in the Dialogue.

So, ACAN research findings were discussed alongside, the insights, experiences and opinions of all relevant stakeholders. Eventually, the findings and recommendations on the four research issues were

published in a simple to read Policy Brief.[17] The Policy Brief has been widely accepted by governmental and non-governmental stakeholders for guidance of their policies, decisions and actions.[18]

Among others, the Policy Brief provided evidence for policy and decision makers on the exact nature of vote buying. Contrary to the common view that vote-buying only entails the purchase of votes, it was demonstrated that vote buyer pays a person or a group of people in order for them to do one or any combination of the following:

- Vote;
- Refrain from voting;
- Cast a void vote;
- Cast a vote for the choice of the buyer;
- Register as a voter;
- Transfer registration; and
- Engage in false registration.

Evidence was also provided to support the following recommendations to policy and decision makers:

- Eventual establishment of an Electoral Offences Commission (EOC) which should focus on all electoral offenders and offences including vote buying;
- Vigorous implementation of exiting provisions of laws penalising vote buying and related conduct;
- Pending the establishment of EOC, investigation and prosecution should be targeted at persons most responsible for vote buying including the candidate, buyers, vote sale brokers, voter traffickers and their principal agents;
- While criminal prosecutions may not be practicable against small time offenders due to the huge numbers involved, written warnings should be issued to such persons and their names publicised. Such written warnings should include name of the investigated offender and the details of the incident;
- Candidates should be prosecuted individually or alongside vote buyers where the vote buying is done with the knowledge and consent of the candidate or the knowledge and consent of a person who is acting under the general or special authority of the candidate;

- Where a candidate is prosecuted for vote buying, the candidates political party should be charged as a co-defendant and the party should be fined where convicted;
- Prosecution of persons involved in the use of illicit funds (including funds from unexplainable sources) and illicitly disbursed funds to buy votes at intra-party level;
- The law needs to be modified to include party primaries in its scope so appropriate sanctions for vote buying can be applied at intra party level even where the funds used are not illicitly obtained or disbursed;

2. Research on Accountability for Secret Security Expenditure

Upon desk review of applicable laws, treaties, decided cases, literature and public commentaries, ACAN researchers found that the funds appropriated through the item identified as security vote in the National and sub-national budgetary process are subject to embezzlement, misappropriation or other forms of unlawful diversion. The funds are also traceable to instances of illicit enrichment. These constitute an abuse of public funds.

Nigeria has global, regional, sub-regional and domestic obligations to prevent and sanction the abuse of public funds. For example, the global level, the UNCAC, requires each state party to adopt legislative and other measures to combat the "embezzlement, misappropriation or other diversion of public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position"[19] It also requires the criminalisation of "significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income"[20]

It also came to light, from the desk review, that there are no clear legislative or policy guidelines for appropriating and accounting for the said security votes. With a view to contributing to the attainment of the NACS objective of having an "Improved Legal, Policy and Regulatory Environment"[21], ACAN researchers further conducted an in-depth comparative review of how other UNCAC state parties prevent the corrupt use of funds appropriated through secret budgets.

Subsequently, stakeholders were invited to a Policy Dialogue for the discussion of their experiences, views alongside the ACAN research findings and recommendations on the following issues:

- Definition of security votes, legitimate users and matters for which security votes may be lawfully applied
- Entrenching accountability in the use of security votes
- Categories of persons, whom may be, funded or paid from security votes
- Modalities and frequency of rendering account for security votes received or used

Participants at the Policy Dialogue were from civil society, academia, the military, security and intelligence agencies, anti-corruption agencies, law enforcement agencies, political parties, civil service, public service including elected officials and the media.[22] Opposing views were openly discussed by the participants.[23] The research findings and most of the recommendations were accepted by the stakeholders.[24] In the context of contributions of stakeholders at the Policy Dialogue, ACAN research findings and recommendations were published in a Policy Brief.

Among others the Policy Brief helps policy and decision makers to remove the ambiguity in the definition of security votes by clarifying that in the Nigerian budgetary process, moneys appropriated are described as votes and security votes are items of security expenditure whose details are kept secret and not specified in the budget document.[25] The Policy Brief also provided evidence of the arbitrariness in the security vote appropriation process. It presented evidence that in the 2019 Budget, a total of N21,848,004,970 (Twenty-One Billion, Eight Hundred and Forty-Eight Million, Four Thousand, Nine Hundred and Seventy Naira) was appropriated as security votes for 162 (One Hundred and Sixty-Two) Ministries, Departments and Agencies (MDAs). The distribution of this sum across MDAs is depicted in Table 1 below.[26]

Table 1: Distribution of Security Votes Across MDAs[27]

Type of MDA	Number of Recipients	Amount in Naira
Agriculture	7	11,088,769
Anti-Corruption Agency	3	115,681,056
Auditing	1	4,800,000
Awards	1	4,050,000
Budget & Planning	1	15,270,419
Civil Service Administration	2	11,084,824
Education	47	123,411,078
Environment	11	17,347,834
Health	15	39,898,790
Identity Management	1	9,469,965
Industry and Trade	2	19,784,000
Information	6	31,083,093
Infrastructure	1	7,150,000
Intelligence	5	5,817,547,148
Labour and Employment	1	1,280,000
Law Enforcement/Public Safety	8	730,577,348
Legal	2	6,380,824
Lottery	1	2,280,000
Military	7	9,817,886,150
Military Education/Research	2	4,695,727,669
Mines & Steel	2	8,992,268
Petroleum	1	9,000,000
Power, Works & Housing	2	6,479,648
Presidency	2	260,120,000
Science and Technology	23	16,950,688
Transport	5	50,967,395
Water Resources	1	200,000
Women Affairs	2	13,496,004
Grand Total	**162**	**21,848,004,970**

The Policy Brief, recommended ways of meeting the various international and domestic obligations relating to preventing the embezzlement and other abuses of security votes. For example, based on the evidence of what should be legitimate use of security votes, it was recommended to policy and decision makers that MDAs that do

not have a continuous core security function (CCSF) are not fit and proper recipients of security votes.[28]

It was demonstrated that an MDA has CCSF if its primary mandate demands the prevention or suppression of domestic or foreign threats of harm against the people of Nigeria, public and private institutions of the country, or the State as an entity. MDAs with CCSF conventionally have the statutory or constitutional mandate to:[29]

- gather and process local and foreign intelligence.
- work with law enforcement, military and intelligence allies of the country.
- counter criminal, terrorist, military and intelligence adversaries of the country.
- engage in war or armed conflict on behalf of the country.
- investigate crimes against individuals, institutions and the State (country).
- arrest and prosecute offenders.
- protect witnesses and whistle-blowers.
- deter organised crime.

3. Corruption Awareness Attitude & Susceptibility (CAAS) Survey of Students of Tertiary Institutions 2019

In fulfilment of anti-corruption obligations, Nigeria is required to work towards the inclusion of anti-corruption in the curricula of tertiary institutions. One of such obligations is contained in the UNCAC which provides that state parties should promote "activities that contribute to nontolerance of corruption, as well as public education programmes, including school and university curricula."[30] Domestically, the Implementation Plan of the National Anti-corruption Strategy (IP NACS),[31] requires the introduction of General Studies in Anti-corruption to improve anti-corruption awareness among students of tertiary institutions in the country.[32]

Tertiary institutions are the training grounds for Nigerians who will hold virtually all senior positions in the public and civil service. Presuming that the knowledge and orientation received in the tertiary institutions would be brought to bear in the performance of their roles as future leaders,[33] IP NACS adopts the strategic goal of improving public awareness of corruption and its implications through General Studies in anti-corruption in tertiary institutions.[34]

To provide evidence to appropriately plan and support the implementation of general studies in anti-corruption in tertiary institutions, ACAN conducted the Corruption Awareness Attitude and Susceptibility Survey (CAAS). The findings were discussed at ACAN presentations. They were also shared with stakeholders in the academia for peer review and comments. The findings and recommendations were published in a widely disseminated report.[35] The report has guided the decisions and policies of stakeholders in the tertiary education sector.[36]

The survey tool was a self-administered questionnaire. The respondents to the questionnaire were 1,926 (one thousand nine hundred and twenty-six) randomly selected undergraduate students in 39 tertiary institutions across the 6 geo-political zones of Nigeria.[37]

The CAAS Survey provided evidence to policy and decision makers that the surveyed students had a Low Level of anticorruption awareness, they were Dangerously Exposed to corruption and were Very Susceptible to corruption.[38] Among others, the CAAS survey found that 51% of students in tertiary institutions are not aware of the distinction between bribery and extortion. 65% were not aware of the existence of UNCAC (see Figure 1). 67% were not aware of other ACAs apart from ICPC and EFCC (see Figure 2). 44% had the personal experience of engaging in a corrupt practice (see Figure 3).

Figure 1: Existence of UNCAC

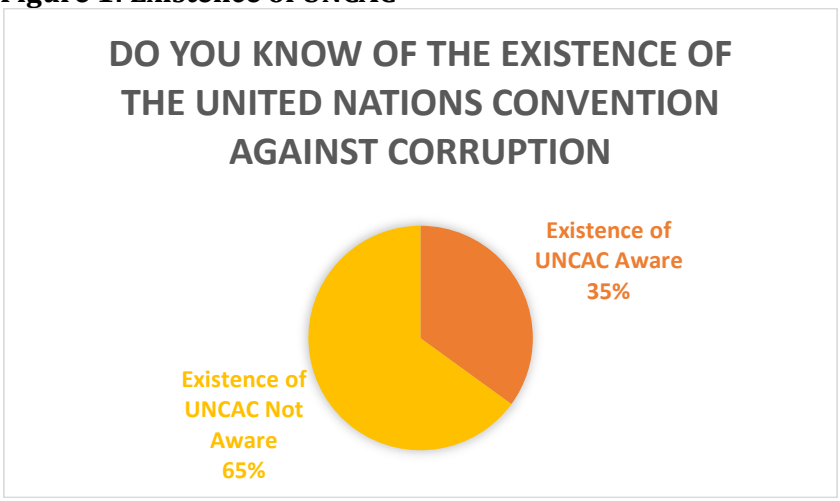

Figure 2: Awareness of other ACAs apart from ICPC and EFCC

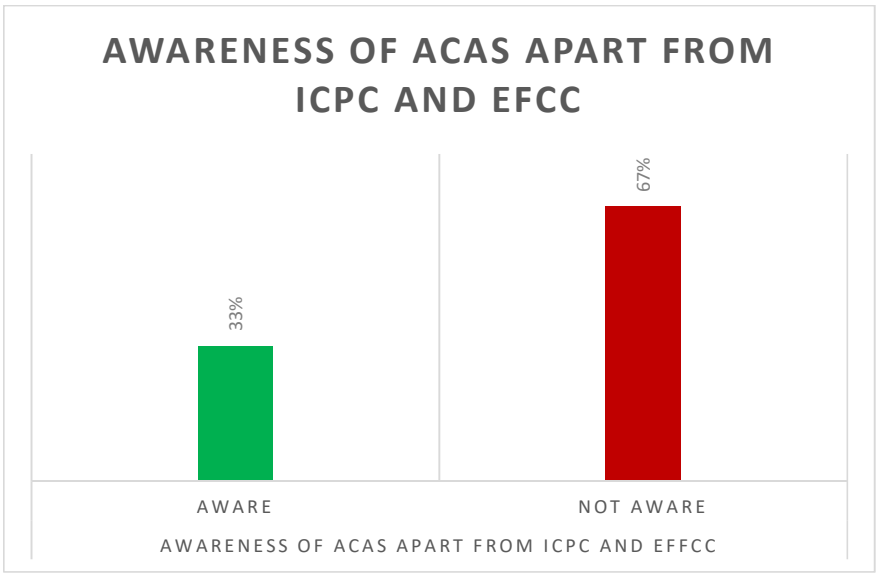

Figure 3: Experience of Corrupt Practice

The CAAS Survey thus provided evidence that can be used in designing and monitoring educational anti-corruption interventions in tertiary institutions.[39] The CAAS Survey showed areas where students have substantial awareness of issues as well as areas where

they are largely unaware of the issues. The survey also revealed the students' attitude, exposure and susceptibility to corruption. If the educational and orientational interventions are successful, future surveys should show substantial improvements.[40]

4. Corruption Attitude, Perception and Experience (CAPE) Survey of Public Officials

There are numerous international and domestic anti-corruption obligations relating to public officials.[41] There are also numerous reports indicating that corruption is pervasive in the Nigerian public sector. To provide properly stem the tide of corruption in the public sector, it is important for stakeholders, policy and decision makers to know the underlining causes.

Given that anti-corruption initiatives to reduce public sector corruption would benefit from evidence of why public officials engage in corrupt practices, the CAPE Survey examined public official as a subpopulation whose attitude, perception and experience of corruption might be different from the rest of the citizenry.[42] Targeting the subpopulation allowed for asking questions that will aid specific anti-corruption activities, policies and decisions for the public sector.[43]

The survey tool was a self-administered questionnaire filled by 1,510 (one thousand five hundred and ten) randomly selected public officials in Federal MDAs. The survey provided evidence that younger public servants are likely to engage in corruption on the false justification that everyone else is doing it (see Figure 4).[44] The survey also provided evidence that the anxiety of meeting basic needs is an enormous form of psychological pressure on public servants as 76% considered that their salaries including all allowances were not sufficient to meet their basic monthly needs (see Figure 5). More female than male (77.16% of the female and 75.70) public officials indicated that their salaries and allowances were insufficient for their basic monthly needs (see Figure 6). It was also shown that community acceptance played a large role in promoting corruption in the public sector as 69% of public servants indicated that their community would accept monetary gifts above their annual salary without questioning the source of the money (see Figure 7). Other causes and enablers of public sector corruption are contained in the CAPE Survey Report 2020.

Figure 4: Age in Relation to the View that Everyone in Nigeria is Corrupt

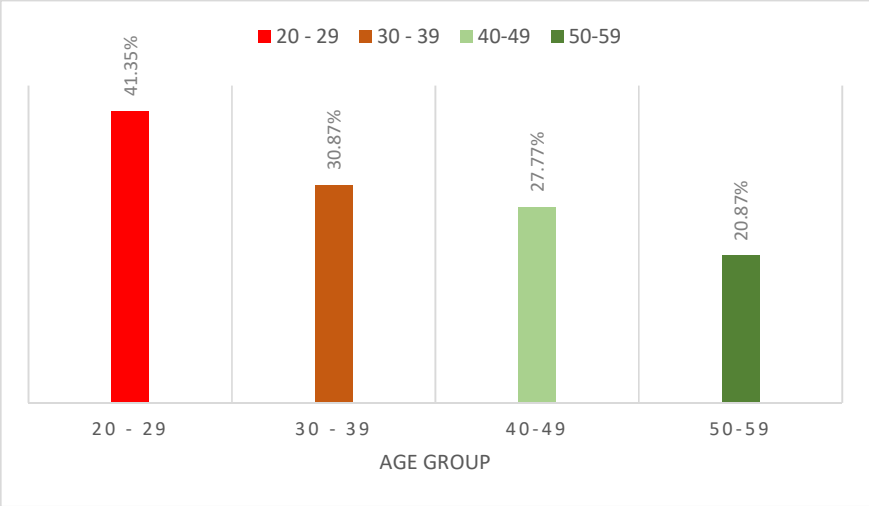

Figure 5: Meeting Basic Needs Through Salaries and Allowances

Figure 6: Sex in Relation to Insufficiency of Emoluments to Meet Basic Needs

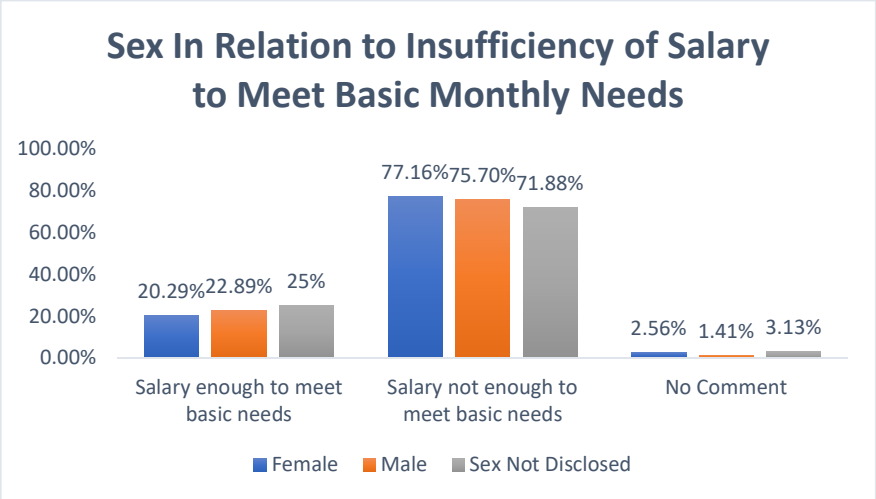

Figure 7: Community Acceptance of Monetary Gifts Larger than Public Official's Annual Salary

In all, the CAPE Survey seeks to guide policy and decision makers by providing evidence of underlying factors that push, pull, enable or

support corruption in the public service. Based on the evidence supplied, interventions can be targeted at the appropriate issues and segments of the population.

Conclusion and Recommendations

Certainly, it is preferable to act based on research-generated evidence and knowledge than to act on anecdotal opinion.[45] Research-based interventions are however best utilised where the research is continual. Continual or periodic research will enable decision and policy makers measure the successes of their interventions.[46] Although providing research-generated evidence and knowledge for anti-corruption work is good in itself, its real value lies in continuity. Moreover, it is important to widen the scope and scale of the research being conducted by ACAN. At the moment, most of the research projects are focused on the federal tier of the country.

In addition, research facilities and techniques need to be improved. The CAAS and CAPE Surveys were conducted using self-administered paper questionnaires. In preparation for future surveys, ACAN has acquired 40 handled computers for Computer Assisted Personal Interviewing (CAPI).[47]

Provided that the management of ACAN and ICPC continue to abide by the Strategic Plan of ACAN and ICPC respectively, ACAN will continue to conduct research projects to aid evidence-based and knowledge-driven interventions.

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CHAPTER 11

PRACTICAL AND IDEOLOGICAL PECULIARITIES OF ANTI CORRUPTION INVESTIGATION IN NIGERIA

DAVID IGBODO & SHEHU B. DAUDA

Introduction

Corruption is a monster that attacks the fabric of the Nation. It is observed to be responsible for most of the setbacks that Nigeria country has suffered since independence. While declaring a national emergency on corruption, President Muhammadu Buhari said, "there is a very strong link between corruption, peace and security. Unfortunately, corruption is everywhere; at all levels of government, and every stratum of our society. Without doubt, corruption constitutes an unusual and extraordinary threat to the well-being, national security, and economy of Nigeria…if Nigeria does not kill corruption, corruption will sooner-or later kill Nigeria."[1]

The various administrations in the country since independence made efforts to eliminate corruption by creating laws and institutions that sought to strengthen the fight against corruption and ensure that corrupt and corruptible public officers and their collaborators are adequately brought to justice and the looted funds/assets duly recovered and forfeited to the Government for reinvestment into national infrastructural development. One of those institutions that was created is the *Independent Corrupt Practices and Other Related Offences Commission*, ICPC.[2]

Before the establishment of the ICPC, the Nigeria Police Force was about the only security agency investigating corruption cases using anti-corruption provisions in the Criminal and Penal Codes. The Code of Conduct Bureau is enshrined in the Fifth Schedule to the 1999 Constitution (as amended),[3] while the State Security Service uses SSS Instrument No 1 of 1999. For most of these years, government efforts to tackle corruption never achieved the desired result. It was when it became apparent that the Government was losing the war on corruption, the ICPC was created to join in the fight against the destructive impacts of corruption in the country.

To ensure that the ICPC has the legal instrument and wherewithal to overcome corruption, the ICPC Act 2000, gave the Commission the powers and immunities of the Police and other security agencies.[4] The ICPC was even given the power to prosecute in the name of the Attorney General of the Federation.[5] Again the Act gives the Commission power to conduct System Studies and Review (SSR) of Ministries, Departments and Agencies (MDAs) of Government.[6] Since its creation, the Commission has made giant strides in the fight against corruption but the war is far from being won. The Transparency International Corruption Perception Index in 2019, ranked Nigeria 146th out of 180 countries, making the country the 34th most perceived corrupt country in the world.[7]

The ranking of the Transparency International was discredited by not only the government but also other stakeholders in the fight against corruption. For instance, the Chairman of the Presidential Advisory Committee against Corruption (PACAC) Professor Itse Sagay, while reacting to the Transparency International report, said the Organization *"did not take into cognizance the fact that in the last four and half years, tremendous progress had been made in the anti-corruption war."* He further stated that *"the way ICPC is targeting constituency projects; we are going to target some departments where this is common, so that we can try to, if not eliminate it but reduce it so drastically that it will not continue to be a public concern."*[8]

Despite the views expressed by the esteemed PACAC Chairman and despite the efforts of the ICPC and other Anti-Corruption agencies, the Nigerian corruption profile has continued to worsen, even if only from the point of perception. ICPC has continued to take steps to entrench integrity in the processes of governance. These are done by constantly studying the system and putting measures in place that make it difficult for persons especially public servants to get corrupted. The ICPC has also intensified investigation and prosecution of high profile corrupt individuals. However, the fight against corruption has proven more challenging than the war against other crimes as there are certain practical and ideological peculiarities with the fight against corruption that have continued to stifle the investigation and prosecution of corruption in Nigeria.

Practical and Ideological Peculiarities of Corruption Investigation

In the investigation of corruption, the ideological and cultural challenges which the investigators are confronted with are different from the ones encountered by those charged with the responsibilities of investigating other general crimes like armed robbery, kidnapping, murder and rape. This has made the eradication of corruption a daunting task. While strategies adopted in the investigation of other crimes like armed robbery, murder, banditry, stealing may easily result in the curbing of these crimes, that of anti-corruption strategies may not easily lead to reduction in corruption cases as is the case with Nigeria.

In view of these challenges of investigation and to harmonize the different approaches to tackling corruption, in April 2003, the Conference of International Investigators was held in Brussels where 80 representatives from about 30 organizations, including the World Bank and the United Nations, participated.[9] Thereafter, it periodically brings together the major investigative bodies of international and bilateral organizations. During one of the conferences, the delegates developed '*Uniform Guidelines for Investigations*' which was adopted by the organizations that attended[10]. The Standard also serves as an international benchmark for investigative agencies. These approved investigation standards are:

i. **Principles**

An Anti-corruption investigator should be a person who:

a. Has highest personal integrity.
b. Endeavours to maintain confidentiality (protection of information, informants and witnesses).
c. Is objective, impartial and fair judgement throughout the investigative process and timely disclosure of any conflict of interest to supervisors.
d. Demonstrates competence: (someone who has the ability to identify and trace persons, companies and properties; possesses interview techniques, document examination and financial investigation skills. Conducting a search and arrest operations, physical and technical surveillance and act as an undercover agent).

In addition,

e. Investigation activities of the investigator should prove his preparation, involvement or engagement to unravel the facts of the case.
f. Findings should be based on competent evidence, facts and related analysis that can be proved, not suppositions or assumptions.
g. Recommendation should be based on the investigation findings.

ii. **Procedural Guidelines**

It is expected that all anti-corruption investigation should be guided by the following guidelines:

a. Complaints brought to the attention of the Investigating Officer (IO) should be subject to careful analysis and handling;
b. Complaints, which may include criminal conduct or acts contrary to the rules and regulations of the organisation should be registered, reviewed and evaluated to determine if they fall within the jurisdiction or authority of the organisation;
c. Information received by the Investigating Officer should be protected from unauthorised disclosure;
d. The identities of those who make complaints to the Investigating Officer should be protected from unauthorised disclosure;
e. Every investigation should be documented by the Investigating Officer;
f. Decisions on which investigations should be pursued, and on which investigative activities are to be utilized in a particular case, rests with the Investigating Officer, and should include any decision whether there is a legitimate basis to warrant the investigation and commit the necessary resources;
g. The preparation for the conduct of an investigation should include necessary research of the relevant national laws, rules and regulations of the organisation; the evaluation of the risks involved in the case; the application of analytical rigor to the evidence to be obtained and the assessment of the value, relevance and weight of the evidence; the measurement of the evidence against the relevant laws, rules and regulations; and the consideration of the means

and time by which the findings should be reported and to whom;

h. The planning and conduct of the investigation should reasonably ensure that the resources devoted to an investigation are proportionate to the allegation and the potential benefits of the outcome; and
i. The planning should include the development of success criteria for the identification of appropriate and attainable goals for the investigation.

However, the possession of these attributes by an investigator of corruption cases is not a guaranty to surmount the practical and ideological peculiarities in the anti-corruption investigation terrain. Some of these practical and ideological peculiarities are as follows.

(i) Social norms

The greatest challenge encountered by an investigator of corruption cases in Nigeria is the people's social and cultural norms. Nigeria is a constitutional democracy which in ordinary parlance means that power resides in the people. However, the way the political leadership has manipulated the political system and the masses, has negatively affected their social psyche and therefore impede the fight against corruption. Unlike other criminal investigations (e.g. murder or theft), that are mostly reported by the victims or witnesses, anti-corruption investigation though not a "victimless" crime, but the only victim in many cases is the general public interest, which is not aware of the crime or not in a position to report or complain about i.t[11]

The masses who are therefore the victims of the crimes are expected to collaborate and provide investigators of corruption with information that could aid them in the gathering of required evidence. It is, however, surprising that rather than cooperate and support the investigator they not only threaten but sometimes physically assault them while conducting investigation in the field. There are instances where residents of an area attack and prevent operatives of anti-corruption agencies from conducting searches or arresting a public officer who have been accused of corrupt practices. One then wonders why the victims of corruption, the ones whose children have been deprived of the opportunities of good education, good medical facilities, good roads and lack of employments are the ones obstructing the investigation and frustrating the efforts of the Commission to heal them of their ailments. The reason is not far-

fetched. Nigeria is a patron-client society where citizens are more likely to look for personal connections rather than achieve things based on merit. These connections are usually persons from their ethnic group or same community. The implication in our social system is that citizens more often than not support public officers from their own communities or ethnic groups with the hope that they will benefit from their powers.

In this light, Nigeria is regarded as one very giant cow where public officers from the various ethnic nationalities are seen as the only source to the benefits accruing from the National cakes. The public officers who succeed in stealing public funds are regarded as heroes and bestowed with chieftaincy titles in appreciation for their looting of public funds. The investigators assigned to investigate their corrupt practices and their witnesses are regarded as enemy of that ethnic nationality and are usually attacked. Abba Umar, a former staff of the Corporate Affairs Commission (CAC),[12] who was a witness in the Malabu Oil deal was attacked and killed by the "victims" of the corruption.

When their sons and daughters are discharged by the Courts or even released from prison after serving jail terms for corrupt practices and looting of the common wealth, they roll out drums to celebrate. When the former Governor of Delta State, Mr James Onanife Ibori was discharged from UK Prison[13], his houses in London and Delta State were turned to a Mecca of sorts. This social behaviour shows that "Nigeria is a country of strange and contradictory moral values. Leaders are often judged not on their astuteness or moral probity but on ethnic considerations. Primordial instincts are higher in assessing public officials than edifying values. Accountability hardly counts and double standards abound in evaluative judgments. This is a tragic shortcoming of the Nigerian State"[14]. This attitude is detrimental to the success of the investigation of corruption in Nigeria as the people rather than cooperate with investigators turn hostile to them.

ii. **Political Protection**

Political protection is another major challenge faced by investigators of corruption in Nigeria. In the political space in Nigeria, there is so much reliance on godfathers. This has become the way of life and ideology of the people. It is difficult to partake or succeed in political activities in Nigeria without *godfatherism*. In an article by the BBC in February 2019, it detailed how much of an effect 'godfathers' can

have in the political space in Nigeria. In the report it was stated that "they are political sponsors, who use money and influence to win support for their preferred candidates." It is explained that these 'godfathers' choose a 'godson' that they groom into a candidate that can implement the policies they want. This makes for a corrupted government and political system in Nigeria. These men are chosen by the rich for their "ability to repay and enrich their godfather"(BBC article 'Nigeria election 2019: How 'godfathers' influence politics').[15]

This godfather/godson syndrome in Nigeria's constitutional democracy seriously affects the effectiveness of corruption investigation in Nigeria because of the protection offered to their political godsons or political godfathers. Arising from these protections, Investigators are put under immense pressure to drop investigation of any godfather or godson found to be corrupt. In one of the cases investigated in the commission which affects a political godson, we could not make a head way in the investigation. The political godson who is one of the governors of the States violated the Constitutional provision and the Nigerian Financial Intelligence Unit (NFIU) guidelines which stipulates that Local Government Councils should operate separate accounts from that of the States Government. Investigation into this allegation met very strong brick walls and could not progress as the particular Governor regarded as a godson to one of the political big wigs directed the local Government chairmen not to honour invitation to substantiate the allegations.

Another form of political protection of corrupt public officers which negatively affects investigators are those ones offered to members of the ruling party. Though the situation has drastically changed under the leadership of President Muhammadu Buhari, membership of ruling political parties is usually considered as an advantage and a shield to investigation. "It was alleged that the former Chairman of the All Progressive Congress, APC, Mr Adams Oshiomhole, said during the Edo state APC Presidential rally "once you join the APC, your sins are forgiven."[16] This protection offers to membership of ruling Party affects the effectiveness of investigators. Most particularly in the past, the investigators or their Chief Executives, who are usually appointees of the ruling Party, for fear of being victimized or removed from an office, often times abandon the investigation.

iii. **Difficulty in Obtaining Information Relating to Corruption**

In many cases, it is difficult to obtain information relating to corruption during investigation. Anti-corruption data collection modules are most times regular administrative data. They are mostly obtained from fiscal authorities, jewellery dealers, real estate transactions, Suspicious Transaction Reports (STRs), from financial intermediaries notably banks. Most times because the suspects are politically exposed persons (PEPs), they use their position and influence to compromise top management officials of banks, real estate owners, etc. to manipulate information requested by investigators. The ICPC Act gives the Investigating Officer, the power to request for documents from MDAs. Most times these requests are not accorded the urgency it requires and when they do are scanty and may not meet the desire of the investigation thereby slowing down investigations. These delays and non-detailed response give rooms for the suspects to deplete the proceeds of crime.

Another challenge faced by anti-corruption investigators is getting information relating to bank transactions. The ICPC Act,[17] states that a duly signed bankers order has to be attached. Getting bankers order can be very cumbersome. This is because there are no designated Magistrates to sign bankers order, arrest and search warrants. Some of the Magistrates who agree to sign, usually request for the copy of the petition or motion to that effect. Satisfying that requirement would make the witnesses vulnerable as the protection required in the ICPC Act[18] will no longer be available to the witness. Whatever is filed in court is a public document and is accessible not only by the court staff but by anybody including journalists. In some cases, the information about the planned arrest or search for which the court order is sought leak to the suspect before the investigators could act.

iv. **Challenges of Assets Tracing and Recovery**

There are usually dual mandates in anti-corruption investigations. These involve the issues of analysing operational status of criminality, performing risk analysis, analysis of investigative information, identifying and assessing the property obtained through the corrupt practices.[19] Anti-corruption investigations need to be open, transparent and accountable to ensure both the protection of fundamental rights of citizens and the interests of the country. Anti–corruption investigation does not only seek to convict the offender

but seeks to deprive the corrupt persons and their collaborators of the proceeds of the crime.

In a nutshell, beside conviction of the defendant, emphasis should also be placed on the 'Property derived or realized directly or indirectly from the crime (the initial criminal proceeds), and includes property resulting from the conversion or transformation of the initial criminal proceeds (secondary criminal proceeds) and income, capital or other economic gains derived from either the initial criminal or the secondary criminal proceeds.'[20] Numerous forms of predatory crimes yield proceeds, in the form of assets, some of which are the object of the crime itself, while others are the result of intervening transactions that may conceal the connection to the crime. Initial proceeds can be mingled with others and converted into secondary forms. Furthermore, criminal assets can be speedily moved between places, or across borders. This often complicates the task of identifying proceeds of crime for the victim or for any other claimant, and is a basic challenge for investigators.

As anti-corruption agencies develop new strategies to combat corruption, and track the proceeds, the corrupt persons especially Politically Exposed Persons (PEPs) develop ever-increasingly sophisticated means of concealing their illicit gains but most times they do so with the assistance of "Gatekeepers"[21]. They invest time, money and effort into the manner in which their property is laundered and then used. They seek to achieve a 'disconnect' between them and the proceeds through the use of "Gatekeepers" by the following methods:

v. create a distance between the PEPs and the proceeds of his crime
vi. the proceeds of crime and the form in which he ultimately derives his benefit, and finally
vii. the PEPs and his access to the benefit.

These disconnects facilitate the safe enjoyment of the fruits of the crime. A classic example of such instance is the case of former Comptroller General of Customs, Abdullahi Dikko Inde, who was suspected of using his lawyer's firm to conceal ownership of most of his properties. When investigation commenced, he disassociated himself from the assets. This scenario is aptly captured by Stephen Baker, an English advocate when he said, "the financial world does

not operate in one dimension. The traditional view that individuals hold direct, simple relationships with financial service providers is increasingly less relevant. This is especially so in a world of ever-increasing complexity, driven by technological change and shifting political and social sands."[22]

V. Judicial Interference

In 2007, the High Court of Rivers State in a suit instituted against the Independent Corrupt Practices and Other Related Offences Commission and 36 Others by the Attorney General of Rivers State, declared among others:

(a) That under the Constitution of the Federal Republic of Nigeria, the Independent Corrupt Practices and Other Related Offences Commission or any other investigative body or agency are not entitled to direct or cause to be directed any inquiry or investigation into the disbursing or the administering or money appropriated or to be appropriated under any appropriation bill passed by the River State House of Assembly, whether for the purpose of exposing corruption, inefficiency or waste, neither are they entitled to take any steps or decision that will cause the House of Assembly of River State to share, surrender or abdicate the Constitutional powers so vested in it with the Independent Corrupt Practices and Other Related Offences Commission or any other person body agency or organization no matter how described.

(b) That under the 1999 Constitution of the Federal Republic of Nigeria, the Accountant General of Rivers State is not entitled to submit financial statements, reports of annual or other accounts of Rivers State, documents, vouchers, or other financial records/statements of Rivers State to any other authority, persons, body or organizations including the Independent Corrupt Practices and Other Related Offences Commission or any other investigative body.

(c) That Banks and financial institutions are not entitled to submit or release or in any manner whatsoever disclose to any person or body or agency including the ICPC or any other investigative body any documents, vouchers, or other financial records, statements of accounts, cheques or any other information relating to the banks accounts of Rivers

State Government other than to the Rivers State House of Assembly.

The Court, after the above declarations restrained the Independent Corrupt Practices and Other Related Offences Commission and other investigative bodies in the country from investigating the State, whether for the purpose of exposing corruption, inefficiency or waste and that Banks are not obliged to release any information whatever in respect of accounts operated by the State to the ICPC.

Similarly, in 2016, the High Court of Ekiti State holden at Ado Ekiti, gave similar declarations and restrained the Independent Corrupt Practices and other related Offences Commission and other investigative agencies from investigating the financial activities of Ekiti State, citing Constitutional provisions as the basis for such injunctive Orders. The Court also restrained the Banks and other financial institutions from supplying the ICPC or any other investigative body any documents, vouchers, or other financial records, statements of accounts, cheques or any other information relating to the Bank accounts of Ekiti State Government other than to the House of Assembly of Ekiti State.

These cases have not been appealed by the ICPC, hence these injunctions, restraining it from investigating the financial transactions of the States is adversely affecting the Commission from discharging its mandate. Furthermore, the declarations that the Accountant General of the States are not to submit financial statements, reports of annual or other accounts documents, vouchers, or other financial records/statements to the Independent Corrupt Practices and Other Related Offences Commission or any other investigative body are now relied upon by some states as a basis for not cooperating with investigators of anti-corruption agencies including the ICPC.

Conclusion

The tacit support accorded corrupt public servants and their collaborators by the people of their various ethnic nationalities, the amount of wealth at their disposal which facilitate the procurement of injunctive orders from courts against their investigations, political protection of corrupt public officers, doctoring of information as well as delays in supplying investigators the required documents and difficulties in identifying and tracing assets associated with corrupt

public servants are the commonly practical and ideological peculiarities of corruption investigations. The ICPC should enhance its enlightenment activities particularly through the various state offices to re-orientate the people that corrupt public servants and their collaborators including some willing judicial officers irrespective of their ethnic nationalities are enemies of the state and account for why the country lags behind in infrastructural development in all sectors despite the huge resources at its disposal. It is only when the people understand this that they will begin to change their attitude and begin to cooperate with investigators to fish out and punish them in accordance with the provisions of the ICPC Act and other anti-corruptions laws. This will also help to put an end impunity in the country. Furthermore, the decisions of the High Courts of Rivers and Ekiti States restraining the Commission from investigating the accounts of the States should be appealed against to avoid a situation where it is used as a land mine against the operations of the Commission.

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CHAPTER 12

FINANCIAL INTELLIGENCE AND INVESTIGATIONS

AYENI VICTORIA AND AGBORO OMOWERA MICHAEL

Introduction

The existence and development of financial intelligence and investigations in the Commission can be traced back to the second Board of the Commission. It was conceptualized and approved by the Chairman, Honourable Justice Emmanuel Ayoola (retired) in the year 2007.

The importance of financial intelligence and investigation became apparent and was brought to the fore when Nigeria was preparing for its First Round Mutual Evaluation by the Inter-Governmental Action Group Against Money Laundering in West Africa (GIABA). The Independent Corrupt Practices and Other Related Offences Commission, ICPC, was directly involved because corruption was one of the predicate offences in Money Laundering/Terrorism Financing. Also, anti-corruption and law enforcement agencies in the country including the ICPC, were trying to comply with the Financial Action Task Force (FATF)'s 40 Recommendations plus 9 special recommendations. For instance, Recommendation 27.5 stated in enquiry form, that "in addition to special investigative techniques, are the following effective mechanisms used? (a) Permanent or temporary groups specialized in investigating the proceeds of crime (financial investigation)? An important component of the work of such groups or bodies would be focused on the investigation, seizure, freezing and confiscation of the proceeds of crime."[1]

Early Beginnings: FIS to FIU

To comply with the afore-mentioned Recommendation 27, and taking cognizance that majority of corruption cases involved financial transactions both simple and complex as well as one-off and reoccurring cases, the Commission decided to set up a section under the Finance and Accounts Department known as Financial Investigation Section (FIS). In its early years, FIS rendered financial analytics and services to the investigation departments and units during investigation especially in cases where complex financial

transactions were involved. The specialized section manned by members of Institute of Chartered Accountants of Nigeria (ICAN) and Association of National Accountants of Nigeria (ANAN), brought to bear their knowledge and professionalism in Public Financial Management. FIS was also responsible for organizing and overseeing System Study and Review of Personnel Cost of MDAs to curb abuses inherent in personnel cost. The section also superintended the financial review of Universal Basic Education Commission and State Universal Education Boards.

Observing the successes of the section, it was granted the status of a Unit in 2009 and christened Financial Investigation Unit (FIU). The Unit also specialized in investigating tax matters, cases involving financial institutions, pension matters, procurement fraud and complex financial cases. The Unit has come of age with modest achievements which would be highlighted in this chapter.

Financial Intelligence and Financial Investigations: The Nexus

There exists a strong correlation between financial intelligence and financial investigations. Financial intelligence is the product derived from financial information gathered from various sources that have undergone collation, evaluation and analysis. The financial intelligence can then be acted upon to conduct investigation, effect an arrest or seize or confiscate any asset that is proceed of crime. On the other hand, financial investigation can be said to be an official examination connected with money or finance. In the sense of anti-corruption therefore, financial investigation is the analysis of financial data to establish whether or not fraud had been committed. It is a tool used to unravel fraud, misappropriation, misapplication of fund, embezzlement, virement, theft, money laundering, tax evasion, bribery and other corrupt practices. There is a mutually reinforcing relationship between the financial intelligence and financial investigation: while financial intelligence can be a means to successful investigation, a comprehensive analysis of several investigation reports (information) can produce further financial intelligence.

Conducting a parallel financial investigation is a modern technique used in crime fighting. In parallel investigation, focus is extended beyond the main issues intelligence data had suggested or allegations made against a target. Considering that some crimes are harder to prove than others, investigations could be extended for instance

beyond procurement fraud to examine a target's asset holding against his tax profile. It has been used successfully to bring down criminals. For example, 'Al Capone was brought down not for the numerous crimes associated with alcohol, murder, and prostitution, but for tax evasion.'[2] Therefore, financial investigation can be employed in identifying cases of embezzlement, fraud and misappropriation. This is achieved using the 'follow the money' technique. Indeed, financial investigation is solely concerned with following the money to establish where it came from and on what it was expended, enabling law enforcement officials to prevent criminals from enjoying the loot or proceeds of crime.

It can also be used to determine person or persons behind a criminal enterprise by analysing money flows and establishing links through link analysis thereby helping investigators to determine the real criminals behind the scenes (who is really behind any corruption case).

Financial Investigations and the Fight against Corruption

Financial investigation can be used as a tool for profiling defendants. This is accomplished using time tested methods such as analysis of bank deposit, net-worth and expenditure. These methods are based on the golden rule of accounting that is, for every credit entry there must be a corresponding debit entry; credit the giver and debit the receiver, credit income and gains and debit expenses and losses etc. This rule postulates that just as energy can be converted from one form to another, the value of money too can be transferred from one person to another or from one organization to another. It is in this process of transfer of value from one person or organization to another that fraud, corruption and other crimes are perpetrated. For instance, suppose the Ministry of Finance transfers 'N1,000,000' to an MDA as its allocation, thereafter the MDA pays a contractor 'N500,000' and finally the contractor transfers a gift of N100,000 to the Permanent Secretary, the accounting entries are as follows:

a. Credit the Ministry of Finance 'N1,000,000' (the giver) and debit the MDA 'N1,000,000' (the receiver)
b. Credit the MDA 'N500,000' (now the giver from its allocation of N1,000,000) and debit the contractor 'N500,000' (the receiver)
c. Credit the contractor 'N100,000 (the giver) and debit the Permanent Secretary 'N100,000'

The implication of the above scenario is that using the golden rule of accounting, you can always trace anyone who had received money from any government agency and what the money is used for as long as the transactions are within the financial system. Just like energy, when it is being converted from one form to another a portion of it can be dissipated in form of heat so also financial trail can be lost if the money is converted into cash thus making tracing difficult otherwise, money cannot be lost.

At this juncture, the lure of making easy money, becoming rich at the expense of government and the populace, trying to secure one's future as is the case by majority of civil servants whose pensions are a far cry from their standard of living while working engenders corruption. The plight of pensioners who had served the beloved country meritoriously but are suffering degradation serves as negative influence for serving public officers who also attempt to settle themselves while in service. There is also the dearth of infrastructural amenities in the country such as; world class hospitals and institutions of higher learning that pressures public servants and political office holders to seek treatment for common sickness like headache, flu and other minor ailments abroad. Even public servants with debilitating illnesses are forced to seek treatment in India and other countries. The real problem arises when a dependent of a public servant is involved and the cost of treatment cannot be borne by his employer. The public servant is left with no other option than to cut corners to pay the hospital bill. What about the cost of sending wards to universities abroad and paying in hard currency at such an exorbitant rate? How many public servants can really afford to cover the cost of such foreign education from their legitimate income? The answer is obvious: financial consideration of corruption.

Political patronage, high cost elections, godfather syndrome and high dependence by the community all exacerbate corruption. Therefore, corruption is a crime driven by the financial consideration. Falsifying turnover records by one of the big four multi-national construction company to evade tax of over N1.3billon, receiving gratification from contractors who were awarded contracts, awarding contracts to companies of relatives and associates, inflating the cost of contracts, rigging of bids and a host of activities all have one thing in common: how to exploit the system for private monetary benefits. It is the

financial nature of most corruption cases that makes financial intelligence and investigation very important to the Commission.

To curb the financial consideration of corruption cases, the analysis of cases investigated so far can create financial intelligence the Commission can act upon to develop preventive mechanisms. From investigations conducted by the Unit, advisories had been written by the current board to various government agencies on how to plug the loopholes that create opportunity for discretionary abuse. The Office of the Accountant General of the Federation has always been ready to partner with the Commission in eliminating abuses in the disbursement and use of public funds.

Financial Intelligence and Pension Fraud Investigations

The relationship between financial intelligence and financial investigation has proved true in the Unit's investigations in the Pension Sector. Sometimes in 2012 the Commission received a financial intelligence on serious fraud in the pension administrated at the Office of Head of Civil Service of the Federation (OHCSF). The intelligence led to an investigation wherein it was discovered that the OHCSF operated over 40 pension accounts in several commercial banks. The multiplicity of accounts facilitated a lot of fraud and abuse, and the Commission recovered N469million accrued interest that were not remitted to Treasury from those accounts and using its powers directed that the number of accounts be reduced to only seven. Some of the civil servants who abused the system were charged to court. All these were achieved due to financial intelligence. The success of the operation led to a surge in petitions relating to pensions that the Commission received, following which a Pension Social Benefit (PSB) section was created in the Unit to handle all pension related petitions. About 54 cases were resolved between 2015 to 2018 and a total of N7.4 billion was recovered on behalf of petitioners.

Following analysis and resolution of the volume of petitions received from hitherto hapless pensioners, the Commission generated financial intelligence which it shared with Pensions Transitional Arrangement Directorate (PTAD), and acting on the intelligence, PTAD embarked on a vigorous enlightenment campaign to sensitize pensioners to be wary of fraudsters and this led to a drastic reduction in the number of pension fraud cases, thus underscoring the importance of financial intelligence. Also, from the cases investigated

and analysed the ICPC was able to share financial intelligence with the National Pension Commission (PENCOM), and recommended the need to review its enrolment criteria and further the need to carry out intermittent verification of contributors so as to eliminate those who were no longer alive. This intelligence was shared due to analysis of several investigation reports wherein bank accounts of contributors who had died were still being funded. Based on the intelligence, PENCOM commenced a nationwide re-assessment and recapture of contributors in 2018. The ICPC has, relying on analysis and investigations conducted by the FIU, written several advisories to Ministry of Finance and National Primary Health Care Development Agency.

Financial Intelligence and Corruption Investigation: The ICPC Experience

In one case the Unit investigated, it was discovered that the main suspect connived with contractors to inflate contracts and each contractor thereafter made 30% returns to the main suspect. The scheme was very complex because the contractors actually executed the projects but in the process through financial analysis it was discovered that most of the contractors patronized a particular enterprise for the supply of specialized inputs from abroad. The questions that popped up as red flags in the minds of the investigators were:

- Why were all the contractors patronizing this particular enterprise?
- Why were specialized equipment not sourced from overseas suppliers using Form M?
- What was the competence of this particular enterprise to be entrusted with this technical function?
- What was the main business of this enterprise as contained in its memorandum and article of association?
- Were there traces of transfer of the monies received to overseas suppliers?
- If not, what happened to the money supposedly paid by contractors for acquisition of specialized equipment?

These and other questions pricked the curiosity of the Financial Investigation Unit to probe further using financial analysis, i.e. follow the money concept and link analysis. Investigations further revealed that the enterprise with which all the contractors had a subcontract for supply of specialized equipment from overseas proved to be a

Bureau de Change. Your guess as to the findings would be correct: steady flow of huge public funds to the government official for doing nothing other than exploiting the opportunity for corruption.

Financial investigation has also helped in identifying assets acquired as proceeds of corruption. Employing the technique, the Unit has been instrumental in the recovery of cash stolen and hidden in bank accounts. These monies were disguised as advances to '*Project Accountants', and* in most cases paid from capital development accounts of Ministries Departments and Agencies (MDAs) to individual accounts of staff. While the payment vouchers indicated a specified purpose for the advance such as; duty tour allowance, training and capacity building, estacode allowance and airfare, monitoring and evaluation, analysis of the individual accounts of the so-called project accountants proved different. In some cases, there were structured cash withdrawal below the threshold requiring banks to file a suspicious transaction report (STR) to the Nigerian Financial Intelligence Unit (NFIU). Digging further using financial investigation techniques earlier mentioned the Unit discovered that some of the monies ended up in bank accounts of Bureau de Change, limited liability companies, farms and other companies whose mandate had no relationship with the purpose for which the fund was released initially. Late 2019 and early 2020, the Commission recovered over a billion Naira from these project accounts thus saving the money from abuse, misappropriation and outright embezzlement.

The Financial Investigation Unit has contributed immensely to the attainment of the Commission's mandate as spelt out in section six of the Corrupt Practices and Other Related Offences Act 2000. The Unit under previous Boards of the Commission intervened in individual cases submitted by hapless Nigerians who were victims of corrupt practices. Cases involving individual and groups of pensioners were successfully investigated by the Unit. Examples of such intervention are illustrated in the table below.

	Case Number	Title	Amount
1	ICPC/P/SE/100/2014	Hurry to investigate pension fraud at NTA Aba	53,370.00
2	ICPC/P/SS/112/2012	Stoppage of monthly pension by FCSPB	78,079.00
3	ICPC/P/SW/221/2015	Non-refund of NHF contribution	84,657.00
4	ICPC/P/SE/295/2014	Refusal to pay my NHF contributions	89,707.00
5	ICPC/P/SS/583/2014	Non-remittance of contributory pension	141,785.00
6	ICPC/P/SS/335/2013	Non-payment of my monthly pension	156,250.00
7	ICPC/P/SW/596/2015	omission of monthly pension	223,140.00
8	ICPC/P/NW/642/2014	Unjustifiable and wicked retention of my retirement benefits for 4 years by Kaduna State	544,263.00
9	ICPC/P/NC/116/2015	Petition against Trust Fund pension for denying me access to my pension funds	884,534.00
10	ICPC/P/SW/221/2014	Non-payment/ stoppage of my pension	941,087.00
11	ICPC/P/NW/689/2014	Complaint by Mr. Adamu Shittu Funtua on non-payment of pension and gratuity	2,147,945.00
12	ICPC/P/NC/802/2013	Petition against NICON insurance plc	3,000,000.00
13	ICPC/P/NW/719/2015	Non-payment of final benefit and non-remittance of PAYE	4,062,048.00
14	ICPC/P/SS/785/2015	Unsettled entitlements of late Ogunsakin Alexander by IGI	4,127,465.00

15	ICPC/P/SW/637/2013	Non-remittance of pension funds	9,184,385.00
16	ICPC/P/NC/908/2014	Refusal to pay my retirement benefit	11,864,523.00
17	ICPC/PR/MISC/21/2014	Complaint against non-payment of gratuities and pension by chief registrar, Mr. Aliu Court of Appeal Abuja	41,934,494.00
18	ICPC/P/NC/365/2014	SOS message from ITF pensioners on non-payment of their entitlement	314,659,623.00
19	ICPC/P/SE/369/2014	Non-payment of pensions to Abia State pensioners	1,636,754,595.00
20	ICPC/PR/MISC/73/2014	Frustration of PHCN retirees' monthly pensions by NELMCO Mgt Gte ltd	3,894,302,990.00
21	ICPC/P/NW/85/2016	Request for investigation on the non-payment of the Kaduna State share of allowances	42,676.66
22	ICPC/P/SW/124/2015	Petition against Trust Fund Plc Ibadan	180,400.00
23	ICPC/P/SS/630/2014	Refusal of First Guarantee Pension (FGPL) to pay my N193,262.72	205,127.11
24	ICPC/P/SW/722/2015	Sudden stoppage of pension by Trust Fund	276,764.80
25	ICPC/P/SW/550/2014	Petition about non-payment of gratuity and backlogs arrears	750,000.00
26	ICPC/P/SW/7/2016	Application for redress for non-payment of gratuity	854,924.23

		and pension payment disruption	
27	ICPC/PR/MISC/165/2015	Refusal of my pension balance transfer from programmed withdrawal monthly pension payment to annuity pension	1,538,337.86
28	ICPC/P/NC/248/2016	Complaints of unlawful delay and denial of payment of retirement benefits of dr. Fredrick Omaka	1,929,450.68
29	ICPC/P/SW/299/2016	Colossal denial of retirement benefits to a retired ASP Jonathan Odiche	1,974,509.03
30	ICPC/P/NW/689/2014	Please SOS on bitter complainant on the threat of my life by hire killers employed by Funtua LG contractors and merciless retention of n2million part of my retirement benefits by Katsina State LG Pension Board for 2 years	2,147,945.25
31	ICPC/P/NC/791/2014	Save my soul a plea of senior community health extension worker	770,699.03
32	ICPC/P/SS/179/2016	Pension fraud by Pal Pensions Alliance Limited by terminating my monthly pension	4,142,473.05

		payment after twenty months of remittance just because I applied to transfer my pension fund to another company	
33	ICPC/P/SS/1 282/2015	Refusal of my pension balance and transfer of my program withdrawal to annuity	7,874,834.36
34	ICPC/P/NC/1 008/2016	Petition against ARM Pension Managers for the refusal to transfer my RSA to FBN Insurance for life annuity purchase	10,401,332.50
35	ICPC/P/SW/7 38/2016	Petition against my pension managers Stanbic IBTC Bodija Branch Ibadan and PenCom Abuja	12,875,556.38
36	ICPC/P/NC/8 53/2016	Petition over non-payment of death benefits belonging to the heirs of late former ambassador Salihu Ahmed Sambo by PenCom	15,125,951.24
37	ICPC/P/NC/8 1/2013	Non-payment of pension and retirement benefits to our father late Deputy Commissioner of Police Matthew Onioju	17,856,290.40
38	ICPC/P/NC/1 48/2016	Suspicion of fraud with on payment of N33,785,342.00	19,294,693.70
39	ICPC/P/NC/8 35/2016	Petition against PAL Pension Alliance Limited (PAL) Pensions on matters	20,478,037.20

		connected with my retired benefits	
40	ICPC/P/SW/515/2015	Petition against Nigeria Electricity Liability Management (NELCOM) for manipulation of pension monies due to retirees	1,263,367,889.19
41	ICPC/P/SW/272/2012	Non -payment of pension fund by NSITF to Ib Plc Ilesha	174,564.37
42	ICPC/P/SE/1017/2017	Request to prevail on A & G Insurance Plc to pay my entitlements	532,851.88
43	ICPC/P/SW/653/2016	Appeal for justice for my husband's death benefits	1,784,818.80
44	ICPC/P/NC/315/2012	Complaint against ABUTH and National Pension Commission on the pensioner verification exercise of NOK of deceased civil servants and lack of payment of entitlement	3,191,319.04
45	ICPC/P/SW/1250/2016	Payment of full maturity value of our 15 years/ 5 years respectively endowment guaranteed bonus anti-inflation policy	3,853,622.12
46	ICPC/P/SW/763/2014	Complaint about non-payment of arrears of upward review	24,720,778.89
47	ICPC/P/SW/544/2013	Refund of contributory pension funds to 2004 - 2007 retirees	114,979.18

48	ICPC/P/SE/1337/2017	An appeal for justice	145,407.00
49	ICPC/PR/MISC/193/2017	Non-payment of federal pension and arrears	940,845.52
50	ICPC/P/SW/550/2014	Petition about non-payment of gratuity and backlogs arrears	1,067,000.00
51	ICPC/P/NW/68/2017	Petition against Powerhill Construction Limited for non-payment of work entitlement	1,377,776.14
52	ICPC/P/NC/981/2017	Non-payment of my late husband death benefit	1,620,807.00
53	ICPC/P/NC/923/2017	Complain: refusal to discharge liabilities by insurance companies	4,746,126.53
54	ICPC/P/NC/345/2017	Complaint against non-payment of my late husband's pension gratuity	6,499,010.88
		Total	**7,358,092,740.02**

Aside from cases that had to do with individuals, the Unit also investigated high profile cases that impacted on the image of the Commission. Examples of some cases are:

a. Pension scam in the Office of the Head of Civil Service of the Federation earlier mentioned.
b. Investigation of Arab Contractors for tax evasion leading to a recovery of over N735 million from the company on behalf of Federal Inland Revenue Services before the recovery of the remaining balance was handed over to the Revenue Service.
c. Investigation of several companies engaged in using fake Tax Clearance Certificates in bidding for contracts in MDA's which had led to several convictions.
d. A case of diversion of revenue from sales of Federal Government properties in Enugu to private accounts leading to recovery of N981million to Treasury Single Account.

e. Investigation of procurement fraud concerning the Chairman Governing Council of a Polytechnic which led to prosecution and conviction of the respondent.
f. A procurement/gratification case involving a former Chairman of Benue State Universal Education Board and a staff of Universal Basic Education Board which also led to prosecution and conviction of both respondents.
g. The Unit also investigated a financial intelligence received by the Commission involving funds invested by Nigerian National Petroleum Corporation (NNPC) which were alleged to have been trapped in various commercial banks. The investigation led to the recovery of $57.1 million from some of the commercial banks in 2018.

Aside from these cases the Unit is also actively involved in the Financial System Study and Reviews conducted by the Commission. Under the current Board, the Unit concentrated its efforts on big ticket issues of national importance leading to cash recoveries of about two billion naira. The Unit is also the secretariat of the newly established Inter-Agency Committee saddled with the responsibility of implementing President Thabo Mbeki Report on Combating Illicit Financial Flows from Africa.

Financial investigations as conducted by the Unit leverages on intelligence received, and involved conducting financial analysis of records especially bank accounts to follow the money trail including use of technological tools. Bearing in mind that the world is technologically driven and is gradually phasing out manual processes, the Unit is poised to also become information technologically savvy and digitally primed. This is the future outlook. Consequently, the Unit is taking advantage of government management information systems technology platforms that are available in Finance and Accounts Department in carrying out investigations.

Challenges

In carrying out its functions, the Unit has had its fair share of challenges. Although these challenges cut across the Commission, the chapter will briefly discuss these and how the Commission addressed them. Some of the challenges encountered by the Unit are as discussed below.

One major challenge that constitutes a major constraint is Funding. The Commission's activities at large have been hampered by poor funding. This is due to the envelope system of budgeting adopted by the Federal Government. The implication of envelope budgeting system is that an agency is given resources not based on established needs, mandate or activities but based on the funds available to government. Though economically this sounds rational, the result was that the Anti-Corruption crusade could not be implemented in as robust a way as desired by the planning process. The gatekeepers were therefore incapacitated and allowed treasury looters have their way and day.

The constraints posed by the envelope budgeting system are compounded by the erratic nature of funds releases. Until recent months, the expected monthly releases were not coming in as and when due if at all they came. Releases were epileptic and incomplete. For some fiscal years the first allocation for overheads would be in the month of March while the last allocation would be in September or October. As a result, the Commission usually found the first three and last three months as periods of inactivity or of very low scale activity. However, to counter this, the Unit innovated and commenced what was termed desk investigation where instead of waiting for allocated funds to embark on investigation travels, the Unit invited the respondents to appear with all documents required to prove the issues at hand and at the same time corroborated these documents through other sources.

To add to the funding challenge is non-availability of forensic infrastructures, operational vehicles, conducive office accommodation, and low staff strength resulting work overload for the few staff of the Unit. In addition, poor funding also led to inadequate training opportunities and therefore skill or capacity gaps of operatives.

Other challenges were external to the Unit but still had impact on its activities. These obstacles encountered include:

a. Unnecessarily long delay in receiving response to requests for information from third parties such as Nigerian Financial Intelligence Unit and mutual legal assistance from foreign competent authorities;

b. Delay in accessing information from financial institutions leading to delay in conclusion of cases;
c. Negligence on the part of financial institutions in conducting customer due diligence (CDD), making it difficult to apprehend respondents even when the cases are due for prosecution;
d. The analogue/manual nature of many economic transactions makes it difficult to follow the money once it is out of the financial system;
e. Fear of victimization holding back some public servants from assisting investigation; even when they were listed as witnesses they were vague and not forthcoming.
f. The reluctance of Magistrates to sign Bankers Orders for retrieval of bank statements and Know Your Customers (KYC) records.
g. Public apathy to corruption and to anti-corruption operations; the public service and the community have a half-hearted approach to anti-corruption and at times were seen to celebrate the corrupt, in fact some are waiting for their turn to enrich themselves.
h. Lack of political will, especially on the part of states and local governments in the fight against corruption. When investigating acts of corruption in States or Local Governments, investigators are seen as adversaries rather than as allies.
i. Finally, there is the problem of slow judicial processes attributed to congestion of cases in courts. For instance, the Unit investigated two cases which were filed in court 2006. Testimony in one of the cases was taken for the first time was in 2016. As at the time of writing, the case is still in court having started de novo in 2019. The second case is yet to reach the point of testimony for the Investigating Officer.

Addressing the Challenges

The Commission adopted a wide variety of strategies to address those challenges that were within its power, and to influence authorities and other stakeholders to address those beyond its control. To address the challenge of obtaining information from other law enforcement agencies, regulators, banks and courts, the Commission has commenced some wide range discussions, collaborations and negotiations that have culminated in reducing the

time it took to get response from these bodies thereby enhancing productivity.

With regard to funding, the Commission adopted a multi-faceted approach in addressing the problem. First, the Commission engaged in prioritization of its expenditure; this was achieved through the Expenditure Control function in Finance and Accounts Department. Priority was given solely to projects that had a direct impact on the anti-corruption crusade. Secondly, management and staff had to make sacrifices; some Directors or Heads of Departments used their private vehicles for official engagements while some prosecutors attended court sessions using their private vehicles and also travelled to court using private funds to be subsequently refunded. In many instances, staff use personal laptops when official ones are not available. Thirdly, to cater for the capacity development of staff, the Anti-Corruption Academy of Nigeria, ACAN, was established to ensure that capacity development needs of staff were addressed. Thus, staff were able to receive quality training at minimal cost.

Finally, with the advent of the new Board in 2019, the dynamic leadership style of the current Chairman, his national and international connections and the goodwill he brought to the Commission, the problem of funding is gradually becoming history. The Chairman has been able to secure a grant from MacArthur Foundation to meet critical needs, and the Commission is partnering with other well-meaning Nigerians, not-for-profit and for-profit-organizations to advance the anti-corruption agenda. Above all, the Federal government has placed the Commission amongst prioritized organizations for funding, making it possible for the Commission to access all its recurrent allocation in 2019. This improvement in funding both from the Government and from donor agencies has helped the Commission to set up a functional, world class Forensic Laboratory, a critical resource in financial investigation.

Conclusion

In conclusion, having considered the mutual relationship that exists between financial intelligence and financial investigation, the Commission may wish to develop the competencies of a defined number of staff in sourcing, collecting, collating and analysing financial data and information for the production of actionable financial intelligence. The financial intelligence generated would then be used by equally trained financial investigators to conduct

investigations that cannot be faulted in any court of law. This would greatly enhance the ability of the Commission to carry out investigations that would lead to prosecutions, thereby assisting the Commission to achieve its vision of eradicating corruption from the polity. Considering the successes of the Unit and the Commission a large, the Unit wishes to thank the Commission for creating it and giving it the conducive environment to thrive. Finally, the importance of gathering financial intelligence should be given priority as a means to successful investigations.

Endnotes

[1] Methodology for Assessing Compliance with the FATF 40 Recommendations and the FATF 9 Special Recommendations. 27th February 2004 (Updated as of February 2009)

[2] Jonathan E. Turner, *Money Laundering Prevention: Deterring, Detecting and Resolving Financial Fraud* (Hoboken, New Jersey: John Wiley & Sons, Inc., 2011).

CHAPTER 13

ROLE OF TECHNOLOGY IN UNEARTHING PROCEEDS OF CORRUPTION

GODSGLORY OLUWOLE IYERU

Introduction

Enforcement operations against money laundering all over the world is a herculean task and have developed over the years from whistle blower information to the sophisticated tracking, tracing and analysis of voluminous and complex illicit financial flows. The first and most common trend for perpetrators of fraud or corruption is to wash and make the illicit finance or proceeds clean by laundering it. Conventional investigation techniques in uncovering patterns have become obsolete and time consuming. Link analysis of volumes of illicit transaction records and relationships call for modern technology based innovative techniques that can aid investigators in generating timely, accurate and evidential leads. Forensic science and data mining techniques are well suited for identifying trends and patterns in large data sets that often comprise of hundreds or even thousands of complex hidden relationships. This chapter explores the deployment of modern data mining methods that ultimately enhance law enforcement's ability to detect, reduce, and prevent laundering activities of proceeds of crime. This chapter provides an overview of the money laundering/illicit financial flow problem as it relates to Nigeria and other countries and describes the nature and scope of money laundering challenges. Further, it reviews traditional approaches to financial crime investigation and discusses various innovative data mining methods to assist financial investigators.

In the year 2000, the Federal Government of Nigeria established the Independent Corrupt Practices and Other Related Offences Commission, ICPC, with the enactment of the Corrupt Practices and Other Related Offences Act 2000. The Act provides for use of forensic science and other modern technologies to enhance its capability to vigorously investigate the laundering of illicit proceeds gained from fraud, embezzlement, corrupt practices and other related crimes.

Experience of investigating and prosecuting acts of corruption confirms that substantial amounts of illegally obtained funds are

laundered through businesses and shell companies both within and outside Nigeria. Estimates suggest that, worldwide, between US$500 billion and US$1 trillion is laundered annually[1]. Financial crimes, and in particular the laundering of proceeds acquired through illegal activities, affects any country that is integrated into the international financial system.

The Challenge of Unearthing Proceeds of Corruption

Since inception, the ICPC has successfully utilised the provisions of Corrupt Practices and Other Related Offences Act 2000 (hereafter referred to as CPA 2000), to investigate money laundering and attempts to conceal the illicit origins of crime profits. Certain Sections (Ss. 6a, 13, 14, 15, 20 and 24) of CPA 2000 also makes provisions for the Commission to use any law prohibiting corruption and other related offences. Banking institutions in Nigeria and overseas are required to complete a Currency Transaction Report (CTR) and Suspicious Activity Report (SAR) for individuals and corporate bodies for all deposits, withdrawals, and currency exchanges over US$10,000. Many of these transaction reports are completed and submitted on a daily, weekly, and monthly basis. For example, NFIU in collaboration with Central Bank Nigeria are responsible for this and there has been a robust synergy between the Commission and these bodies. Money Laundering Act, Sections 2-8.

It is worthy of note that there are also international agreements set up to address this pervasive and harmful form of criminal activity. Some examples of international organisations and multi-national agreements aimed at reducing money laundering activities include the International Organization of Securities Commissions (1992), United Nations Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1990), the Council of Europe Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds of Crime (1990), the Financial Action Task Force (1989) and the Basle Commission on Banking Supervision (1988). On different occasions, the ICPC has benefitted from these bodies through collaboration to track illicit finance and asset within their respective regions. Section (S.) 66(3) of CPA 2000 empowers the Commission to utilise this avenue to track proceeds of crime. For example, Federal Bureau of Investigation FBI had in the past assisted and worked with the Commission in unravelling identities of suspects involved in money laundering and concealment of proceeds of crimes in the USA, South Africa, and United Kingdom. INTERPOL, Metropol

among others have also assisted the Commission. The Commission has also in return be of tremendous benefit to other Countries especially in Visa Scam investigation; India, United Kingdom, USA, Germany among others have all benefited from the collaboration. The Commission also assisted the USA in uncovering fake Tertiary Institutions floated by local and foreign criminals.

Technology to the Rescue?

Uncovering instances of proceeds of crime/money laundering and subsequently linking transactions to proceeds of crime and in some cases drug trafficking pose a serious challenge to law enforcement. Currently, investigative trails/tracks are designed through resource-intensive, digital/manual scrutiny of centralized repositories of big data housing financial data of interest. Law enforcement could benefit significantly from the use of new technology for rapid identification of money laundering patterns through automated analysis of financial transaction reports.

This chapter explores the use of forensics and modern technologies to assist law enforcement identify patterns of money laundering to reduce fraud, financial and other related crimes. The chapter covers five categories, viz., description of nature and scope of money laundering challenges with emphasis on process by which money laundering is performed; traditional investigation techniques for identifying proceeds of crime/money laundering; exploration of forensics and modern technologies that could be used to assist law enforcement suppress and investigate financial-related crime more efficiently; description of each methodology and provision of examples of each application's utility for financial investigators as deployed by the Commission. The chapter concludes with a discussion of the benefits and limitations of forensics science, data mining/analysis and other modern technologies deployed till date by the Commission, and recommend other factors to be considered by investigators when integrating these technologies into tools for tracing proceeds of crime/money laundering.

Definitions

The Corrupt Practices and Other Related Offences Act 2000 defines Corruption to include bribery, fraud and other related offences (CPA 2000 S. 2). On the other hand, Money Laundering has been defined as "…to knowingly engage in a financial transaction with the proceeds of some unlawful activity with the intent of promoting or carrying on

that unlawful activity or to conceal or disguise the nature, location, source, ownership, or control of these proceeds."[2] S. 15 of CPA 2000 defines instruments for concealment of crime as books, documents, valuable security, account computer system, diskette, computer print-out, or other electronic device. In addition, Bankers' book includes ledgers, day books, cash books, account books and all other books and documents or electronic devices used in the ordinary course of business of a bank.

The money laundering process is often used by drug dealers to disguise their illegal profits. These illicit drug profits are laundered by converting them into other legal assets such as real estate, stocks, gold or other valuables.[3] According to S. 24 of Corrupt Practices and other Related Offences Act 2000, any benefit or proceeds derived whether within or outside Nigeria, directly or indirectly which was subject matter of offenses under sections 10 – 20 of CPA 2000 is considered as proceeds of crime.

Nature and Scope of Proceeds of Crime/Money Laundering

Money laundering as one of the easiest and most common way of concealing proceeds of crime has been a major challenge to law enforcement ICPC inclusive. The complexities and sophistication of money laundering techniques have taken different dimensions with attendant complications, making it difficult for law enforcement to investigate. The continuous evolvement of banking technology aimed at achieving ease of transactions has also made it difficult for law enforcement to effectively monitor banking transactions.

Massive volumes of wire transfers, internet/online banking activities and the use of computer and mobile/electronic devices for transactions anywhere in the globe on daily, weekly and monthly basis have also created wide gaps and loopholes for perpetrators of fraud to have it easy concealing proceeds of their crimes. These makes it daunting for law enforcement officers to effectively investigate this issue.

The complexity of the money laundering process is designed to protect the anonymity of those involved in illicit activities. In order to prevent detection from law enforcement, several steps must be taken to ensure the money is nearly impossible to trace back to its original source.

Traditional/Conventional Methods in Tracing Proceeds of Crime and Its Challenges

The traditional methods are classified as identification, detection avoidance, and surveillance.

a) Identification of Proceeds of Crime/Money Laundering Incidences

Identifying the business or individual suspected to be involved with or in illicit finance activity is very crucial and this might be a tip from a whistle blower which most likely will be a disgruntled employee, or a bank being suspicious by the high volume of activity done in the business or individual's name. Another source of information may come from informants, who may provide tips concerning criminal activity and/or financial transactions. Conventionally, informants have been an important source of information in the investigation of financial crimes and its proceeds.

A case against a suspect is made significantly stronger if the investigator can find someone who was involved in, or at least aware of, the operation of illegal business transactions and the eventual laundering of such. There are, however, risks inherent in using informants. The investigator should let the informant be aware of his boundaries to prevent any act of illegality in the course of investigation activities and avoid possibility of tipping off a suspect. Regardless of how an investigating unit becomes aware of possible criminal activity, many traditional and risky investigative techniques might be employed to gather additional intelligence, a Bank employee reporting the involvement of his Manager may stand the risk of losing his job or life depending on the volume of the proceeds, a honest staff of a politically exposed person involved in shell companies to hide proceeds of crime may be putting his life at risk if he makes attempt to report such activity, personnel of companies (mostly pharmaceuticals and super stores) fronting for money launderers may go to any length with anyone revealing their activities. But there is a provision in CPA 2000 for Informants (CPA Ss. 27 (4), 39 and 64.

b) Detection Avoidance

The major aim of the investigator tracing proceeds of crime is to ensure the suspect is not aware of the activities until all necessary facts had been gathered. The risk of detection can increase depending on the traditional methods used. Investigative techniques can range

from low-risk computer database analysis to a much riskier approach: interviews with a suspect's associates, or even the subject under scrutiny.[4] Investigators do, however, have access to numerous financial data sets from banks and relevant government agencies. Examples include communications data, Currency Transaction Reports, etc. This stage can be time consuming and overwhelming.

c) Surveillance of Money Laundering Incidences

Surveillance operation methods such as discrete inquiries with potential suspects or associates, mail and trash covers trails, to much more risky, intrusive techniques like suspect interviews. While surveillance is not a new technique, recent advances in technology can make surveillance easier for investigators.[5] Video and audio advances can decrease the probability that an investigative team will be detected. It can also increase the amount of information gathered. One form of surveillance, mail or trash covers, can reveal various financial transactions (CPA S. 36). This can make it easier to determine if the suspect was living beyond his or her means.[6] The mail cover will also enable the investigator to identify the location from which a suspect's mail is being generated. Even the postmark on the mail is sometimes important. It is helpful to know if the suspect is receiving mail from the Cayman Islands or Zurich.[7] Surveillance information generated from trash or mail covers is beneficial to financial investigators because while it may be illegal to actually open the mail, merely observing who is sending the suspect mail is often very useful. Banks, other financial houses, and other businesses working with the suspect or his business can also be tracked down as a result of careful surveillance.

However, investigators need to be aware that banks, do not readily turn over their records of client transactions, even to law enforcement. Financial investigators must file the proper paperwork to gain access to the bank's records and, ideally, the investigator should have authorised warrant. It is also worthy of note that if the business is large enough, it will have an annual report. The annual report tells the investors and the Securities and Exchange Commission how much money the business earned and how it is spending its income. This, once again, reinforces the importance of proper training for those investigators assigned to uncovering money laundering activities.

It is worthy of note that the Commission successfully made commendable improvements especially with its current leadership by sponsoring officers of the Commission on both local and overseas training to acquire specific skills in tackling money laundering and other related crimes.

Identifying Patterns and Links

Identifying patterns of instances of proceeds of crime and money laundering have posed great challenge to law enforcement agencies including ICPC because perpetrators capitalise on the fact that cyber space and computer networks can be accessed from anywhere in the world thereby making it difficult to geo-locate the source of the crime. Adequate training in the field of forensic auditing, forensic accounting, cyber-security, data analysis and bank operations are critical to investigating source of proceeds of crime and money laundering but these trainings are not usually emphasized in basic law enforcement trainings carried out by the Commission and other Law Enforcement bodies. Most basic investigation trainings cover how to investigate the peripheral fundamentals of what, where, when, who and how (4WH), this may not unravel the mysteries behind the laundering of proceeds of crime especially when technology sophistication is involved in committing the crime. White collar crimes are usually assigned to people with relevant skills and expertise in forensic science or those that have been trained extensively in this area to analyse source account and other related links. The Commission in the recent time trained some members of staff in forensic auditing, forensic accounting, and data analysis among other trainings. In addition to this, the Commission also engaged the services of financial consultants to assist in analysis of Banks and financial documents.

Shortage of Manpower and Skilled Officers

Manpower is another important issue that impedes law enforcement's capacity to track proceeds of crime/money laundering activities. There is so much to do but rather few or no skilled officers to execute actions and this becomes more complicated with insufficient trainings, with incompetence in knowing where to look, who and what to identify as launderers in the midst of millions of financial transactions. These are the most common problems that impede investigations of illicit financial activity. Consequently, traditional investigative methods are insufficient and resource intensive.

New Innovative Approaches to Combating Money Laundering

The Commission after the review and research of cases bordering mainly on proceeds of crime and money laundering since inception adopted the use of modern technology to enhance its evidence gathering capabilities. Some of the modern technologies that have been deployed and of tremendous help to the Commission in investigating/prosecuting laundering and tracking proceeds of crime/assets are discussed as follows:

(a) Big Data Concept: This refers to the collection of automated tools and Artificial Intelligence (AI) techniques that facilitate searching of large data sets to discover 'hidden' or 'buried' relationships among the data, not easily identified by inspection or seen with manual analysis. There are existing datasets in both government and non-government such as Corporate Affairs Commission (Company Registration Details), Federal Inland Revenue Service (Tax Payment Records), Telecommunication Companies (Call Detail Records/Coordinates and Owners Registration Details), Nigerian Immigration Service (International Passport details/Biometric and travel details), National Identity Management Commission (National Identity Card details/ biometrics), Federal Road Safety Corps (Vehicle registration/license details), Nigerian Customs Service (Export and Import records), Abuja Geographical and Information Service AGIS, Federal Capital Development Authority (Assets records), data from other MDAs, Banks and Financial houses (Statement of Account, Know Your Customer details, account opening records, Currency Transaction Reports, Suspect Transaction Reports etc.) and Mutual Legal Assistance Treaty/International Cooperation data from Member Countries (from bodies such as FBI, INTERPOL, UNODC for CTRs/STRs among other relevant data. The Commission through its collaboration with these listed bodies has recorded land mark achievements in its reactive and preventive operations.

The Commission has utilised the concept of Big Data Cycle to retrieve, structure, mine, import and analyse available data from MDAs and other local and international bodies with one of the world's most sophisticated software to enhance its investigation activities and thereby creating a robust petition database for necessary upgrade, planning, reviews and researches. Most of the Commission's recent success stories are traceable to data analysis.

(b) Geo-location and Tracking: There is an existing collaboration with Office of National Security Adviser ONSA in geo-locating and tracking of suspects with the use of state of the art software and devices that meet global standard for tracking, lawful interception and link analysis suspects' data. The Commission has used this medium to track and apprehend suspects at large.

(c) Computer and Digital/mobile Forensics: The most common instrument or channel of laundering or hiding proceeds of crime is the use of mobile technology or electronic devices but the good news is there is always a trail to follow to track every perpetrator and his/her links. The Commission has a forensic Unit and a team of world class experts that are skilled in retrieving and analysing data from mobile phone, computer systems and other electronic devices to enhance investigation activities and evidence gathering. The Commission's forensic laboratory meets global standard and ensures probative values of the digital evidence. Use of digital forensics has aided the Commission's investigation activities and also added significant values to prosecution through relevant evidence presentations.

(d) Forensic Psychophysiology Examination: This is one of the latest technologies procured by the Commission. The Commission is one of the foremost organisations in West Africa to deploy this technology for specific issues investigation, Pre-employment test and periodic validation of its officers. Data generated from this examination are subjected to international quality control processing to aid the integrity and admissibility of evidence. The Commission has a team of world class experts in this field and are ready to deploy this technology to aid and strengthen the Commission's investigation and prosecution activities.

Recommendations

There is a need for a robust National Database Centre to house all forms of data in the country, this will make tracking/link analysis of assets to offenders easy and will also aid discoveries of predicate crimes and suspects. The Commission needs to have direct access to the database of all relevant bodies to be able to remotely gather information for real time activities.

Conclusion

ICPC being the foremost agency of government in the fight against corruption and other related offences has maintained its position at the forefront with the deployment of modern technology to uncover hidden or dark areas in complicated cases through phone/electronic analysis, forensic auditing, geo-location/tracking and call detail records/other data analysis. Data analysis of data retrieved by the Commission on Constituency projects tracking, system study and review and other preventive activities have enhanced the Commission's strategies to fulfil its mandate.

Endnotes

[1] David Scott, *Money Laundering and International Efforts to Fight It,* Note No. 48 (Washington, DC: World Bank Group, 31 May, 1996); Jeffery Robinson, *Money Laundering: The World's Third Largest Business* (New York: Arcade Publishing, 1996), pp. 89-94); and Raymond Baker, *Money Laundering and Flight Capital: The Impact on Private Banking* (Washington, DC: United States Senate, 1999), p.85.

[2] L Genzman, *Tracking Dirty Proceeds: Exploring Data Mining Technologies as Tools to Investigate Money Laundering*, (Florida, USA: Taylor & Francis Routledge, 1997), p.342.

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CHAPTER 14

COUPLING, SEVERING AND DETANGLING: CHALLENGES TO EXTRICATING ILLICIT WEALTH FROM PUBLIC POOL

FRANK NANAKUMO

Introduction

Illicit wealth or money is a term commonly associated with wealth obtained through corrupt or questionable activities of the handler. According to Global Financial Integrity, illicit flows encompass: "the proceeds from both illicit activities such corruption (bribery and embezzlement of national wealth), criminal activity, and proceeds of licit business that become illicit when transported across borders in contravention of applicable laws and regulatory frameworks (most commonly in order to evade taxes)."[1]

Illicit wealth is accumulated over time and maybe generated through bribery, embezzlement, tax evasion, advance fee fraud, organized crime or false commercial transactions. The list is endless but because they are largely invisible, flows of illicit money across persons or borders can be difficult to detect and measure, and largely difficult to confiscate. Unfortunately, the effects of possessing and dealing with illicit wealth are particularly devastating for developing countries and increasingly undermine efforts to promote growth and sustainable development of a nation. In law enforcement, the term "living above ones means" translates to a public servant or individual possessing cash or non-cash assets that is in excess of their legitimate source of income. The origin of such wealth as well as the utilization of same is usually shrouded in secrecy. However, a major concern is transferring illegitimate gains into the legitimate financial system.

Consistent with the above definition, features of illicit flows include:

1. These flows are largely unrecorded and are not captured by official statistics or countries' balance of payment
2. They are associated with active attempts to hide the origin, destination and true ownership of fund
3. They are often associated with public loss and private gain

4. They constitute domestic wealth permanently put beyond the reach of domestic authorities in the source countries.
5. They are not part of a "fair value" transaction and would not stand up to public scrutiny
6. In most cases they violate some laws in their origin, movement or use
7. Earning on the stock of illicit financial flows outside of a country does not normally return to the country of origin.[2]

It is instructive to note according to Maria,[3] that all dirty money use the same financial structures and techniques to illegally cross international borders, taking advantage of an integrated financial structure that aids the movement of illicit flows. These techniques include tax havens, high secrecy jurisdictions and wide range of services offered by banking institutions such as multiple accounts, high secrecy products, disguised corporations, anonymous trust accounts, fake foundations and other complex corporate vehicles. These transactions are aided by professionals such as lawyers, accountants, import-export agents and trust formation agents, who solicit and enable capital flight as well as manage ill-gotten wealth.[4] Reports by Global Financial Integrity shows that major points of absorption consist of developed countries' banks and off shore financial centres are the highest absorbers of cash coming out of developed countries.[5]

Scale of the Problem

There are no accurate statistics on the enormity of the problem of illicit financial flow. It is estimated that between $900 million to $1 trillion disappear annually as proceeds of corruption, state looting and tax evasion from poor countries[6]. The lack of clear-cut information is not surprising as corrupt behaviours are clandestine in nature and no obvious way of gathering evidence, let alone aggregating data. Since 2008, Global Financial Integrity (GFI) a non - governmental organisation has published estimates of the scale of illicit financial flows with special focus on developing countries.

Nigeria had the chunk of her common wealth stolen largely by corrupt officials and deposited externally. Little wonder over the years, the country has held the unenviable position of been one of the most corrupt nations on earth according to the corruption perception index released annually by Transparency International (TI). It is estimated that several billions in foreign currency since the 1960s

have been looted and stashed abroad. It is estimated that late General Sani Abacha stole about $5 billion from when he took over power in November, 1993 to when he died in 1998. These monies were stashed in different countries such as Switzerland, Jersey Island in the United Kingdom, United States and Liechtenstein. During the Abdulsalam Abubakar regime, $750 million was recovered. During the Obasanjo administration, $1.2 billion was recovered in 2002; $148 million was recovered from Jersey Island in 2004 and in 2005, $458 million was recovered from Switzerland. Under the Jonathan administration, $1 billion was recovered in 2012 and $380 million was also recovered in 2015, both tranches from Switzerland. Also, the sum of $227 million was recovered from Liechtenstein and $48 million from the United States in 2014. The Buhari's government recovered $308 million from Jersey Island and $322 million from Switzerland in February, 2020.[7]

In 2012, British authorities helped Nigeria recover the sum of five million pounds of the illicit gains obtained by late Diepreye Alamieyeseigha, former Governor of the oil-rich Bayelsa State.[8]

Asset recovery is an important component of the anti-corruption strategy, because depriving corrupt officials from enjoying their ill-gotten gains is a significant deterrent. Additionally, recovering even a reasonable portion of the stolen assets would make a huge difference for developing countries who continue to suffer infrastructural deficit as a result of wanton looting and abuse of public office by leaders.

This chapter identifies the efforts and challenges in coalescing dispersed proceeds of corruption. It will examine the various international instruments and protocols that has been put in place to assist in the identification, tracing and recovering of these tainted assets, the various legislations enacted in Nigeria especially Corrupt Practices and Other related offences Act 2000. The procedure inherent in investigation, tracing and recovery of this illicit financial flows/asset will also be examined. Among other things, this study also offers a set of policy recommendations that would establish a more comprehensive legislative and institutional framework in the fight against corruption.

The Journey So Far: Nigeria in Focus

Since the return to democratic rule in 1999, successful regimes have created institutions to combat the malaise of corruption and by extension, recover some of illicit assets stashed abroad. It may be argued that such institutions have not recovered a significant amount of assets, despite the unbroken chains of laws, the enactment of formidable codes of conduct and other international instruments that aid in the recovery of stolen asset. It has also been argued at different fora that the failure of successfully combatting corruption in Nigeria is caused by weak institutions and lack of political will and not a dearth of legislations/regulations.

Some of such legislation enacted include: The National Drug Law Enforcement Agency (NDLEA) Act 1989, Money Laundering (Amendment) Act 2004 (Now Money Laundering (Prohibition) Act 2011 MLPA). The Economic and Financial Commission (Establishment) Act 2002 (see Economic and Financial Crimes Commission (Establishment) Act 2002, and the Independent Corrupt Practices and other Related Offences Commission Act 2000.[9]

Others are the Security and Exchange Commission Rule 174, the Central Bank of Nigeria Regulation, the National Financial Intelligence Unit and the Banks and Other Financial Institutions Act, 2013 (BOFIA). These legislations/laws extensively cover FATF recommendations on Customer Due Diligence, Suspicious Transaction Reporting, and Financial Intelligence Gathering and Surveillance on Money Laundering/Terrorism financing as well as the prescription of other international institutions or instruments.

Until recently, the Special Presidential Investigation Panel on Recovery of Public Property was established by the Recovery of Public Property Act of 2004 and powers of the panel are spelt out in Section 2 (1) a, b, c of the law. [10]

Though significant progress has been recorded in the fight against corruption and asset recovery over the years, the process has not been without attendant hitches. One may also note the additional difficulties in prosecution of public officials for corruption, as they may use their position to intimidate witnesses or destroy evidence.[11]

It is interesting to note also that asset recovery is not peculiar to Nigeria alone. Several international agencies have been set up with

the aim of mitigating these scourge bedevilling countries and their economies as the enrichment of a public official may be the most visible manifestation of corruption. One of such initiative is Stolen Asset Recovery Initiative (STAR). The Initiative helps countries fight grand-scale corruption, especially the theft of public assets by senior government officials and their collaborators. The program supports efforts to prevent the laundering of the proceeds of corruption and to confiscate ill-gotten gains stashed in foreign countries by corrupt officials.

Nigeria is equally a signatory to several international treaties and Convention that seek to reduce the negative impact of Corruption. The United Nations Convention Against Corruption is one of such. Otherwise known as the Merida Convention, it lays down procedures and obligation on member countries also known as State Parties on how to reduce corruption.[12] Thus the Convention mandate the establishment of a basic regime for domestic freezing, seizure and confiscation of assets. It provides that State parties must in accordance with their domestic law consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases where the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases. Furthermore, by the provisions of Article 57, a State Party is required to dispose of confiscated property to its prior legitimate owners pursuant to the Convention and its domestic law. In doing so, the State Party must take cognizance of the rights of bona fide third parties. The requested State Party may deduct expenses incurred in investigations, prosecutions or judicial proceedings leading to the return of the confiscated assets. Also States Parties may enter into agreements or mutually acceptable arrangements for final disposal of such assets.

The African Union Convention on the Prevention and Combating of Corruption (AUPCC) is one initiative by the African Union directed at nipping in the bud the menace of corruption. It also has provisions that encourages putting in place necessary institutions and legislations for identification, tracing and recovery of stolen assets.[13] Article 16(1)(a)-(c) provides thus:

> *"Each State Party shall adopt such legislative measures as may be necessary to enable: its competent authorities to sear, identify, trace, administer and freeze or seize the*

> *instrumentalities and proceeds of corruption pending a final judgment; confiscation of proceeds or property, the value of which corresponds to that of such proceeds, derived from offences established in accordance with this convention; repatriation of proceeds of corruption."*

ECOWAS is a regional organisation formed in 1975, comprising 15 West African states. The ECOWAS Protocol was adopted to strengthen efforts in combating and eradicating corruption through cooperation among state parties. The obligations of state parties include the establishment of preventive measures against corruption, criminalization of acts of corruption, international co-operation and follow-up mechanisms. Most importantly, the ECOWAS Protocol provides a framework for the seizure and confiscation of assets in Articles 13 and 15. Article 13 provides for the seizure and forfeiture of corruptly-acquired assets. States Parties are required to adopt appropriate measures to facilitate the identification, tracing and seizure of items for eventual forfeiture. Courts must be empowered to order the surrender or seizure of bank or financial documents.[14]

The Financial Action Task Force (FATF) is another body that focuses on global anti-money laundering (AML) and countering terrorism financing (CTF). It considers confiscation of the proceeds of crime. It assists member nations and increases compliance with international best standards. One of their numerous programmes entitled Combating Illicit Financial Flows focuses on proceeds of crime. The programme operates in three fields of action:

i. **Prevention**: To prevent Illicit Financial Flows, the programme supports partner countries in strengthening their legislative framework in line with international standards and systematically increases the traceability of the proceeds of crimes.
ii. **Financial Investigation**: The programme assists national law enforcement agencies in adopting innovative investigation methods and improving inter-agency cooperation.
iii. **Asset Recovery**: To ensure that crime 'does not pay', the programme supports the recovery of assets stolen in developing countries and emerging economies. It does so by fostering collaboration among relevant agencies at national, regional and global level.[15]

The ICPC Approach

The Independent Corrupt Practices and Other Related Offences Commission (ICPC) was established about 20 years ago, following the signing into law the Corrupt Practices and Other Related Offences Act No 5 of 2000 Cap C31 by the then President, Chief Olusegun Obasanjo. The establishment of the Commission was one of the ways of giving effect to the constitutional provision that specifically obligates the State to "abolish all corrupt practices and abuse of power."[16] Furthermore, other provisions aimed at eradicating corruption include powers of the National Assembly on appropriation, audit of public funds by the Auditor General of the Federation and the Code of Conduct for Public Officers.[17]

The three-prong mandate of the Independent Corrupt Practices and Other Related Offences Commission empowers it to investigate and prosecute, examine systems and review them and advise against practices that breed corruption, educate and enlighten as well as mobilise support against corruption.[18]

The establishment of the Assets Tracing and Recovery and Management Unit (ATRM) in the Commission, gives credence to the fact that asset tracing, recovery and management is an integral and important component of the anti-corruption war. These illegal assets stashed in foreign and domestic bank accounts as well as monies laundered in the acquisition of immovable assets, art work, cryptocurrency and other funds must be identified, traced, recovered and forfeited to government. The Corrupt Practices and Other Related Offences Act 2000 provides under section 37 that:

> *"(1) If in the course of an investigation into an offence under this Act any officers of the Commission has reasonable grounds, to suspect that any movable or immovable property is the subject matter of an offence of evidence relating to the offence he shall seize such property.*
> *(2) A list of all movable or immovable property seized pursuant to subsection (I) and of the places in which they are respectively found shall be prepared by the officer of the Commission effecting the seizure and signed by him.*
> *(3) A copy of the list referred to in sub-section (2) shall be served on the owner of such property or on the person from whom the property was seized as soon as possible.*

> *(4) Where any movable or immovable property liable to seizure under subsection (2) is in the possession, custody or control of a bank, subsections (1), (2) and (3) shall not apply thereto…"*[19]

The approach of the Commission with regard to the identification, tracing and recovery of assets is not a one-cap-fits all process. Each case is treated based on its peculiarity. When a petition is received, enquiries are usually sent out to banks, land registries and the Corporate Affairs Commission as the case may be. The Commission also issues a notice to the person under investigation to furnish a statement pursuant to the above sections cited above. This statement under oath directs the suspect or respondent as the case may be to declare his assets. The declaration is usually compared with the one declared at the Code of Conduct Bureau (CCB)[20].

Where it is established that assets linked to a respondent is far beyond that which his known legitimate income can justify, the Commission will take necessary steps to seize such assets. Where the asset in question is money in the bank, the Commission through the powers of the Hon Chairman can freeze such an account until the determination of the case where such money is suspected to be proceeds of crime. The identification, tracing and recovery of assets is usually not an easy task. It takes time and resources as every laid down procedure must be followed.

Upon the identification of the assets, they are usually marked as investigation and other procedure continue. The Commission will then proceed to court to get an interim order of forfeiture. The interim order is usually for a year and the list of properties identified are published in at least two national dailies. The essence is for anyone with a legitimate claim over such properties to show himself. If at the end of the stipulated time, the court is satisfied, it can give its final order of forfeiture and such property would be forfeited to the Federal Government of Nigeria. If it is cash, the court will order that the bank where such is domiciled pay same to the consolidated revenue fund.

It is instructive to note that there are two types of forfeiture. The conviction-based forfeiture and the non-conviction-based forfeiture. Conviction base forfeiture is the criminal forfeiture of the rights, title or interest in a property which is the subject matter of an offence

usually to the State after the conviction of the accused person. It is an action "*in personam*" or against the individual and it requires that Government gets an indictment of the property use in or obtained with the proceeds of crime. Similarly the prosecution of an offence under the Act, the court can make an order for the forfeiture of any property which is proved to be the subject matter of the offence under two condition: First the offence is proved against the accused and secondly, the offence is not proved but the court is satisfied that the accused is not the true and lawful owner of the property or that no other person is entitled to the property as a purchaser in good faith for valuable consideration.[21]. Assuming such a property has been donated to a community or say a religious organisation, the question that readily comes to mind is what happens to such a property? The answer is not farfetched. If such a property is traced to the accused person, and the court is convinced that what may have been used to acquire such property is a proceed of crime, it is liable to forfeiture. Again, if the proceed of crime is use to complete a building that was built using a legitimate income, what happens to such a property? Applying the logic of a tank of clean water wherein a spoon of sewage is poured into it will suffice in this circumstance. The tank of water will definitely be contaminated. Following therefrom, any asset that is tainted with criminality is liable to forfeiture.

The second type is the non-conviction base forfeiture. This relates to the forfeiture of assets suspected to have been proceeds of crime or illicitly acquired without the necessity of criminal conviction. It is an action "in rem" whose main objective is to undermine the profit incentive of criminal activity and to particularly deprive the individual of the loot by going after the assets rather than the offender. Bringing it closer, section 48 of the Act[22] provides that where there is no prosecution, or conviction for an offence, the Chairman of the Commission may before the expiration of twelve months from the date of seizure apply to a Judge of the High Court for an order of forfeiture of the property if he is satisfied that such property is connected has been obtained as a result of or connected to an offence under section 8-19. This section is a novel section of the Act that if it is tested will give teeth to the asset tracing regime in Nigeria. I may be quick to say that with the power given to the Commission under this section, the Commission can commence forfeiture proceedings against some of the unoccupied buildings that have dotted the landscape of Maitama and Asokoro Districts of the

Federal Capital Territory. It is very possible that most of the said houses may have been bought or built with proceeds of crime.

Challenges

With the level of achievement so far recorded, it is important to state that the room for improvement is enormous. The Nigerian institutional framework for asset recovery is still unarguably unclear and inefficient. Several agencies share the asset recovery portfolio, including the Independent Corrupt Practices Commission, the Economic and Financial Crimes Commission, law enforcement groups and others, which inevitably carries the risk of lack of clarity and overlapping of roles and rivalry among agencies. A newly established Asset Recovery Management Unit under the Attorney General's Office has been given the role of overviewing the entire asset recovery portfolio, but this is limited by lack of resources and capacity as well as of a common asset recovery policy and of a centralised database of recovered assets.

Transfer to third party is also a challenge in extricating illicit wealth. In this case, one of the most common ways to hide illegal gains or to escape from the law is to transfer assets to a third party. This is an increasing global phenomenon used to conceal and thus avoid asset confiscation or recovery.

Funding, or the lack of it, also tends to pose a challenge to asset recovery efforts by the anti-corruption and law enforcement agencies. Corrupt government officials that fraudulently enrich themselves are able to cover their tracks, intimidate people, destroy evidence and get away with such acts. This is evident in the cases where off shore accounts are opened and such monies are transferred to safe havens. They are also able to afford lawyers money can get should they be dragged to a court of law. Saddled with other operations as well, anti-corruption agencies are unable to initiate and successfully complete a cycle of asset tracking and recovery.

Another challenged faced in asset recovery is that the countries where these monies are moved practically shield the offenders from the law. Requests for mutual legal assistance maybe declined because of the absence of dual criminality. The dual criminality requirement means that it must be demonstrated that the offence underlying the request for assistance is criminalized in both the requested and

requesting jurisdictions. Interpretation of this requirement varies. Some jurisdictions require an exact match between the names and elements of the offence in both jurisdictions, while others apply a conduct-based approach, requiring equivalence between the criminal conducts prohibited by the two offences. The latter approach is recommended by UNCAC Article 43(2). The United States government refused a Mutual Legal Assistance request by Nigeria in the TSKJ consortium case.

The Nigerian participants in the TSKJ bribery could not be prosecuted because the evidence needed to convict them was in possession of the German authorities. The German constitution prevents the government from releasing information to aid the trial of its citizens in other countries. France once refused an application for Mutual Legal Assistance because it was written in English.

The United Nations Convention Against Corruption (UNCAC) recognized corruption as a transnational issue that affects all societies and economies and there is need for international cooperation to prevent and control it. UNCAC provides a global framework to strengthen effort internationally against corruption by allowing the tracing and recovery of stolen assets at the international level. Worthy of note is chapter 4& 5 that addresses international cooperation and asset recovery[23]

Recommendations

Having seen the enormity of funds that illicitly escape the shores of developing countries as a result of corrupt activities such as tax evasion, profit shifting, money laundering and what have you, the need to proffer measures that can enhance the prevention, tracing and ultimate recovery of illicit funds and assets cannot be over emphasized. To this need the following recommendations amongst many others can help in addressing the challenges pose by illicit financial flows:

1. Shared Database: There is no shared database among relevant anti -corruption and law enforcement agencies. The lack of shared data undermines the integrity of the work and reliability of the Agency and of other law enforcement institutions.

2. Build Stronger International Co-operations: Corruption and illicit financial flows have no borders, therefore in fighting it there is a need for cross border joint efforts, be it formal or informal. The formal ones usually tend be lengthy and more bureaucratic in nature as opposed to the informal ones. However, they are both beneficial in exchanging information for the confiscation of criminal proceedings.

3. Seizure and recovery of assets: This is another response that can have a deterrent effect in combating illicit financial flows. This sends a loud and clear message to corrupt officials and complicit financial institutions across the globe that there will be no safe place to hide proceeds of corruption. This also allows the country of origin to recover at least part of the loss. The UNCAC places emphasis on asset recovery in the fight against corruption and illicit financial flows, particularly Article 51. UNCAC gives measures to be taken in the recovery of assets that have been acquired through corruption and the mechanism to facilitate the process through international co-operation. UNCAC also makes provision under Article 57 on the importance of providing technical assistance to developing countries on the return and disposal of assets.

4. Whistle blowing: is another possible measure that can help in curbing the menace of illicit financial flows. Already the policy has been put in place in Nigeria; however, its codification as a law in Nigeria is yet to take effect. In other climes such as the United States, the Whistle Blower Protection Act provides cash rewards to persons that voluntarily provide original information leading to successful prosecution. For companies and corporate entities, the Federal Corrupt Practices Act also in the United States stresses the need to review compliance programs to ensure they are in line with the Dodd Frank requirements. Same can be done through deliberate policy initiative and codification of laws that discourage companies and international organisation in engaging or abetting in corrupt practices.

Conclusion

In conclusion, given the drive and passion of the present Board of the ICPC, there is room for improvement in the long and convoluted chain of asset tracing. Personnel must be trained and retrained

continuously to keep them up to date with the emerging trends in asset tracing using international best practices. We cannot afford to allow looter of our common wealth enjoy their loot at the detriment of the vast majority who are deprived of basic necessities of life. We must continuously follow the money, identify, trace and recover it. It is only then can we discourage corruption and Nigerians will come to release that corruption does not pay.

Endnotes

[1] Global Financial Integrity, (2009) Illicit Financial Flows from India $22 billion-$27 billion per year. *http: www.gfip.or/index.php=contents&task=view&id=247*

[2] *Kapoor, S. (2007). Brief paper for the first meeting of the international Task Force on illicit Financial Flows and Capital Flight*

[3] *Chene, M. (2009). Corruption and International Financial System, Transparency International/U4*

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[5] *Kar, D & al (2010). The absorption of illicit Financial Flows from developing countries.*

[6] *Chene, M. (2008). Mutual Legal Assistance, treaties and money laundering, Transparency International*

[7] www.vanguardngr.com 8th March,2020

[8]www.premiumtimes.com 4th May,2016

[9] Some of the laws enacted to fight corruption in Nigeria. The laws are by no means exhaustive just a few for the purpose of this study.

[10] See Recovery of Public Property (Special Provisions Act) CAPR4 LFN 2004

[11] Cases against politically exposed person such as Joshua Dariye, Jolly Nyame, both former Governors had lingered for more than 10 years until recently when they were convicted.

[12] See chapter 5 of UNCAC: Articles: 3, 31, 46(1), 54(1)(c) & 57

[13] See Articles 16,17&18of the AUCPCC.

[14] See Economic Community of West Africa States Protocol on the fight against corruption and the Inter-Governmental Action Group against Money Laundering. GIABA

[15] See FATF 40plus 9 Special Recommendation, 2001.

[16] See Section 15(5) of the Constitution of the Federal Republic of Nigeria (CFRN) 1999 (As amended)

[17] See sections: 80,81,85, and the fifth Schedule, Part 1&2 of the CFRN 1999 (as amended)
[18] See section 6 of the Corrupt Practices and Other Related Offences Act 2000 referred in the body of the work as the Act
[19] Corrupt Practices and Other Related Offences Act 2000 CAP C31 LFN
[20] It is a requirement that all Public Officers declare their asset at the point of appointment and at the end of their tenure. For career public servants it is mandatory to declare your asset every four years. See section 11;5th Schedule, Part 1 CFRN 1999 (As amended)
[21] Basel Institute on Governance, International Centre for Asset Recovery: Tracing stolen Assets: A Practitioner's Handbook 2009. See also section 47 of Corrupt Practices and Other Related Offences Act 2000
[22] Act refers to the Act cited in 21 above. In some jurisdiction confiscation or forfeiture involves actual change of ownership of a property from the owner to the State after a demonstration of its illicit origin. See also Section 44(2)(b) CFRN 1999 (As amended)
[23] United Nations Interregional Crime and Justice Research Institute (2013). Confiscation of the Proceeds of IP Crime: A modern tool for deterring counterfeiting and piracy. Available at file:///C:/Users/lenovo/Downloads/Proceeds_of_Crime%20(1).pdf

CHAPTER 15

TOOLS FOR EFFECTIVE PROSECUTON OF CORRUPTION AND RELATED CASES

COMFORT CHINYERE ANI

Introduction

Prosecutors play a crucial role in the administration of justice. This topic presupposes that corruption exists and is recognized as an offence. That offenders ought to be prosecuted effectively and that there are tools to be used or to assist in the prosecution of corrupt individuals in Nigeria.

The prosecutor is a minister in the temple of justice, whose task is not to secure conviction at all cost but to help in the administration of justice. Prosecutors have an onerous burden to discharge particularly in coordinating investigation and evaluating evidence before determining whether, and if so, what charges to bring in any particular case. The major function of the prosecutor is to put the accused person on trial before a competent court of law. When they have put forward an accused person for trial, they have the onus to prove the guilt of the individual as far as the ingredients of the offence is concerned, beyond reasonable doubt.[1]

Where at the close of evidence an essential ingredient of the offence has not been proved, a doubt would have been created as to the guilt of the accused and he will be discharged and acquitted.[2] How effectively prosecutors carry out their assigned roles depend a whole lot on how well they apply the tools available at their disposal. Literally speaking, "tool" is an implement used in the practice of a vocation. Nevertheless, speaking in terms of the title of this paper, we are referring to resources and processes available, which can be drawn upon by prosecutors when needed in performance of their functions, in order to ensure effectual prosecution of corruption and related cases.

The focus of this paper is to x-ray the myriad of tools by way of resources and processes at the disposal of prosecutors charged with prosecuting suspects accused of corruption and related offences. The tools in the hands of the prosecutors of the various agencies charged

with the prosecution of corruption cases can be found in various forms and are obtainable at all stages of the criminal process, from the pre-trial stage, up to the trial and even at the post-conviction stage.

These tools are embedded in the provisions of the substantive laws, procedural laws, international and regional instruments as well as State Guidelines, strategy and policy documents that back up investigation and prosecution of crimes generally and in some instances, particularly, corruption and related cases. Entrenched in these laws, instruments and documents are far reaching provisions and procedures the prosecutor can rely upon to achieve effective prosecution of corruption and related offences.

The procedural laws provide essential tools for achieving efficient prosecution of corruption cases right from the arrest, investigation, trial and up to the stage of appeal. Such tools available at the pre-trial stage include, but are not limited to procedures such as: arrest, detention and remand; investigation; extradition and mutual legal assistance, and confiscation and forfeiture.

At the trial stage, the prosecutor has at his disposal tools such as the plea, plea bargain, amendment of charge and filing of new charge, trial in absentia, calling of witnesses, abolition of stay of proceedings, witness protection measures, conviction for lesser offence and others.

Ultimately, the tools provide clear guidance to assist the prosecutors in discharging the onerous burden of coordinating investigations, evaluating evidence, determining whether or not to charge a suspect and if so, what charges to file, procedure during the trial and where the consequence of the judgement permits further intervention after the trial.

CLARIFICATION OF CONCEPTS

Corruption[3]

It is acknowledged that there is no universal definition of corruption and that the quest for definitions rarely produces unanimity among writers.[4] The *Oxford Advanced Learner's Dictionary*[5] defines corruption as dishonest or illegal behaviour, especially of people in authority. The World Bank defines corruption as:

> *The abuse of public office for private gains. Public office is abused for private gain when an official accepts, solicits, or extorts a bribe. It is also abused when private agents actively offer bribes to circumvent public policies and processes for competitive advantage and profit. Public office can also be abused for personal benefit even if no bribery occurs, through patronage and nepotism, the theft of state assets or the diversion of state revenues.*[6]

According to Yusuf Bala Usman, corruption means much more than public officers taking bribes and gratification, committing fraud and stealing funds and assets entrusted to their care. It includes also the deliberate violations, for gainful ends, of standards of conduct legally, professionally, or even, ethically established in private and public affairs.[7]

Section 2 of the *Corrupt Practices and other Related Offences Act, 2000*[8] *(CPROA)*, states that corruption includes bribery, fraud, influence peddling and other related offences. The offences established by the *Act* include:[9]

1. Offence of accepting gratification.
2. Offence of giving or accepting gratification through an agent.
3. Acceptor or giver of gratification to be guilty notwithstanding that that purpose was not carried out or matter not in relation to principal's affairs or business.
4. Fraudulent acquisition of property.
5. Offences committed through postal system.
6. Deliberate frustration of investigation by the Commission.
7. Making false statement in return.
8. Gratification by and through Agents.
9. Bribery of Public Officer.
10. Using office or position for gratification.
11. Bribery in relation to auctions.
12. Bribery by giving assistance etc, with regards to contracts.

Taiwo Osipitan and Oyelowo Oyewo have condemned the trend in the attempts at defining corruption, that restrict the term to bilateral corruption, i.e. bribery, thereby excluding unilateral corruption by public officers, who utilize insider knowledge to award contracts to themselves or to companies owned or controlled by them.[10] It is incisive to note that even the *CPROA* still did not accommodate

situations of unilateral corruption[11]. Taiwo Osipitan has enumerated the various types of corruption. According to him, there is collusive corruption, where there is the planned cooperation of the giver and taker; extortionary corruption, where there is forced extraction of bribes or other favours from vulnerable victims by those in authority, and anticipatory corruption, which takes the form of bribes or presentation of gifts in anticipation of favourable action on the part of the recipient of the gift.[12]

Whatever definition is given to the term corruption, one thing that stands out clearly is the evil nature of corruption and all who indulge in it know that it is evil.[13]

Prosecution and Prosecutors

Prosecution means the institution and the carrying forward of a judicial prosecuting to obtain some right or to redress and punish some wrongs.[14] A prosecutor is any person who institutes and conducts criminal proceedings by way of indictment or information on behalf of the State, who is nominally the prosecutor in all criminal cases[15]. In Nigeria, as far as crime is concerned generally the Attorney-General and the police are vested with prosecutorial powers.[16] In addition, some other federal agencies are also given powers to prosecute offenders by their enabling statutes. A private person can also be a prosecutor if certain conditions are satisfied. *Section 348 (1) of the ACJA* mentions the persons that can file information in the High Court.[17] The following is a brief profile of prosecutors in Nigeria.

CATEGORIES OF PROSECTORS

Private Prosecutor

The law of Nigeria has given every person a right to prevent the commission of a criminal offence, and where it is committed, to lay a criminal charge against any one whom he sees committing the offence, or who he reasonably suspects to have committed the offence.[18] Anyone who has sufficient information in his possession to establish the crime and identify an accused person is entitled to lay the charge. The Supreme Court justices held unanimously in the case of *Gani Fawehinmi v. Halilu Akilu & Anor[19]. In Re: Oduneye, D.P.P.[20],* that every Nigerian has a right to prosecute anyone for a crime committed.

A private prosecutor must satisfy the conditions specified in *Section 383 of the ACJA*[21] before the Registrar accepts the information for filing.

Attorney General and the Law Officers

Constitutionally, it is the function of the Attorney General to undertake criminal prosecutions.[22] *Sections 174 and 211* of the *Constitution* empower the Attorney General of the Federation and the States respectively, to institute, and undertake, take over, and continue or discontinue criminal proceedings against any person before any court of law in Nigeria. These functions of the Attorney General, which he exercises in person or through officers in his department, can be subject to abuse as a result of corruption.

The officers in the Directorate of Public Prosecutions (DPP), popularly known as State Counsel or Law Officers, are the prosecutors in the Ministry of Justice. They represent the State in criminal matters mostly in the superior courts. The State Counsel advises the police on criminal cases; writes legal opinion on cases; appears on behalf of the State in motions[23]; exercises the discretion whether or not to prosecute; files information and proofs of evidence, where a prosecution has been decided, and goes on to prosecute. With all these, the State Counsel has enormous say on the faith of a criminal case.

The Police

The police are an integral part of our judicial system as far as criminal justice administration is concerned. A large percentage of criminal prosecutions take place in the lower courts, especially the magistrate courts and it is the police that handle them. By *Section 23 of the Police Act*[24]*,* the police officer may conduct in person all prosecutions before any court whether or not the information or complaint is laid in his name. However, this is subject to the provisions of *Sections 174 and 211 of the Constitution*.[25]

From the wordings of *Section 23 of the Police Act,* it appears a police officer can prosecute cases in the High Court. By necessary implication, the police can prosecute but the power to conduct such prosecutions is subject to the provisions of *Sections 174 and 211of the Constitution.* This issue was the bone of contention in the case of *Olusemo v. Commissioner of Police.*[26]

Special Prosecutors

Some statutes establishing some agencies expressly empower some persons named in the statutes to prosecute offences created under the statute. This is however, subject to the provisions of *Section 174 of the Constitution,* which relates to the power of the Attorney-General of the Federation to Institute, continue or discontinue criminal proceedings against any person in any court of law. It has been affirmed by the courts in the cases of *A-G Kaduna v. Hassan*[27]*; Ibrahim v. State*[28] *and FRN v. Adewunmi*[29] that the Attorney General has the powers to delegate his powers as regards criminal prosecutions.

Such agencies that are charged under their enabling statute to prosecute include: National Drug Law Enforcement Agency (NDLEA)[30], National Agency for Prevention of Trafficking in Persons (NAPTIP)[31], National Agency for Foods and Drugs Administration and Control (NAFDAC), and the Nigerian Customs Service.

As far as the offence of corruption is specifically concerned, the major agencies explicitly charged with prosecuting corruption related offences are the Independent Corrupt Practices Commission, the Economic and Financial Crimes Commission (EFCC) and the Code of Conduct Bureau (CCB).

Independent Corrupt Practices Commission

Section 5 of the Independent Corrupt Practices and Other Related Offences Act, (*CPROA*) vests in the officers of the Commission, all the powers and immunities of a police officer under the *Police Act* and any other laws conferring power on the police, or empowering and protecting law enforcement agents. *Section 61 of the Act* states that any prosecution for an offence under the *Act* are deemed to be done with the consent of the Attorney-General.

The *CPROA* prohibits and prescribes punishments for corrupt practices and other related offences. It establishes the Independent Corrupt Practices and Other Related Offences Commission (ICPC), vesting it with the responsibility for investigation and prosecution of offenders thereof.

The ICPC comprises of a Chairman and twelve (12) other members. Presently in Nigeria, the ICPC is the main body in the anti-corruption campaign. The statutory responsibilities of the Commission are wide

and well spelt out to enable it combat all facets of corrupt activities. *Section 6 of the Act,* states that it shall be the duty of the Commission:

a. *where reasonable grounds exist for suspecting that any person has conspired to commit or has attempted to commit or has committed an offence under this Act or any other law prohibiting corruption, to receive and investigate any report of the conspiracy to commit, attempt to commit or the commission of such offence and in appropriate cases to prosecute the offenders;*
b. *to examine the practices, systems and procedures of public bodies and where, in the opinion of the Commission, such practices, systems or procedures aid or facilitate fraud or corruption, to direct and supervise a review of them;*
c. *to instruct, advise and assist any officer, agency or parastatals on ways by which fraud or corruption may be eliminated or minimized by such officer, agency or parastatal;*
d. *to advise heads of public bodies of any changes in practices, systems or procedures compatible with the effective discharge of the duties of the public bodies as the Commission thinks fit to reduce the likelihood or incidence of bribery, corruption, and related offences;*
e. *to educate the public on and against bribery, corruption and related offences; and*
f. *to enlist and foster public support in combating corruption.*

As regards investigation and prosecution of cases, Section 5 of the *Act*, vests in the officers of the Commission, all the powers and immunities of a police officer under the *Police Act* and any other laws conferring power on the police, or empowering and protecting law enforcement agents.[32]

The Economic and Financial Crimes Commission (EFCC)

The Commission was established by the *Economic and Financial Crimes Act 2002,*[33] to administer the provisions of the *Act*. Designated with the primary responsibility of investigating and prosecuting economic crimes and bringing perpetrators to justice. *Section 46 of the Act* defines economic crimes as a non-violent criminal activity committed with the objective of earning wealth illegally.

The Commission has the responsibility among other things, for the investigation of all financial crimes including advance fee fraud, money laundering, counterfeiting, illegal charge transfers, future market fraud, fraudulent encashment of negotiable instruments,

computer credit card fraud, contract scam, etc.[34] The Commission is the coordinating agency for the enforcement of the provisions of:

a. *the Money Laundering Act,*
b. *the Advance Fee Fraud and Other Related Act,*
c. *the Failed Banks (Recovery of Debt and Financial Malpractices in Banks) Act, as amended.*
d. *the Banks and Other Financial Institutions Act 1991, as amended;*
e. *Miscellaneous Offences Act; and*
f. *any other law or regulation relating to economic and financial crimes, including the Criminal Code and Penal Code.*

Among the five special units established under *Section 12 of the Act* is the General and Assets Investigation Unit and the Legal and Prosecution Unit. Under *Section 13 (2) (a) of the Economic and Financial Crimes Act[35], t*he Legal and Prosecution Unit of the Commission is charged with the responsibility of prosecuting offenders under the *Act*.

The Federal High Court or High Court of a State or of the Federal Capital Territory has jurisdiction to try offenders under the *Act*.[36] The Courts are to ensure that all matters brought before them by the Commission against any person, body or authority, are conducted with dispatch and given accelerated hearing.[37] They are to give such matters priority over other matters pending before them.[38]

Code of Conduct Bureau and Tribunal

The Fifth Schedule to the *Constitution* establishes a Code of Conduct for Public Officers. The Code of Conduct is further given legislative backing by the *Code of Conduct Bureau and Tribunal Act*.[39] It is a guiding *Code* of dos and don'ts regulating the conduct of public officers. The Schedule commences by stipulating that a public officer shall not put himself in a position where his personal interest conflicts with his duties and responsibilities[40]. This initial provision, by implication incorporates in its ambit, cases of bribery and other illegal acts done for personal enrichment. The *Code* strictly prohibits acts of bribery and sundry acts of corruption by stating that a public officer shall not ask for or accept property or benefits of any kind for himself or any person on account of anything done or omitted to be done by him in the discharge of his duties.[41]

The public officer shall only accept personal gifts or benefits from relatives or personal friends to such extent and on such occasions as are recognized by custom.[42] In addition to these and other provisions, a public officer is mandated to declare his or her assets and liabilities and those of his or her unmarried children who are under twenty-one, immediately after taking office and thereafter, at the end of four years and at the end of their terms of office.[43]

The *Code of Conduct Bureau and Tribunal Act*[44]established the Code of Conduct Bureau. The main aim and objective of the Bureau is to establish and maintain a high standard of morality in the conduct of government business, and to ensure that the actions and behaviour of public officers conform to the highest standards of public morality and accountability[45].

The Bureau among other things is also, to ensure compliance with and, where appropriate, enforce the provisions of the Code of Conduct or any law relating thereto. It also has the powers to receive complaints about non- compliance with or breach of the provisions of the Code of Conduct or any law in relation thereto, investigate the complaint and where appropriate, refer such matters to the Code of Conduct Tribunal.[46]

The Code of Conduct Tribunal was established to consist of a Chairman and two other members.[47] The Tribunal has the power to punish any public officer found guilty of contravening any of the provisions of the *Act*. It can impose any of the following punishments, without prejudice to the penalties that may be imposed by any law where the breach of conduct is also a criminal offence under the *Criminal Code* or any other enactment or law[48]. Any party to a proceeding before the Tribunal can appeal against its decision to the Court of Appeal.[49]

Substantive Tools

There is a myriad of laws that specifically make provisions against corruption and related offences. They provide definition for abhorred acts, name the offences and go ahead to prescribe penalty for infringement. These are very important tools in the hands of a prosecutor as they are the starting point of every contemplation to prosecute. These laws include:

1. Constitution of the Federal Republic of Nigeria, 1999 (as amended)
2. The Criminal Code Act, Cap. C 38 LFN, 2004
3. The Penal Code, Cap. P 03, LFN, 200
4. The Independent Corrupt Practices & Other Related Offences Act, 2000
5. The Economic and Financial Crimes Commission Establishment Act, 2004. Cap E. 1, LFN 2004.
6. The Code of Conduct Bureau and Tribunal Act, 1991, Cap. C 15, LFN, 2004.
7. The Money Laundering (Prohibition) (Amendment) Act, 2011 as amended in 2012.
8. The Advance Fee Fraud and Other Related Act, 2006, Cap A6, LFN, 2004.
9. The Banks and Other Financial Institutions Act 1991, as amended.
10. Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act, 1994, Cap. F 2, LFN, 2004.
11. The Miscellaneous Offences Act, Cap. M 17, LFN, 2004.
12. The Public Procurement Act, 2007

Procedural Tools

Procedural Laws, court rules, international and regional instruments as well as domestic policy and strategy documents, if adhered to, are also tools that are fashioned to amongst other things enhance seamless and speedy prosecution of cases in the Courts. These Laws and Rules serve as tools and guides and provide steps towards achieving effective prosecution by fair hearing for the defendant, the society and the victim(s) of crime. These tools are discussed below.

Domestic Legislations and Court Rules as Prosecutorial Tools

Some of the domestic legislations and Court Rules that contain processes and procedures that amount to tools for the prosecutor include:

1. The Administration of Criminal Justice Act 2015
2. Administration of Criminal Justice law of the various states
3. Federal High Court Law and Rules.
4. Various State High Court Rules and FCT High Court Rules.
5. The Evidence Act, 2011.

International, Regional and Sub Regional Instruments as Prosecutorial Tools

At the international and regional fora, Nigeria has acceded to some instruments that obliges it to adhere to the provisions of those instruments in its fight against corruption and related offences. The *United Nations Convention Against Corruption* is one of such tools also in the hands of Prosecutors as it affects Nigeria in the anti-corruption war. *Article 11 of the Convention* is on measures relating to the judiciary and prosecution services.

Also, worthy of mention is the *United Nations Guidelines on the Role of Prosecutors.*[50] The UN Guidelines *succinctly describes the duties of prosecutors*. The UN Guidelines on the Role of Prosecutors were formulated to assist States in their tasks of securing and promoting the effectiveness, impartiality and fairness of prosecutors in criminal proceedings, should be respected and taken into account by Governments within the framework of their national legislation and practice, and should be brought to the attention of prosecutors, as well as other persons, such as judges, lawyers, members of the executive and the legislature and the public in general.

The *Guidelines* set forth principles that are applicable to all jurisdictions irrespective of the nature of their prosecuting authority[51]. The Guidelines have been formulated principally with public prosecutors in mind, but they apply equally, as appropriate, to prosecutors appointed on an ad hoc basis.

Articles 11 to 16 of the Guidelines are on the Role of Prosecutors in Criminal proceedings. Knowledge and observance of these Guidelines will position the prosecutors on the path of effective prosecution of criminal cases regardless of genre. The roles of the prosecutors as prescribed by the Guidelines are:

> *1. Prosecutors shall perform an active role in criminal proceedings, including institution of prosecution and, where authorized by law or consistent with local practice, in the investigation of crime, supervision over the legality of these investigations, supervision of the execution of court decisions and the exercise of other functions as representatives of the public interest.*
>
> *2. Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and*

protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.

3. In the performance of their duties, prosecutors shall: (a) Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination; (b) Protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect; (c) Keep matters in their possession confidential, unless the performance of duty or the needs of justice require otherwise; (d) Consider the views and concerns of victims when their personal interests are affected and ensure that victims are informed of their rights in accordance with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

4. Prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded.

5. Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences.

6. When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.

The purpose of *United Nations Convention against Transnational Organized Crime (2000)*[52] is to promote cooperation to prevent and combat transnational organized crime more effectively.[53] Article 6 criminalizes the laundering of proceeds of crime, while Article 8 criminalizes corruption. The Convention covers cooperation among member States on extradition, seizure and confiscation of proceeds of crime, mutual legal assistance and generally on cooperation concerning crimes involving organized criminal groups.

At the regional level, the *African Union Convention on Preventing and Combating Corruption* adopted by the Heads of State and Government of the African Union on at Maputo, on 12 July 2003 is also relevant to Nigerian Prosecutors. The aims of the Convention are to:

1. Promote and strengthen the development in Africa by each State Party, of mechanisms required to prevent, detect, punish and eradicate corruption and related offences in the public and private sectors.
2. Promote, facilitate and regulate cooperation among the State Parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption and related offences in Africa.
3. Coordinate and harmonize the policies and legislation between State Parties for the purposes of prevention, detection, punishment and eradication of corruption on the continent. Part 2. Regional instruments 457
4. Promote socio-economic development by removing obstacles to the enjoyment of economic, social and cultural rights as well as civil and political rights.
5. Establish the necessary conditions to foster transparency and accountability in the management of public affairs.

At the sub regional level, the *Economic Community of West African States (ECOWAS)* have adopted some instruments that is geared towards aiding the fight against corruption. The *Economic Community of West African States Protocol on the Fight against Corruption* was signed on 21 December 2001. The aims and objectives of the Protocol are: i) to promote and strengthen the development in each of the State Parties effective mechanisms to prevent, suppress and eradicate corruption; ii) to intensify and revitalize cooperation between State Parties, with a view to making anti-corruption measures more effective; iii) to promote the

harmonization and coordination of national anticorruption laws and policies.[54]

The Convention on Extradition of the Economic Community of West African States (ECOWAS) of 6 August, 1994.[55] States undertake to surrender to each other, subject to the provisions and conditions laid down in this Convention, all persons within the territory of the requested State who are wanted for prosecution for an offence or who are wanted by the legal authorities of the requesting State for the carrying out of a sentence.

The Convention on Mutual Assistance in Criminal Matters of the Economic Community of West African States (ECOWAS), of 1992,[56] is for member States to extend to each other the widest mutual legal assistance to combat offences of all kinds particularly of serious crimes, as an effective way of dealing with the complex aspects and serious consequences of criminality in all its forms and new dimensions. Member States undertook to afford to each other, in accordance with the' provisions of this Convention, the widest measure of mutual assistance in proceedings or investigations in respect of offences the punishments of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting Member state[57].

Domestic Guidelines, Strategy and Policy documents
Code of Conduct for Prosecutors, 2013[58]
The Code aims to enhance the performance of prosecutors by stipulating principles, which should guide the initiation and conduct of prosecutions along with factors which should be taken into consideration to ensure a fair reasoned and consistent prosecution process. Fairness in this case, includes truthfulness, and ensuring that the decision to initiate or continue a criminal trial is based on objective factors that are in the public interest and in accordance with best practices.

Documents produced by the Presidential Advisory Committee Against Corruption (PACAC)
PACAC was inaugurated on 10th August 2015 as an Activist Think Tank to coordinate the Anti-Corruption struggle of the government and to intervene vigorously in the Administration of criminal justice system in Nigeria with an agenda of reform and effectiveness. PACAC has since its inception produced strategy documents that have

become invaluable tools for the prosecutors in various anti-corruption agencies in the fight against corruption. These documents are briefly discussed below.

Corruption Case Management Manual
The aim of this manual is to create a framework that will be used by investigators and prosecutors of Anti-Corruption Agencies to achieve more successful prosecution of high profile corruption cases. Part of what the Manual does is to eliminate weaknesses in the prosecution of corruption cases and to guarantee a realistic prospect of a conviction based on pragmatic and objective evaluation of the available evidence.

The Manual contains useful guidelines on the whole prosecution process, from the beginning to the end of the prosecution.[59] It provides a process for dealing with petitions, investigating allegations of corruption; making and taking prosecutorial decisions, initiating proceedings and prosecuting offences.[60]

Plea Bargain Manual
This manual is a guide to the decision-making process when considering alternative means of disposing criminal allegations and plea bargaining. Not every criminal case should be prosecuted to finality through a trial if it can be resolved by alternative means. These guidelines set out the procedure by which a prosecutor may conduct discussions with a suspect or defendant or their legal representative.[61]

Federal Sentencing Guidelines for High Profile Corruption and other Related Economic Offences
The objective of the Guidelines is to set out appropriate standards for the sentencing process towards achieving uniformity and ensuring fairness in sentencing in corruption and other elated economic offences.

These guidelines are majorly for the courts to be guided in sentencing. However, the Guidelines is a useful tool for the prosecutor as he has a duty at the sentencing to represent the public interest and is obliged to assist the court to reach its decision as to the appropriate sentence.[62]

The Courts are empowered to amongst other things, order restitution and compensation. A post-conviction restitution order shall include but not limited to costs awarded against the offender to defray the State's cost for the prosecution of the case against the offender. [63]

Corruption Information and Intelligence Protocol

One of the identified weaknesses in the fight against corruption is that information at the disposal of various intelligence units in the country are not shared in a pragmatic and systematic manner to assist the fight against corruption and other related offences. Against this background, the PACAC developed a Protocol on information and intelligence sharing for Anti-Corruption and Law Enforcement Agencies and the Intelligence Community.

The Protocol recommends two options, a short-term measure aimed at an immediate solution as well as a long-term measure designed to establish an information Technology (IT) driven National Criminal Database, to service all the Anti-Corruption Agencies (ACAs), Law Enforcement Agencies (LEAs) as well as the Intelligence Community.[64]

Framework for the Management of Recovered Stolen Assets

Guidelines for State Prosecutors in the Prosecution of Federal Offences

The Guideline harmonizes the operations of all prosecutors prosecuting federal offences on behalf of the Attorney-General of the Federation. It incorporates the principles and overriding objectives of the Administration of Criminal Justice Act, 2015, the Code of Conduct and Prosecutorial Guidelines for Federal Republic of Nigeria, 2014 and the Rules of Professional Conduct for Legal Practitioners, 2007.[65] Contents of the Guidelines include: The Prosecutor's Responsibilities, Prosecutorial Decision making, the Evidential Test, the Public Interest Test, Decision not to Prosecute, Decision to Charge, Conflict of Interest, Selection of Prosecutors, Relationship with Investigators, Approval and Consent of the Honourable Attorney-General of the Federation, Institution or Commencement of Proceedings, Disclosure, Review of the Decision to Prosecute, Conduct of Prosecution in Court, Delay of Trial, Plea Bargaining, Asset Recovery, Sentence, Appeals, Victims and Witnesses, Relations with the Media and Handling Internal and External Interference.

Guidance Notes on Non-Conviction and Conviction Based Forfeiture and Management of the Res in Conviction Based Forfeiture in Nigeria

This Guidance Notes has strengthened the capacity of ACAs to recover looted assets before conviction. The Notes examine provide insightful perspectives on Nigerian Statutes that prescribe Conviction and Non-Conviction based Forfeiture. It examines issues concerning these procedures and also gives guidance in lucid and explicit terms on the scope and application of the laws. It is an invaluable resource to judges, lawyers, prosecutors and law enforcement agencies[66].

Asset Recovery Strategy

The strategy recognizes that a robust asset recovery regime will assist the rejuvenation of the economy, ensure reduction of poverty, lead to the creation of jobs and the expansion of social safety nets for the poor people of Nigeria. Among other strategies in this document, include[67]: establishing the Presidential Coordinating Committee on Asset Recovery (PCCAR); Assets tracing; preservation of assets; mutual legal assistance procedure; confiscation of assets; asset return and mechanism to manage, funding the asset recovery process by use of bilateral or multilateral funds.

Of major concern to prosecutors is that the Strategy mentions that the Federal Government of Nigeria is to put together a core team of prosecutors led by Attorney General of the Federation to prosecute local assets recovery cases. [68]That the team should report to PCCAR and should comprise of experts in prosecution drawn from public and private sectors to be supported by a shadow team of highly recommended retired Judges versed in adjudicating criminal cases as well as highly experienced Senior prosecution or defence lawyers who are willing to serve gratis. The shadow team is to be consulted from time to time on difficult cases.

Whistle Blower Policy of 2016

Besides the above the PACAC recommended the Whistle Blowers Policy, which was adopted by the Federal Government of Nigeria. This policy is also a good tool for prosecutors of corruption related offences. The policy introduced a reward of not more than 5% for information leading to cash recoveries only. The policy provided measures for protection and anonymity of whistle blowers. As at September 2018, the Whistle Blower Unit has received over 11, 000 communications, which has led to recovery of Seven Billion Naira,

Three Hundred and Seventy-Eight Million USD and about Twenty Thousand, Eight Hundred Pounds[69].

Pre-Trial Procedural Tools

Besides all the laws, instruments and documents discussed in the preceding sections of this paper, there are actual procedural tools in form of processes and procedures the prosecutor must take cognizance of, for an effective prosecution of criminal cases and corruption cases in particular. These processes are found in the laws, instruments and documents discussed earlier. We shall now, briefly point out those processes and their applicability.

Arrest, Detention and Remand

Arrest, detention and remand of suspects are the first very important set of pre-trial tools for a prosecutor. This is because without them, there may not be any one physically present to stand trial. Arrest is the action of the police or person acting under the law, to take a person into custody, usually so that the person may be forthcoming to answer before a court for the commission of a crime.[70] *The United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*[71] states that an "Arrest" means the act of apprehending a person for the alleged commission of an offence or by the action of an authority.[72]

Detention generally refers to a state or government holding a person in a particular area, either for interrogation, as punishment for a wrong, or as a precautionary measure while investigating a potential threat posed by that person.[73]

The term “Remand” is used to illustrate a situation where a suspect who is charged with an offence is ordered by a court of law, to be kept in prison custody, pending his bail, ultimate trial or release on the advice of the DPP.[74]

By virtue of *Section 35 of the 1999 Constitution*[75], every person is entitled to his personal liberty. However, this right is curtailed by the imperatives of crime prevention; participation and perhaps punishment if found guilty.[76] This right is restricted *inter alia*,[77] for the purpose of bringing an accused person before a court in execution of the court order or upon reasonable suspicion of his having committed a criminal offence, or to such extent that is reasonably necessary to prevent his committing a criminal offence.[78]

Under the extant provisions of the ACJA, there are ample provisions for remand proceedings, which allow or provide legal cover for the police to continue with investigations. Detention by remand is to ensure judicial control of those arrested by the law enforcement agencies on criminal allegations. It allows the investigators and prosecutors more time to prepare for the arraignment of the suspect before the appropriate court.[79]

The ACJA 2015 allows remand and prescribes a time protocol for remand. The remand protocol time limit is as follows:

> By Section 296 of the ACJA, remand shall be for a first period of 14 days and a second period of 14 days. Thereafter, suspect can apply for bail under Sections 158 to 188 of the ACJA. After 28 days of remand without charge or trial, the court shall issue hearing notice to (a) the Inspector General of Police and the Attorney-General of the Federation; or
> (b) the Commissioner of Police of the state or of the Federal Capital Territory or the Attorney-General of the Federation, as the case may be, to show cause why the suspect remanded should not be unconditionally released.

Where good cause is shown, the court may extend the remand of the suspect for a final period not exceeding 14 days for the suspect to be arraigned for trial before an appropriate court or tribunal; and shall make the case returnable within the said period of 14 days from the date the hearing notice was issued.
Where good cause is not shown for the continued remand of the suspect pursuant to subsection (4) of this Section, or where the suspect is still on remand custody after the expiration of the extended period under subsection (5), the court shall, with or without an application to that effect, forthwith discharge the suspect and the suspect shall be immediately released from custody.[80]

Extradition and Mutual Legal Assistance (MLA)

Extradition and MLA are two essential and indispensable means of international corporation in effective prosecution of corruption and related offences. Extradition involves the surrender of a person from one sovereign jurisdiction to another and fundamentally affects the liberty and on the possibly life of that person. Mutual legal assistance is an international cooperation process by which States seek and

provide assistance in gathering evidence for use in the investigation and prosecution of criminal cases, and in tracing, freezing, seizing and ultimately confiscating criminally derived wealth.[81] It is a means of assisting in transfer of criminal proceedings to another State and for executing foreign criminal sentences.[82] MLA involves obtaining international support and assistance from other jurisdictions where pertinent evidence exists for the successful prosecution of a case. It covers a wide and ever-expanding range of assistance which include: Search and seizure; production of documents; taking of witness statements by video conference; and temporary transfer of prisoners or other witnesses to give evidence.[83]

International, regional and sub-regional instruments on extradition as it relates particularly to corruption is the *United Nations Convention Against Corruption (for corruption and related offences, including money-laundering), 2003* and *the African Union Convention Against Corruption (2003).* Article 15 (5) of the *African Union Convention Against Corruption* is on extradition and it provides:

> *Each State Party undertakes to extradite any person charged with or convicted of offences of corruption and related offences, carried out on the territory of another State Party and whose extradition is requested by that State Party, in conformity with their domestic law, any applicable extradition treaties, or extradition agreements or arrangements existing between or among the State Parties.*

The Convention on Extradition of the Economic Community of West African States (ECOWAS) of 6 August, 1994[84] and the *UNCAC* are also relevant for Nigeria on extradition. *Article 54 of UNCAC* provides that each State Party shall provide mutual legal assistance pursuant to article 55 of the Convention with respect to property acquired through or involved in the commission of an offence established in accordance with the Convention.

Investigation

Investigation of alleged offences is one of the tools for effective prosecution. Poor or shoddy investigation of cases is undoubtedly, one of the pitfalls of successful prosecution of corruption related cases as well as other criminal cases. A successful prosecution is the function of adequate investigation, therefore, there is the need to develop and coordinate a team of investigators and prosecutors who

work harmoniously together to promote synergy and ensure that prosecution of corruption is result oriented. Prosecutors are increasingly being drawn into much closer relationship s with investigators. Investigators also will frequently need the assistance of prosecutors when it comes to assistance with investigatory processes.[85]

Section 11. 1 of Guidelines for State Prosecutors in the Prosecution of Federal Offences[86] provides that the prosecutor shall assume full responsibility for tracking the progress of the case from the point of receipt of a case file from investigators until the conclusion of the case. The Prosecutor may also request further investigation into any particular matter where additional information is required.

It is important for investigators to comply with the procedure for recording statement of a suspect, especially where the suspect makes a confessional statement. *Section 17 of the ACJ Act 2015,* is on recording of statement of suspects. The section provides:

> *17.(1) Where a suspect is arrested on allegation of having committed an offence, his statement shall be taken.*
> *(2) Such statement may be taken in the presence of a legal practitioner of his choice, or where he has no legal practitioner of his choice, in the presence of an officer of the Legal Aid Council of Nigeria or an official of a Civil Society Organization or a Justice of the Peace or any other person of his choice. Provided that the Legal Practitioner or any other person mentioned in this subsection shall not interfere while the suspect is making his statement.*
> *(3) Where a suspect does not understand or speak or write in the English language, an interpreter, shall record and read over the statement to the suspect to his understanding and the suspect shall then endorse the statement as having been made by him, and the interpreter shall attest to the making of the statement.*
> *(4) The interpreter shall endorse his name, address, occupation, designation or other particulars on the statement.*
> *(5) The suspect referred to in subsection (1) of this section shall also endorse the statement with his full particulars.*

Corruption Case Management[87] *Manual* prescribes that investigators shall seek early legal advice from the Case Lawyer as soon as the Case

Team receives a petition. It further prescribes that the Prosecution Strategy Template (PST)[88] shall amongst other things, set out an early strategy for the investigation and ensure that the cases to be investigated and /or prosecuted are well planned and able to proceed with all due expedition within a clear and disciplined framework and timeframe.[89]

Prosecutors and Investigators should not rely solely on admissions or confessional statements of suspects and defendants to prove the case and investigators shall only arrest a suspect after consultation with the Corruption case team, unless where time is of the essence[90]. Good investigation will reveal the actual person or persons that committed the offence and hence present the right culprit(s) for prosecution. Diligent investigation will yield adequate, reliable and admissible evidence that will lead to good prosecution and eventual conviction.

Decision Whether or not to Prosecute

Prosecutors have a discretion to exercise in deciding whether to prosecute any particular case or not. Ability to make the strategic decision whether or not to prosecute is key. Wrong exercise of discretion to prosecute a particular case may lead to effort in futility. Not all suspected criminal offences must automatically be the subject of prosecution. Public interest, strength of evidence remains an overriding consideration for the prosecutor to make the decision to prosecute a case. The overall consideration is whether it appears that the offence or the circumstances of its commission is or are of such a nature that a prosecution is required in the public interest.[91]

A prosecutor must weigh the contending interest of the community, suspect and the victim in determining whether or not to prosecute. Besides public interest criteria, the strength of the evidence and realistic prospects of conviction are factors prosecutors have to consider in exercising discretion to prosecute or not to prosecute. Paragraph 7.2 of the *Code of Conduct & Prosecutorial Guidelines for Federal Prosecutors*[92] provides:

> 7.2.1. *No prosecution should be undertaken where essential evidence of the basic elements of the offence are lacking. The main reasons for this are:*
> *(a) It is not in the public interest on the prosecution of a case, which has no reasonable prospect of success;*

> *(b) It may amount to an abuse of legal process where a prosecution is commenced against a person when there is insufficient evidence to assure a realistic prospect of conviction.*
> *(c) If there is a very high rate of prosecutions resulting in acquittals, this can undermine public interest confidence in the system.*
> *7.2.2 A prosecution should not be instituted unless there is a prima facie case against the suspect. By this is meant that there is admissible, substantial and reliable evidence that a criminal offence known to law has been committed by the suspect. The evidence should be such that if uncontradicted, a court should reasonably convict on it.*
> *7.2.3 In considering the strength of the evidence, the existence of a prima facie case is important. Once it is established that there is a prima facie case, it is then necessary to give consideration to the prospects of conviction. The prosecutor should not lay a charge where there is no reasonable prospect of securing a conviction before a court.*

The Corruption Case Management Manual has provisions inter alia on post interview actions, referral for a prosecutorial decision, charging strategy, approach to charging, selection of charges, drafting charges. Some other tools in the Manual include Prosecution Strategy Template (PST), Case Analysis worksheet (CAW) and Trial Readiness Certificate (TRC).[93]

Confiscation and Forfeiture

The word "forfeit" has been defined to mean to give up something or have something taken away as a consequence of or punishment for having done something wrong. The philosophy behind forfeiture is to confiscate the property used by an accused person in connection with an offence which will prevent him from committing the offence, at least, with the confiscated property.[94]

Confiscation and Forfeiture of proceeds of crime is an international best practice anti-corruption tool.[95] Provisions on Forfeiture or on confiscation and forfeiture of proceeds of crime are embedded in various legislations enacted to fight corruption[96]

Adedeji Adekunle has identified three forms of penal forfeiture or confiscation.[97] They include:

1. Forfeiture of proceeds or assets acquired through proceeds derived from the offence for which the offender is convicted.
2. Forfeiture calculated by reference to the benefit derived by the convict from the offence.
3. Forfeiture of all traceable assets of the convicted person.

Besides the deterrent effect of this form of punishment, it is also targeted at making the crime unattractive by ripping the offender of the benefits of the crime, thereby incapacitating the offender financially.[98]

Section 27 of the *Economic and Financial Crimes Commission (EFCC) Act*[99] requires a person arrested for committing an offence under the Act to make a full disclosure of all his assets and properties by completing an Assets Declaration Form. Section 28 further provides that where a person is arrested for an offence under the Act, the Commission shall immediately trace and attach all the assets and properties of the person acquired as a result of such economic or financial crime and shall thereafter cause to be obtained an interim attachment order from the court.

From the wordings of this provision, it is clear that the Commission is empowered to trace, and attach the assets of a person who is alleged to have committed an offence, once the person has been placed under arrest. The section also adopts the use of the word *immediately,* implying that it is instant.[100]
Section 29 of the Act attempts to water down the harshness of the provision of section 28 by mentioning that the Commission shall cause an *ex-parte* application to be made to the Court for an interim order forfeiting the property concerned to the Federal Government and where the Court is satisfied that there is prima facie evidence that the property concerned is liable to forfeiture, it is to make an interim order forfeiting the property to the Federal Government.

Sections 37 (1), 45 and 46 of the ICPC Act also deal on non-conviction based confiscation. *Section 37 (1) of the ICPC Act,* provides that if in the course of an investigation into an offence any officers of the Commission has reasonable grounds, to suspect that any movable or immovable property is the subject matter of an offence or evidence relating to the offence he shall seize such property.

Section 45 (4) of the ICPC Act, generally makes the subject-matter of an offence under this Act or evidence of the commission of such offence liable to seizure and the seizure shall be effected:

(a) by the issuance of a Notice of Seizure signed by the Chairman of the Commission or any other person authorised by him setting out there in the particulars of the immovable property which is to be seized in so far as such particulars are within his knowledge, and prohibiting all dealings in such immovable property; and
(b) by publishing a copy of such Notice in two newspapers circulating in Nigeria which shall be in the English Language; and
(c) by serving a copy of such Notice on the officer of the Ministry of Lands of the Area in which the immovable property is situate.

Section 45 (1) of the ICPC Act empowers the Chairman of the Commission to by order direct the bank or financial institution not to part with, deal in, or otherwise dispose of any movable property, including any monetary instrument or any accretion thereto which is the subject-matter of any investigation under this Act or evidence in relation to the Commission of such offence in the possession, custody or control of a bank or financial institution. It is an offence punishable for any person to fail to comply with such an order of the Chairman of the Commission.[101]

Section 46 of the ICPC Act also provides that where the Chairman of the Commission is satisfied that any property is the subject-matter of an offence under this Act or was used in the commission of the offence, and such property is held or deposited outside Nigeria, he may make an application by way of an affidavit to a Judge of the High Court for an order prohibiting the person by whom the property is held or with whom it is deposited from dealing with the property.

Non-conviction based (NCB) proceedings are "in rem" against the assets, not against a person and are not intended to determine whether any person is guilty. Therefore, *Section 135 of the Evidence Act* on burden of proof is not applicable.[102] Constitutional or diplomatic immunity is not applicable to such forfeiture proceedings. NCB proceedings are not criminal, so *Section 36 (5) of the Constitution* on presumption of innocence does not apply. Presumption of

innocence is only applicable in the actual trial for an offence, where the prosecution bears the burden of displacing that presumption in favour of the defendant.

Section 333 of ACJA is on seizure of things used or intended to be used in crime. *Sections 337-339 of the ACJA* make provisions on property taken during arrest or investigation. *Section 337, ACJA* provides that where the police seize property taken during arrest or investigation under this Act, or alleged or suspected to have been stolen or found in circumstances which create a suspicion of the commission of an offence, the police shall, within a period not exceeding 48 hours of the taking of the property or thing, report to a court, and the court shall make an order in respect of the disposal of the property or its delivery to the person entitled to its possession.

Where the person entitled to the possession of property is unknown, the court may detain it and shall issue a public notice specifying the articles of which the property consists and requiring any person who may have a claim to it, to appear before the court and establish his claim within six months from the date of the notice[103].

Where no person within the period referred to in *Section 337* of the Act establishes his claim to property referred to in that section and where the person in whose possession the property was found is unable to show that it was lawfully acquired by him, the property shall be at the disposal of the court and may be sold in accordance with the order of the court and proceed forfeited to the Federal Government of Nigeria.[104]

The following are some of the situations that may lead to the commencement of NCB proceedings:

1. The defendant/accused has fled jurisdiction and could not be located;
2. The defendant/accused being a public officer or politically exposed person, acquired wealth that could not be explained or justified based on his filed asset declaration form or as legitimate earnings/income.
3. Criminal conviction against the defendant/accused failed or could not be proved for insufficiency of evidence but the defendant/accused acquired movable and non-movable assets including cash, which could not be justified;

4. The ownership of the identified suspected/illicit assets could not be ascertained after or the asset is abandoned or disowned;
5. The defendant/accused has passed away, leaving behind assets associated with crime;
6. The defendant/accused is using pseudonym front or intermediary.[105]

Section 47 of the ICPC Act is on prosecution/conviction based confiscation and forfeiture. It provides:

> *Section 47. Forfeiture of property upon prosecution for an offence. (1) In any prosecution for an offence under this Act, the court shall make an order for the forfeiture of any property which is proved to be the subject-matter of the offence or to have been used in the commission of the offence where-*
> *(a) the offence is proved against the accused; or*
> *(b) the offence is not proved against the accused but the court is satisfied;*
> *(i) that the accused is not the true and lawful owner of such property; and*
> *(ii) that no other person is entitled to the property as a purchaser in good faith for valuable consideration.*
> *(2) Where the offence is proved against the accused or the property referred to in subsection (1) has been disposed of, or cannot be traced, the court shall order the accused to pay as a penalty a sum which is equivalent to the amount of the gratification or is, in the opinion of the court, the value of the gratification received by the accused, and any such penalty shall be recoverable as a fine.*

Section 23 (2) (c) of the Code of Conduct and Tribunal Act, grants wide powers to the Code of Conduct Tribunal to seize and forfeit to the Federal Government any assets acquired in abuse or corruption of office by any public Officer.

Article 54 of UNCAC is on mechanisms for recovery of property through international cooperation in confiscation. State Parties are to take necessary measures to do the following:

(a) permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party;

(b) permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law;
(c) allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.
(d) permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation.

The provisions of *Section 44 (2) of the 1999 Constitution* deal with compulsory acquisition of property. Such seizures are excusable under *Sections 44 (2) (e) and (k)* which limits the right to property when it relates to the execution of judgments and orders of courts and to the temporary taking of possession of property for the purpose of any examination, investigation or enquiry. So long as *Section 44 (2) (e) and (k*) still stands in our *Constitution*, it continues to give validity to the provisions of the legislations that prescribe confiscation and forfeiture of assets and properties before trial.[106]

Penal sentences without asset forfeiture are ineffective in corruption related cases**.** Prosecutors must as a matter of necessity press for forfeiture of not only proceeds but also instrumentalities of the crime and courts have to sentence accordingly.[107]

PROCEDURAL TOOLS FOR THE TRIAL STAGE
The Proof of Evidence, Information and the Charge(s)
The combined effect of *Sections 104, 106, 109, 493 and 494 of the ACJA* is that criminal proceedings at the Federal High Court by the Attorney General of the Federation or on his behalf shall be by information.[108]

Section 379 ACJA contains contents of an information as follows:

(a) the proof of evidence, consisting of:
(i) the list of witnesses;
(ii) the list of exhibits to be tendered;
(iii) summary of statements of the witnesses;
(iv) copies of statement of the defendant;

> *(v) any other document, report, or material that the prosecution intends to use in*
> *support of its case at the trial;*
> *(vi) particulars of bail or any recognizance, bond or cash deposit, if defendant is on*
> *bail;*
> *(vii) particulars of place of custody, where the defendant is in custody;*
> *(viii) particulars of any plea bargain arranged with the defendant,*
> *(ix) particulars of any previous interlocutory proceedings, including remand*
> *proceedings, in respect of the charge,*
> *(x) any other relevant document as may be directed by the court; and*
> *(b) a copy of the form for information on legal representation as provided under section*
> *376(9) of this Act.*

The proofs of evidence are a summary of the evidence the prosecution witnesses would give. For completeness, the proofs of evidence include the unedited statement(s)of the defendant(s), list of witnesses, list of exhibits, and copies of documents to be relied upon. The information and the charge sheet are tools in the prosecutor's kitty that dictates the direction of the prosecution and the defence. It is the charge that will state the name of the offence, as well as the facts of the offence. The section of the substantive law and the punishment section of the law against which the offence is said to have been committed is also set out in the charge

Section 194 of the ACJA provides for an offence to be stated in a charge, while Section 196 provides the particulars of a Charge Sheet thus:

> *(1) The charge shall contain such particulars as to the time and place of the alleged offence and the defendant, if any, against whom or the thing, if any, in respect of which it was committed as are reasonably sufficient to give the defendant notice of the matter with which he is charged.*
> *(2) A charge sheet shall be filed with the photograph of the defendant and his finger print impression provided that where the photograph and finger print impression are not available, it shall not invalidate the charge.*

Sections 197 and 198 of ACJA will be of particular interest for prosecutors of corruption and related cases. *Sections 197* is in relation to the offences of criminal breach of trust or fraudulent appropriation of property. Where a defendant is charged with criminal breach of trust or fraudulent appropriation of property, it is sufficient to specify the gross sum in respect of which the offence is alleged to have been committed and the dates between which the offence is alleged to have been committed without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of a single offence.

Under *Section 198, ACJA,* when a defendant is charged with falsification of accounts, fraudulent falsification of accounts or fraudulent conversion, it shall be sufficient to allege a general intent to defraud without naming any particular person intended to be defrauded or specifying any particular sum of money intended to be the subject of the fraud or any particular day on which the offence was committed.

A charge must not be ambiguous as it will be in conflict with the provisions of *Section 196 of the ACJA. Section 209 of the ACJA* provides that for every distinct offence with which a defendant is accused, there shall be a separate charge and every charge shall be tried separately[109] except in the following circumstances:

> *(a) any three offences committed by a defendant within 12 months whether or not they are of the same or similar character or whether or not they are in respect of the same person or persons; or*
> *(b) any number of the same type of offence committed by a defendant; or*
> *(c) any number of offence committed by a defendant in the course of the same transaction having regard to the proximity of the time and place, continuity of action and community of purpose; or*
> *(d) cases mentioned in sections 210 to 215 of this Act[110].*
> *Conditions for a valid arraignment include:*
> *(a) the accused person shall be present in court;*
> *(b) the charge or information shall be read over to him in a language he understands;*

> *(c) the charge or information after being read over in such language, should be explained to him avoiding as much as possible the use of technical expression.*
> *(d) This explanation should acquaint the accused with the essential ingredients of the offence charged and with the factual situation resulting in and giving rise to the offence charged.*

The accused must be called upon to plead thereto unless there exists any valid reason to do otherwise e.g. objection to want of service[111]. It is a fundamental vice for the accused not to be properly arraigned, and that the effect is that it renders the entire trial a nullity[112].

The charge must be read and explained to the accused, and if there is no objection by counsel or the accused person, there is clear presumption of regularity that all that must be done to let the accused know the charge against him has been done. In that wise it is presumed the accused understood the charge which has been read and explained to him and the court was equally satisfied the charge was understood by the accused. All these conditions must be satisfied.[113]

The Plea is an invaluable tool for the prosecutor and the Court. The plea sets the tone for the prosecutor to know the direction the case will flow. By pleading not guilty, a defendant shall be deemed to have put himself to trial.[114] A plea of guilty to a charge, provided it is voluntary and unambiguous, is conclusive evidence that the accused/appellant committed the offence. A plea of guilty is the best evidence against an accused person. It is even better than eye witness evidence.[115]

Where a defendant is represented by counsel and he pleads guilty the plea of guilty brings the trial to an end. The charge shall be read to the defendant and the court, if satisfied that the defendant intends to admit the truth of all the essential elements of the offence for which he has pleaded guilty shall proceed to convict defendant without necessarily calling on the prosecution to prove the commission of the offence by establishing the burden of proof ordinarily required by law.

The reason is that the admission of guilt on the part of the accused would have satisfied the required burden of proof. Where however, the prosecution goes ahead to adduce evidence though scanty and

tender documents as exhibits, this is an added strength to the case of the prosecution which also obliterates any doubt whatsoever on the mind of the trial judge to convict the accused[116].

Where a Defendant pleads guilty to the charge, the procedure as laid down by *Section 274 (1) and (2) of the ACJA* is as follows:

> *274. (1) Where a defendant pleads guilty to an offence with which he is charged, the court shall:*
> *(a) record his plea as nearly as possible;*
> *(b) invite the prosecution to state the fact of the case; and*
> *Effect of plea of guilty.*
> *(c) enquire from the defendant whether his plea of guilty is to the fact as stated by the prosecution; or*
> *(2) Where the court is satisfied that the defendant intends to admit the truth of all the essential elements of the offence for which he has pleaded guilty, the court shall convict and sentence him or make such order as may be necessary, unless there shall appear sufficient reason to the contrary.*

Onnoghen JSC in the case of *Francis Nkie v. Federal Republic of Nigeria[117]* explaining the essence of a guilty plea, held:

> *A guilty plea by an accused person to a non-capital charge shortens the proceedings in that trial as the court is empowered to proceed summarily to deal with the matter by convicting and sentencing the accused accordingly; it converts an otherwise full trial to a summary one. Where an accused person not only pleaded guilty to the charge but made confessional statement which is admitted in evidence without objection, as in the instant case, the burden of proof legally imposed on the prosecution to prove the charge beyond reasonable doubt is made very light indeed.*

Where the defendant pleads guilty to a capital offence, a plea of not guilty shall be recorded for him.[118] Where despite the plea of guilty the prosecution goes ahead to lead cogent and credible evidence as to further support the plea of guilty, the ensuring conviction, is unassailable.

Failure to comply with requirement of plea will be fatal to the case and the proceedings will be a nullity. In the case of *Lawani Sani v.*

State[119], the case proceeded to trial without any plea being taken from the applicant because the charge was never read to him. The Court of Appeal allowed the appeal and ordered a retrial because applicant was not called upon to enter his plea.

Plea Bargain

Plea bargaining is a process whereby a person accused of a crime pleads guilty to a specified charge in return for an agreed sentence, recommended to the judge, or the dismissal or reduction of other charges. Typically, defence counsel and the prosecutor negotiate the charges to be brought. If the bargain pertains to the sentence to be meted out, a judge may also participate unless barred from doing so.[120]

Plea bargaining embraces such practices as charge bargain, sentence bargain and agreements as to the facts of the offence and the narrowing of issues in order to expedite the trial. Although they may sometimes involve a judge, these private discussions occur primarily between the prosecutor and the accused and his lawyer.[121]

A semblance of plea bargaining was introduced in Nigeria by section 14 (2) of the *Economic and Financial Commission (Establishment Act), 2004.* The section provides:

> *Subject to the provisions of section 174 of the Constitution of the Federal Republic of Nigeria 1999, the Commission may compound any offence punishable under this Act by accepting such sums of money as it thinks fit, exceeding the maximum amount to which that person would have been liable if he had been convicted of that offence*

Up until 2007 when the Lagos State enacted the *Administration of Criminal Justice Law, 2007*, as amended in 2011, there was no concrete statutory basis for plea bargaining in Nigeria. Section 76 of the *Administration of Criminal Justice Repeal and Re-enactment Law* (*ACJRRL) 2011* makes provision for plea bargain and sentence agreements [122].

Section 270 of the ACJA, 2015 has provisions on plea bargain. The Prosecutor may on his own offer or receive and consider a plea bargain from a defendant charged with an offence either directly from that defendant or on his behalf. The Prosecutor can only offer, receive or consider a plea bargain where he is of the view that the offer or acceptance of a plea bargain is in the interest of justice, the

public interest, public policy and the need to prevent abuse of legal process.

The prosecutor may only enter into a plea agreement after consultation with the police responsible for the investigation of the case and the victim or his representative, and with due regard to the nature of and circumstances relating to the offence, the defendant and public interest.[123] *Section 270 of the ACJA* provides plea bargain guidelines which the courts are enjoined to follow once the parties have agreed to a plea bargain.

Plea bargain is a beneficial tool for the prosecutor as can be seen from the observations of the Committee on the Reform of the Criminal Justice Administration, in introducing plea bargaining in the Administration of Criminal Justice Bill 2005, as follows[124]:

a. It broadens the prosecutorial discretion of the Attorney General in supervising and managing the Criminal justice system
b. It provides a release valve in the system so that cases that do not deserve to go through the tedious full trial can be dealt with through plea bargain, especially minor offences and offences not involving intentional violence. In other words, it provides an alternative to trial (may be inappropriately, a kind of ADR in the criminal justice system)

c. It would complement the provisions on compounding offences, and would encourage amicable settlement of cases between the offender and the victim (Victim-Offender Mediation). Usually, plea bargain is entered where the victim and the offender requests for it, having settled the violation through other reconciliatory processes.

d. It is based on the admission of guilt, with element of remorse or contrition. At such point, it would discourage re-offending and encourage reformation of the offender if he is given another opportunity to be a better person in the society.

e. It is a discretional tool, which the prosecution (Attorney-General) will use sparingly and in deserving cases.

f. Reduced prison population and the attendant pressure on prisons and court system. Plea bargain will prevent those who ordinarily ought not to be in prison from going there. Through plea bargain, there can be rehabilitating impact on the defendant. First offenders or young offenders can be sentenced to lesser offences, and to non-custodial sentences that would reform them rather than sending them to long awaiting trial remand or prison term, where they would be in prison with criminals, and by the time they come out of prison, they would become more hardened offenders.

g. Plea bargain will help to reduce impunity, and strengthen faith in the system, which is eroded because cases are hardly finalized. To prevent impunity and to conclude cases, is a dis-incentive to offending. When cases are not processed effectively, it leads to loss of faith in the system. The strongest deterrence to criminal activity is a combination of the possibility of apprehension, and the knowledge that when arrested, the offender will be tried and brought to justice by the system. With plea bargain, a higher number of cases will be processed.[125]

Amendment of Charge and Filing of New Charge

The provisions on amendment and filing of a new charge in Part 22, Section 216, ACJA is a useful tool for the prosecutor. It permits the prosecutor with the leave of court to alter a charge, add to a charge or frame an entirely new charge at any time before judgment is pronounced. This is a wonderful tool indeed as it enables the prosecutor to right any wrong discovered in the charge at any time before judgement. After the charge is amended or a new charge is brought, the procedure is that the amended charge or the new charge must be read and explained to the defendant and his plea to the amended or new charge shall be taken[126].

The court can also *suo motu* direct the framing of a new charge, or an addition to, or the alteration of the original charge[127]. The court is also empowered where a defendant is committed for trial without a

charge or with an imperfect or erroneous charge, to frame a charge or add or alter the charge, as the case may be having regard to the provisions of this Act[128].

In the case of *Aimuamwehi v. Friday Osareren,*[129] Olabode Rhodes-Vivour, JSC, in rendering the import of *Section 164(1) of the erstwhile Criminal Procedure Act,* similar to *Section 217 (1) ACJA*, held thus*:*

> *When it is the desire of a prosecutor to amend the charge or file a fresh charge, he files the process in the Registry and serves a copy of the process on the defence counsel. Leave means permission. An informal oral application is made to the trial judge in open Court to amend or file fresh charge/s and leave to amend is not formally granted by the judge. It is implied that leave has been granted when the accused person is called upon to plead to the amended charge or fresh charge. The fact that the accused person pleads to the amended charge is indicative of the fact that leave was obtained. Failure of the accused person to plead to the amended or fresh charge as provided by Section 164 of the Criminal Procedure Act renders the entire proceedings null and void. See R v. Eronini (1953) 14 WACA p.366, Adisa v. AG Western Nigeria (1965) 1 ALL NLR p.412.*

See also the case of *Okey Jibulu v. Federal Republic of Nigeria*[130]*,* where Nimpar JCA, held that once there is an amendment the original charge is replaced by the amended charge. The accused must take a fresh plea on the amended charge and that the prosecution still has the right to file additional proof of evidence if it so desires before the close of its case.

Trial in Absentia

Sections 352 (4) and (5) of the ACJA is a tool that enables the prosecution to continue with the prosecution of a defendant who has failed to appear to stand his trial in disregard of Court orders or summons. This tool is particularly useful where a defendant has been granted bail and he or she decides to jump bail. By these provisions, the trial is not stalled, but the prosecution can go ahead and prove its case in the absence of the Defendant. The Court can continue the trial and convict the defendant unless the court sees reason otherwise, provided that the case had been adjourned for up to two times or as the court deems feet. The Court is to reserve the imposition of

sentence until the defendant is arrested or surrenders to the custody of the court.[131]

Abolition of Stay of Proceedings

Section 40 of the EFCC Act earlier provided that subject to the provisions of the Constitution of the Federal Republic of Nigeria, 1999, an application for stay of proceedings in respect of any criminal matter brought by the Commission before the High Court shall not be entertained until judgment is delivered by the High Court.

Section 306 ACJA abolished applications for stay of proceedings in respect of a criminal matter. By reason of *Section 306, ACJA,* applications for stay shall no longer be heard until judgement. Section 306 has the potential to curb the misuse of interlocutory appeals to scuttle criminal trials[132]. So, this is a good section the prosecutor can invoke as a tool anytime a defendant wants to delay the prosecution by filling interlocutory appeal. In the case of *Metuh v. Federal Republic of Nigeria,[133]* the Supreme Court held that just like the two lower Courts, it also lacks the powers to stay proceedings under *Section 22 of the Supreme Court Act* or under its inherent powers.

Calling of Witnesses and Summons

"Witness" means a person who sees, knows or vouches for evidence under oath or affirmation either in person or by written deposition. A witness is also a person who gives evidence in court or generally whose vocal testimony is extracted to be used in any judicial proceeding, including a deponent of an affidavit.[134]

Section 36 (6) (d) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) is on the right of both sides of the case to call and to examine witnesses. By *Section 241 (1) of the ACJA,* the court may, on an application of the prosecution or the defence, issue a summon or a writ of subpoena on a witness requiring him to attend court to give evidence in respect of the case, and to bring with him any specified documents or things and any other documents or thing relating to them which may be in his possession or power or under his control.

Where the prosecutor is not a public officer the person to whom the summons is addressed is not bound to attend unless his traveling expenses are paid.[135] The onus is on the prosecution to prove its case beyond reasonable doubt by calling necessary evidence to that effect

and not a host of witnesses. In this regards it has the discretion how it goes about it that is by calling material evidence[136].

The examination of witnesses in court is in accordance with the provisions of *Section 215 of the Evidence Act, 2011.* The order and direction of examination is that witnesses shall be first examined-in-chief, then, if any other party so desires, cross-examined, then, if the party that called him so desires, re-examined.

By *Section 256 of the ACJA,* the court may, at any stage of any trial, inquiry or other proceedings under the ACJA, either of its own motion or on application of either party to the proceeding call a person as a witness or recall and re-examine a person already examined where his evidence appears to the court to be essential to the just decision of the case.

Conviction for Offence that was not Charged

Sections 223, 224 and 225 of the ACJA are powerful tools that can be utilized by the Prosecutor and the Court to ensure that where the prosecution is unable to prove the offence charged, it can still secure conviction for an offence that was proved, though not the one charged. *Section 223 of the ACJA* provides that where a defendant is charged with one offence and it appears in evidence that he committed a different offence with which he might have been charged under the provisions of this Act, he may be convicted of the offence, which he is shown to have committed although he was not charged with it.[137]

Section 224 of the ACJA provides that where a defendant is charged with an offence but the evidence establishes an attempt to commit the offence, he may be convicted of having attempted to commit that offence although the attempt is not separately charged. *Section 225 of the ACJA* goes further to provide that where a defendant is charged with an attempt to commit an offence but the evidence establishes the commission of the full offence he shall not be entitled to an acquittal but he may be convicted of the attempt and punished accordingly.

These provisions do not require that the charge must be amended to accommodate the proved charge. Nevertheless, it is a different kettle of fish where the evidence discloses a higher offence. In that case, the prosecutor must of necessity, bring a charge for the higher offence,

upon which the defendant will be tried, as a court cannot convict for a higher offence in lieu of the lower offence charged.[138]

It has been well suggested that when drafting a charge, the prosecutor is to aim at a higher offence but where the evidence only establishes a lower offence, the court may be urged to convict on the lower offence, so the prosecution does not lose out completely.[139]

Witness Protection Measures

Section 232 of ACJA is a tool that will help the Prosecutor secure the attendance of witnesses to court hearings, where they ordinarily would have felt threatened or unsafe. Offences for which the witness protection applies include offences relating to Economic and Financial Crimes and any other offence in respect of which the National Assembly permits the use of such protective measures or as the judge may consider appropriate in the circumstances.[140]
The names, addresses, telephone numbers and identity of witnesses of such offences shall not be disclosed in any record or report of the proceedings and it shall be sufficient to designate the names of the witnesses with a combination of alphabets.

The court may receive evidence of such witnesses by taking the following measures[141]:
(a) receive evidence by video link;
(b) permit the witness to be screened or masked;
(c) receive written deposition of expert evidence;
(d) any other measure that the court considers appropriate in the circumstance.

Conclusion

It is obvious that in Nigeria, prosecutors are not lacking provisions in domestic, international, regional and sub-regional substantive and procedural laws as tools for effective prosecution. The fight against corruption in Nigeria has received a huge boost since the inauguration of the PACAC, especially in the area of producing documents and fine-tuning the tools for prosecution of corruption and related offences.

It is crucial to ensure that prosecutors possess the professional qualifications required for the accomplishment of their functions, through better methods of employment and professional training, and through the provision of all necessary means for the proper

performance of their role in prosecuting corruption and related offences, which is the offence that has left Nigeria in the class of one of the poorest nation in the globe.

Congested Court dockets have been identified as some of the hindrances to effective prosecution of corruption related cases. The present state of affairs where regular Federal and State High Courts are designated to handle corruption and related cases in addition to the various other criminal and civil matters, leaving corruption and other related cases to compete with the other matters for the time of the very congested Courts is not desirable. Where Special Courts are designated to handle only corruption related cases, the cases will be determined faster. The Special Crimes Court Bill drafted by PACAC is yet to be passed into Law. The National Assembly is called upon to expedite the passage of this Bill into law.

The most important tool of the prosecutor is in built in his personality. It rests in the character and integrity of the prosecutor. It has been well stated in the Corruption Case Management Manual that the foundation of an effective, successful and efficient prosecution of corruption cases is the integrity of purpose and commitment to a successful prosecution.

Endnotes

[1] *Section 135 (1) of the Evidence Act 2011, The State v. James Gwangwan, 2015 Legalpedia SC E52G; Oluwatoyin Abokokuyanro v. The State 2016 Legalpedia SC 5LKB; Idemudia v. State (1999) 7 NWLR (Pt. 610) 202 at 215; and Esangbedo v. State (1989) 4 NWLR (Pt. 113), 57.*

[2] *Abubakar Dankidi v. The State; 2014 Legalpedia CA QS3H and Odunayo Ajayi v. The State 2011 Legalpedia CA 4G6Q.*

[3] See Ani Comfort Chinyere, "Corruption in Criminal Justice Administration: The Role of the Legal Profession", *Nigerian Bar Journal* vol. 7 No. 1, August 2011, pp. 102-183.

[4] T. Osipitan and O. Oyewo, "Legal and Institutional Framework for Combating Corruption", in E. O. Akanki (ed.), *Unilag Readings in Law*, (Lagos: Faculty of Law, University of Lagos, 1999), p. 258.

[5] A. S. Hornby, *Oxford Advanced Learner's Dictionary*, (Oxford University Press, 6th ed., 2000). p. 261.

[6] *Helping Countries Combat Corruption: The Role of the World Bank*, (World Bank, 1997), in I. A. Ayua, *Overview of Corruption in Nigeria, being a Paper Presented at the National Conference on the Problems of Corruption in Nigeria*, held in Abuja from 26-29 March, 2001, p. 11.

[7] Y. B., Usman, "Some Observations on the Problem of Corruption in Nigeria from a Historical Perspective" being a contribution to the National Conference on the Problems of Corruption in Nigeria, Organized by the Nigerian Institute of Advanced Legal Studies, Abuja, 26-29 March 2001, p. 2.

[8] Cap. C 31 *Laws of the Federation of Nigeria 2004, Ibid.* Article 5 of the *African Union Convention on Preventing and Combating Corruption*, adopted in Maputo, Mozambique, July 11, 2003*,* lists the scope of acts of corruption and related offences.

[9] See Section 7, *Ibid*.

[10] T., Osipitan and O., Oyewo, T., "Legal and Institutional Framework for Combating Corruption", in E. O. Akanki (Ed.), *Unilag Readings in Law*, (Lagos: Faculty of Law, University of Lagos, 1999), p. 260.

[11] Ani Comfort Chinyere, "Corruption in Criminal Justice Administration: The Role of the Legal Profession" *op. cit,* note 3.

[12] See T., Osipitan, "The Corrupt Practices and Other Related Offences Act 2000-The Role of NYSC and effects on National Development", in *The Guardian*, November 6, 2001, p. 87.

[13] M., Akanbi, "The Fight Against Corruption in Governance", *This Day Newspaper*, April 16, 2001, p. 33.

[14] Bolaji Owasanoye and Comfort Chinyere Ani, Judicial Reform and Transformation in Nigeria, "Improving Case Management Coordination amongst the Police, Prosecution and Court", in Epiphany Azinge and Dakas C.J. Dakas (Eds.) *Judicial Reform and Transformation in Nigeria*, pp. 192-226.

[15] See *Mozley and Whiteley's Law Dictionary*, (Butterworths, 9th ed., 1977).

[16] The Plea Bargain Manual defines A Prosecuting Agency" means any agency or organization with statutory power to file criminal charges at court and prosecute criminal matters with or without the power to investigate. Prosecuting agencies include: The Federal Ministry of Justice-Department of Public Prosecutions, EFCC, ICPC, CCB, NAPTIP and NDLEA. See *Plea Bargain Manual,* (PACAC: 2016), p. 7.

[17] The persons mentioned include: The Attorney General of the Federation or a Law Officer in his office, the Attorney General of the State or a Law Officer in his office, a Legal Officer of any prosecuting agency and a private prosecutor.

[18] See Sections 174 (1) (b) & (c) and Sections 211 (1) (b) & (c) of the *1999 Constitution, Cap. C 23 Laws of the Federation of Nigeria, 2004 as amended.* See also, Fawehinmi G., *The Murder of Dele Giwa: The Right of a Private Prosecutor,* (Lagos: Nig. Law Publications Ltd., 1988), p. 35.

[19] (1986) 11-12 SCNJ 151.

[20] (1987) 2 NSCC 1265.

[21] This section provides thus: "*The registrar shall receive an information from a private person if-*

(a) it has endorsed thereon a certificate by a law officer to the effect that he has seen such information and declines to prosecute at the public instance the offence therein set forth; and such private person has

> *entered into a recognisance in the sum of one hundred naira together with one surety to be approved by the registrar in the like sum, to prosecute the said information to conclusion at the times at which the accused shall be required to appear and to pay such costs as may be ordered by the court,[3] or, in lieu of entering into such recognisance shall have deposited one hundred naira in court to abide the same conditions"*

[22] Sections 174 and 211 of the *Constitution*, for Federal and State respectively. See *Olusemo v. Commissioner of Police, (1988) 11NWLR, (Pt. 575), p. 557*

[23] For instance, bail applications.

[24] *Cap. P. 19 Laws of the Federation 2004.*

[25] These Sections deal with the powers of the Attorney-General to prosecute offences. See also *Osahon v. Federal Republic of Nigeria* (2003) 43 WRN, p. 69. See also Tijani N., "The Power to Prosecute by Police Officers in Superior Courts in Nigeria, in Yusuf A. O., (Ed.), *Issues in Justice Administration in Nigeria,* (VDG Intl. Ltd., 2008), p. 240

[26] (1988) 11 NWLR, (Pt. 575), p. 557. In that case, the appellant, being the Accountant General of the Federation, was charged with some other persons for the offence of stealing. The appellant was initially charged to the Magistrate Court. The appellant appealed to the High Court against a ruling of the court on the refusal by the police to supply him with the proofs of evidence. At the High Court, the appellant objected to the right of Mr. S.G. Ehindero, then a Commissioner of Police to represent the State in the High Court. The High Court in Abuja, ruled that he had the right to represent the state at the court. The matter went to the Court of Appeal and the issue for consideration was whether a police officer that is also a legal practitioner could represent the State in the High Court. The court held *inter- alia that* by the provisions of Section 23 of the *Police Act*, the police officer may conduct in person all prosecutions before any court in Nigeria, but that the power to conduct such prosecutions is subject to the provisions of Sections 160 and 191 of the *1979 Constitution* (Now Sections 174 and 211 of the *1999 Constitution).*

[27] (1985) 2NWLR (Pt. 8) 483.

[28] (1986) NWLR (Pt. 18) 650.

[29] (2007) 10 NWLR (Pt. 1042)

[30] *Cap. N1, Laws* of the Federation, of Nigeria, 2004.

[31] The National Agency for the Prohibition of Traffic in Persons and Other Related Matters (NAPTIP) is a Federal Government of Nigeria Agency established pursuant to the *Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003.* The Agency is expected among other things, to investigate and prosecute traffickers. The mandate of the Agency is encompassing as it is the national focal point for the fight against the scourge of human trafficking, child labour and the rehabilitation of the victims of trafficking in Nigeria. states that subject to the provisions of Section 174 of the Constitution, any officer of the agency may with the consent of the Attorney General of the Federation, conduct criminal

proceedings in respect of offences under the *Act* or Regulations made under the *Act.*

[32] See Ani Comfort Chinyere, "Corruption in Criminal Justice Administration: The Role of the Legal Profession", *op. cit.* note 3.

[33] Cap. E1 Laws of the Federation of Nigeria, 2004.

[34] *See Section 6 of the EFCC Act, ibid.*

[35] *Cap E 1 Laws of the Federation of Nigeria 2004*

[36] Section 19 (1), *ibid.*

[37] Section 19 (2) (b), *ibid.*

[38] Section 19 (4), *ibid.*

[39] Cap. C 15 *Laws of the Federation of Nigeria, 2004.* Before the establishment of the Code of Conduct Bureau, the Gowon regime had promulgated the *Public Officers (Investigation of Assets) Decree* (No. 5) of 1966. It empowered the Head of State to require suspected public officers to declare their assets and competent persons were appointed to verify the declarations. Suggestions were being made before the *Act* came into being, that it was better that such a Code of Conduct be dealt with by regular legislation, in order to ensure review and updating as and when necessary and to make room for a more detailed Code. See A. A. Adeyemi, "The Impact of Corruption in the Administration of Justice in Nigeria", in I. A. Ayua and D. A. Guobadia (eds.) *Political Reform and Economic Recovery in Nigeria*, (Lagos: Nigerian Institute of Advanced Legal Studies, 2001) pp. 697-698.

[40] See Section 1 of the Fifth Schedule to the *Constitution.*

[41] *Ibid*, Section 10

[42] Section 10 (3), of the *Act*, *ibid.*

[43] Section 15, *ibid.* Note that Section 11 of the Third Schedule, *ibid*, contains verbatim provision, but puts the age of the unmarried children to eighteen years. It is submitted that the Constitutional provision of twenty-one years should be the more appropriate age, since the *Constitution* is supreme to the *Act*.

[44] Cap C 15, *Laws of the Federation of Nigeria, 2004, ibid*

[45] Section 2 of the *Act.*

[46] Third Schedule of the *Constitution*, and section 3(d) and (e), *ibid*.

[47] See Section 20 of the *Act*, *ibid*.

[48] To view cases disposed and pending at the Tribunal, visit, http://ccb.gov.ng/legal-matters/cases-at-the-tribunal/

[49] Section 23 (4), of the *Code of Conduct Act.*

[50] United Nations Guidelines on the Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, (hereinafter referred to as UN Guidelines).

[51] *International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors* Practitioners Guide No. 1 (International Commission of Jurists: 2007).

[52] Adopted by the United Nations General Assembly on 15 November 2000 in force on 29 September 2003, in accordance with Article 38.

[53] See Article 1 of the Convention.
[54] See Article 2 of the Protocol.
[55] Signed in Abuja on 6 August 1994 and entered into force on 8 December 2005, in accordance with Article 36.
[56] Signed in Dakar on 29 July 1992 and entered into force on 28 October 1998, in accordance with Article 38
[57] See Article 2 of the Convention.
[58] See Foreword by Mohammed Bello Adoke SAN *to Code of Conduct Prosecutorial Guidelines for Federal Prosecutors*, Federal Ministry of Justice, Abuja: 2013, p. 6
[59] See Corruption Case Management Manual, (PACAC: 2016).
[60] Fatima Waziri-Azi, "Corruption Management Manual Summary", Annex 5 in Bolaji Owasanoye and Anthony Oluborode (Eds.), *Training Manual for Federal Prosecutors on Drafting Charges Under ACJA 2015",* (PACAC: 2016), p. 90.
[61] See Overview of the Plea Bargain Manual, Abridged Version, Annex 4, Bolaji Owasanoye and Anthony Oluborode (eds.) *Training Manual for Federal Prosecutors on Drafting Charges Under ACJA 2015, ibid, p. 83*
[62] See the Corruption Case Management Manual, *op. cit.* note 59.
[63] *Federal Sentencing Guidelines for High Profile Corruption and other Related Economic Offences,* (PACAC: 2016), p. 10.
[64] See *Corruption Information and Intelligence Sharing Protocol,* (PACAC:2016), P. 2
[65] See the Foreword by Abubakar Malami, SAN, in *Guidelines for State Prosecutors in the Prosecution of Federal Offences* (PACAC: 2017), p. 5.
[66] See the Foreword by Hon. Justice W.S.N. Onnoghen, in *Guidance Notes on Non-Conviction and Conviction Based Forfeiture and Management of the Res in Conviction Based Forfeiture in Nigeria* (PACAC: 2017), p. 4.
[67] *Asset Recovery Strategy,* (PACAC: 2019) pp. 3-12.
[68] P. 13, *ibid.*
[69] *The Presidential Advisory Committee Against Corruption, Report, 2015 - 2018*, pp. 11-12
[70] http://en.wikipedia.org/wiki/detention. Last visited on 12/7/2020.
[71] *General Assembly Resolution 43/173 of 9 December1988.*
[72] See the annex to the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.*
[73] http://en.wikipedia.org/wiki/detention. Last visited on 12/7/2020. *The United Nations Body of Principles* (*General Assembly Resolution 43/173 of 9 December1988*), defines a "Detained person" as any person deprived of personal liberty except as a result of conviction for an offence, while "Detention" means the condition of detained persons.
[74] Ani C. C., "Towards Eradicating the Problem of Delay in Criminal Justice Administration in Nigeria", in *F. A Yusuf (Ed.) Issues in Justice Administration in Nigeria, Essays in Honour of Hon. Justice S.M.A. Belgore (VDG International Ltd. 2008)*, pp. 136- 153 at 137.

[75] See *Constitution of the Federal Republic of Nigeria, Cap. C 23 Laws of the Federation of Nigeria, 2004* (hereinafter referred to as the Constitution)
[76] See Ani Comfort Chinyere, "Remand Orders, Bail and the Criminal Justice System" in Epiphany Azinge and Deji Adekunle (Eds.) *Administration of Justice and Good Governance: Essays in Honour of Hon. Justice Katsina Alu* CJN (Lagos: NIALS, 2011), p. 601.
[77] See sections Section 35 (a)-(f) *ibid,* for situations under which the right to personal liberty may be deprived.
[78] Section 35 (c) *ibid*.
[79] Yemi Akinseye-George, "Constitutionality of Remand Proceedings under the ACJA 2015", in Bolaji Owasanoye (Ed.), *Training Workshop for Federal and State High Court Judges on Effective Implementation of Administration of Criminal Justice Act, 2015 for Asset Recovery,* (PACAC: 2016), p. 108
[80] See Bolaji Owasanoye, "Remand Proceedings and Recognizances", in Bolaji Owasanoye (Ed.), *Training Workshop for Federal and State High Court Judges on Effective Implementation of Administration of Criminal Justice Act, 2015 for Asset Recovery*, *ibid,* p. 123
[81] Abdullahi Y. Shehu, *Strategies and Techniques of Prosecuting Economic and Financial Crimes*, (GIABA Secretariat Complex SICAP Point E, 2012), p. 133.
[82] Bolaji Owasanoye, *Asset Recovery for National Development: Role of the Judiciary* (PACAC: 2016), p. 31.
[83] *Ibid, pp.131 and 133*
[84] Signed in Abuja on 6 August 1994 and entered into force on 8 December 2005, in accordance with the Article 36
[85] Abdullahi Y. Shehu, *Strategies and Techniques of Prosecuting Economic and Financial Crimes*, *op. cit.* note 81, Pp. 56-57
[86] *Op. cit*. note 65, p. 21
[87] *Op. cit*. note 59,
[88] The PST is a Form that must be completed in all complex and high profile corruption cases referred to the Anti-Corruption Agency (ACA) on or after 31/12/2015. See Annex 1 of the Corruption Case Management Manual, p. 23.
[89] *Corruption Case Management Manual*, p. 13.
[90] *Ibid.*
[91] *See Code of Conduct & Prosecutorial Guidelines for Federal Prosecutors,* Office of the Hon. Attorney General of the Federation & Minister of Justice, Abuja, (2013), p. 18.
[92] *Ibid*, p. 19.
[93] *Op. cit,* note 59, p. 13-17
[94] Ani Comfort Chinyere, "Exploring Alternatives to Custodial Sentences: Options and Prospects", paper Presented at a *Workshop for Lagos State Magistrates, on Community Service Orders*, 21st May, 2012, at NIALS, Lagos, p. 21.
[95] See Ani Comfort Chinyere, "Criminological Foundations of Forfeiture-Including Types of Forfeiture Regimes", paper presented at the *NIALS*

Training Workshop on Seizure and Forfeiture of the Proceeds of Crime, 26-29 October, 2015, p. 30. The US Dept. of Justice has recently forfeited more than $480 million Abacha loot hidden in banks in France, UK, Ireland and US. This was possible through a civil forfeiture complaint. The judgment will have to be executed in each of the countries.

[96] These legislations include: *The Administration of Criminal Justice Act, (ACJA), 2015, (Sections 333 and 334); The Independent Corrupt Practices & Other Related Offences Act, 2000, (Sections 37 (10), 47 (1) and 48 (1); The Economic and Financial Crimes Commission Establishment Act, 2004, (Sections 20-21); The Code of Conduct Act, (Sections 23 (2) (c); the Money Laundering (Prohibition) (Amendment) Act, 2011 as amended in 2012 (Section 16 (2) (b); the Advance Fee Fraud and Other Related Act, 2006, (Section 171); the Failed Banks (Recovery of Debt and Financial Malpractices in Banks) Act, as amended (Section 16 (2); the Banks and Other Financial Institutions Act 1991, as amended and Customs and Excise Management Act, Cap. C 45, Laws of the Federation of Nigeria, 2004.*

[97] A. Adekunle, "Seizure of Proceeds of Criminal Activity: in Recent Financial Crimes Legislation in Nigeria", in *Modern Practice Journal of Financial and Investment Law*, Vol. 3 No.2, 1999, pp. 253-254.

[98] *Ibid,* p.252.

[99] *Cap E1,* Laws *of the Federation of Nigeria 2004.*

[100] Ani Comfort Chinyere, "Emerging Trends on the Presumption of Innocence and the Right to Silence in Nigeria*", University of Benin Journal of Private and Property Law,* 2010, Vol. 1, No. 1., pp. 1-26.

[101] *Section 45 (3) of the ICPC Act.*

[102] Ani Comfort Chinyere "Emerging Trends on the Presumption of Innocence and the Right to Silence in Nigeria", *op. cit.* note 100, p. 15.

[103] Section 337 (2) ACJA

[104] Section 338 (1), *ibid.*

[105]*Guidance Notes on Non-Conviction and Conviction Based Forfeiture and Management of the Res in Conviction Based Forfeiture in Nigeria, op. cit,* p. 19

[106] Ani Comfort Chinyere "Emerging Trends on the Presumption of Innocence and the Right to Silence in Nigeria*, op. cit note* 100.

[107] See J. O. K. Oyewole, "Asset Tracing, Recovery and Confiscation: Practice and Procedure", A paper presented at the *Nigeria Judges' Conference of the Superior Courts*, 25th -29th November, 2019, at The National Judicial Institute, p. 16.

[108] See Bolaji Owasanoye and Anthony Oluborode (Eds.), *Training Manual for Federal Prosecutors on Drafting Charges Under ACJA 2015* (PACAC: 2016), p. 39

[109] See *Rickey Tafa Mustapha (SAN) v. Federal Republic of Nigeria, (2017) LPELR -43131 (CA).*

[110] *Section 210 ACJA* provides that an offence is deemed to be an offence of the same kind as an attempt to commit that offence where the attempt is itself an offence. Section 215, ACJA provides that where in a single act or omission, the fact or combination of facts constitutes more than one offence,

the defendant may be charged and tried at one trial for one or more of those offences.

[111] See *Oguinye v. State (1999) 5 NWLR (Pt. 604) 548 at 565. See-Umuolo v. State (2003) 3 N. W. L. R (Pt. 808) p. 493, Ekwuruekwu v. State (2013) LPELR-20669 (CA).*

[112] See *Idemudia v. State, (1999), 7 NWLR (Pt. 610), p. 202.*

[113] See *Gozie Okeke v. State (2003) Legalpedia 37169.*

[114] Section 273, ACJA

[115] See *Umaru Sunday v. Federal Republic of Nigeria (2018) Legalpedia, (SC) 43341; See Akpa v. State (2008) 14 NWLR (Pt. 1106) p.72.*

[116] See Okoro JSC, in *Francis Nkie v. Federal Republic of Nigeria,* (2014) Legalpedia, (SC) 18111

[117] *Francis Nkie v. Federal Republic of Nigeria, ibid.*

[118] Section 274 (3), ACJA

[119] *(2000) 1 NWLR, (Pt. 642) p. 520.* See also, *Attache v. Commissioner of Police,* (1976) NNLR

42, where it was held that under the *Criminal Procedure Code*, the accused need not conduct any case at all until he hears the charge afresh.

[120] Oxford Companion to the Supreme Court, available at: http://www.answers.com/topic/plea-bargain.

[121] Ani Comfort Chinyere, Plea Bargain, Immunity from Punishment? in Epiphany Azinge and Laura

Ani (Eds.) *Plea Bargaining* (NIALS, 2012*), pp. 267-301*

[122] Plea bargain was earlier introduced in Lagos State by Section 76 of the repealed Criminal Justice Law of Lagos State, 2007.

[123] Section 270 (4) (a) and (b).

[124] See Ani Comfort Chinyere, "Plea Bargain, Immunity from Punishment", *op. cit.* note 123, pp. 294-297.

[125] See the *Summary Comments on the Report of the National Working Group on the Reform of Criminal Justice Administration*, June, 2005, pp. 124-125.

[126] Section 217 (1), *ibid.* See the case of *Abdullahi v. The State,* (2012) LPELR – 2052 (CA)

[127] Section 216 (3) ACJA

[128] Section 216 (4), *ibid.* See the case of *Mohammed v. State (2007)* and also the case of *F. R. N. v. Adewumi (2007) 10 NWLR (Pt. 1042) 399,* where the Court noted that amendment, whenever it is made, relates back to the original date of the document so amended.

[129] (2018) Legalpedia (SC) 14983

[130] (2015) Legalpedia, (CA) 18149

[131] Section 352 (5).

[132] Yemi Akinseye -George, *Administration of Criminal Justice Act, (ACJA) 2015 with Explanatory Notes & Cases,* (Centre for Socio Legal Studies, 2017), p. 387.

[133] (2017) 4 NWLR (Pt. 1554) 108 at 131.

[134] *Gezoji v. Kulere (2012) 4 NWLR (Pt. 1291) 458 at 493*

[135] Section 241 (2), ACJA.

[136] See the cases of *Oguejiofor Ilodigwe v. The State* (2012) CLR 7(d) SC; *Akindipe v. The State* (*2012) All FWLR (Pt 638) 805 (SC); Oladotun v. State (2010) 15 NWLR (Pt. 1217) 499 CA.*

[137] See *Commissioner of Police v. Olotu Owoicho FHC/HC/CR/93/2011 and Federal Republic of Nigeria v. Michael Emeka Ekwunife. FHC/AWK/49C/2013*

[138] See Section 228 of the ACJA

[139] See Yemi Akinseye-George, *Administration of Criminal Justice Act, (ACJA) 2015 with Explanatory Notes & Cases, op. cit.* note 133, p. 271.

[140] See Section 232 (4) (c) and (e).

[141] See Section 232(3), ACJA.

CHAPTER 16

ESTABLISHING THE MENTAL ELEMENTS OF CORRUPT PRACTICES

HENRY O. EMORE

Introduction

At common law, a conduct could not be considered criminal unless a defendant possessed some level of intention – either purpose, knowledge, or recklessness – with regard to both the nature of his alleged conduct and the existence of the factual circumstances under which the law considered that conduct criminal. The word *Actus* connotes a 'deed', a physical result of human conduct. The word Reus means 'forbidden by law'. The word *Actus Reus* may, therefore, be defined as 'Such result of human conduct as the law seeks to prevent. *Mens rea* means a mental state, in which a person deliberately violates a law. Thus, *Mens rea* means intention to do the prohibited act. Therefore, an act in order to be a crime must be committed with a guilty mind.[1] However, for some legislatively enacted crimes, a defendant need not have had any degree of belief or wilful disregard as to the existence of certain factual circumstances that rendered his conduct criminal; such crimes are known as strict liability offences.

For a non-strict liability offence to occur, there must be two main elements i.e. the prohibited conduct and the mental element of a guilty mind or intention also known as *actus reus* and *mens rea*.

Criminal liability in common-law based criminal law jurisdictions like Nigeria is tied to the proof of both *actus reus* and *mens rea*, save for strict-liability offences which are spelt out by the law.

The concepts of *actus reus* and *mens rea* developed in English Law are derived from the legal principle *actus non facit reum nisi mens sit rea*, meaning "an act does not make a person guilty unless (their) mind is also guilty"[2]. The FCT High Court restated this principle in ***F.R.N. Vs Chukwulozie & 2 Others***, when it held thus:

> "My reaction to this is that it is the law that confers the advantage on the accused i.e. the monetization circular and without which the issue of taking money for furniture items would never come by. If done without the backing of the

> circular, then the payment would not only be fraudulent but illegal. As I said before the benefit i. e. (Furniture allowance) is that prescribed by the policy of the Federal Government. The accused is an employee of the Federal Government who has not been proved not entitled to the privilege. … That brings me to the maxim "*actus non facit reum nisi mens sit rea*" That is to say no act is an offence unless it is backed up with a blame worthy mind. That is to say an act does not make the doer of it guilty unless the mind be guilty that is unless the intent be criminal"[3]

The modern concept of *Mens Rea* includes "levels," called modes of culpability, which have changed traditional thought. Now, the guilty mind is actually dependent upon three circumstances surrounding the act: 1) the conduct 2) the (attendant) circumstances and 3) the result.[4]

There are some basic elements to determine the mental state of a person when offences are committed and at least one of these elements must be present:

1. **Strict Liability**: the individual engaged in the crime and the mental state is irrelevant. Strict liability crimes include driving while intoxicated, selling alcohol to a minor and statutory rape. In all these offenses, whether or not the individual was aware they were committing a crime is of no concern. It simply has to be shown that individual is guilty of the crime.
2. **Negligence**: the individual is unaware of the dangers presented by the situation and/or attendant circumstances and their resulting consequences, but a reasonable person would have been.
3. **Recklessness**: the individual was aware of the attendant circumstances and the resulting dangers and chose to engage in the activity nonetheless, whereas a reasonable person would not have.
4. **Knowingly**: the individual is practically certain that the action will produce the criminal result.
5. **Purposefulness**: the criminal result was the "conscious object" of engaging in the conduct and the individual believed or hoped that the necessary circumstances existed so as to produce said result.[5]

For the purpose of this paper I will concentrate more on the *mens rea* (mental elements) of offences, particularly offences relating to corruption under the Independent Corrupt practices and Other Related Offences Commission (ICPC) Act, 2000. Like every legislation proscribing criminal conduct, the Corrupt Practices and Other Related Offences Act,[6] spells out the elements of offences created therein.

MENTAL ELEMENTS OF OFFENCES UNDER THE ICPC ACT

For the purpose of this discourse, the offences created under the ICPC Act will be categorized under two (2) broad categories, namely:

- Corruption offences and
- Offences ancillary to investigation of corruption offences

The corruption offences created by the Act are found in Sections 8 to 26. They include gratification by an official, corrupt offers to public officers, fraudulent acquisition of property, fraudulent receipt of property, deliberate frustration of investigation by the Commission, making false statements or returns, gratification by and through agents, bribery of public officer, using office or position for gratification, bribery in relation to auctions, bribery for giving assistance in regard to contracts, failure to report bribery transaction and making false or misleading statement to the Commission etc.

For effective navigation of the elements of offences under the ICPC Act, recourse ought to be made to the elements of the offences as contained in the law as well as definition of terms[7] and presumptions[8] contained in the Act.

Section 53 of the ICPC Act creates the presumption that once gratification has been proven to have been solicited and obtained it shall be presumed that the gratification had been corruptly accepted until the contrary is proved. It should however be noted that the section still places the burden of proving that gratification was given and accepted on the prosecution. The burden lies on the prosecution to prove the actus reus of the offence by establishing a prima facie case against the Defendant and this proof must be beyond reasonable doubt. Upon the prosecution doing this the presumption is that the said gratification was corruptly received until the contrary is proved by the Defendant. From the provisions of the section I am of the opinion that it would not be necessary to place the burden of proving the mental element of the offence of gratification.

These definitions and presumptions go a long way with navigating the elements of offences created by the Act as they provide insight on requirements to establish the elements of offences created by the ICPC Act 2000.

Offences and Elements

i. Gratification by an Official. The ICPC Act 2000 criminalizes gratification by an official and envisages several scenarios under which this can play out. The elements required to prove the offence of gratification by an official include:

- A person
- corruptly
- asks for, receives or obtains or
- agrees or attempts to receive or obtain
- any property for himself or another on account of
- past or future act, omission to be done or favour or disfavour to be 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, corporate body or other organization or institution in which he is serving as an official. These are the basic elements of the offence as contained in section 8 of the ICPC Act.

Where it is proved that any property or benefit of any kind or promise thereof was received by a public officer or some other person at his instance from a person:

a) holding or seeking to obtain a contract, license, permit, employment or anything whatsoever from a Government department, public body or other organization or institution where the public officer is serving
b) concerned or likely to be concerned, in any proceeding or business transacted pending or likely to be transacted before or by that public officer or a Government department, public body or other organization or institution in which that public officer is serving as such;
c) acting on behalf of or related to such a person; the property, benefit or promise shall under which same will be presumed to have been received corruptly on account of such past or future act, omission, favour or disfavour.[9]

The Nasarawa State High Court clearly stated the mens rea of the offence under this section in ***F.R.N. Vs Nzerem & Another***, when it held thus:

> "On the mens rea and actus rea, they asked for the money, they went to the hotel to collect the money, they were given and they received it. The offence is therefore completed. As to whether they were beaten or not they never raised this when their statements were being tendered. They therefore willingly asked for and received the money which is an illegal act in the course of their lawful duties. They are therefore found guilty under section 26 (1) and punishable under section 10 (a) (ii) of the ICPC Act, 2000."[10]

The act of asking for the gratification, meeting at a hotel and collecting the money clearly established the fact that the accused persons had the presence of mind to collect the gratification. The Criminal Code and the penal contains similar provisions on public officers asking for and receiving gratification.[11]

ii. Corrupt Offers to Public Officers. The ICPC Act makes it an offence for any person to make corrupt offers to public officers and contemplates several scenarios in which this can play out. The elements of the offence as contained in the law include:

- A person
- Corruptly (MENS REA)
- Gives, confers or procures or offers to give, confers, procures or attempts to procure (ACTUS REUS)
- Any property or benefit of any kind to, on or for a public officer
- On account of an act, omission, favour or disfavour to be done or shown by the public officer.

It equally creates a presumption that such property or benefit will be deemed to have been given corruptly if the person who gave it -

a) holds or seeks to obtain a contract, license, permit, employment or anything from a Government Department, public body or other organization or institution where the public officer is serving
b) is concerned or likely to be concerned in any proceeding or business transacted, pending or likely to be transacted before or by that public officer or a Government department, public

body of other organization or institution where the public officer is serving;

c) is acting on behalf of or is relative to such a person in a and b above.[12] The Criminal Code and the Penal Code contains similar provisions on corrupt offers to public officer to induce them in the performance of their duties.[13]

iii. Corrupt Demand by Persons. The ICPC Act criminalizes corrupt demand by person and admits of two (2) scenarios in which this can play out i.e. past or future act or omission and past or future favour or disfavour.

The elements of the offence include:

- a person
- asks for, receives, obtains property or benefit of any kind (ACTUS REUS)
- agrees or attempts to receive or obtain any property or benefit of any kind for himself or another (MENS REA)
- on account of past or future act, omission, favour or disfavour by a public officer in the discharge of his official duties or relating to any matter connected with the functions, affairs or business of a Government Department, public body or other organization or institution in which the public officer is serving.

- The mental element of the offence in this section is fact that the offender must have asked for and taken steps in furtherance of the request and actually receiving the gratification. ***F.R.N. Vs Nzerem & Another (SUPRA)***. The elements of the offence created under section 10 of the Act are the same with the elements required to be proved under section 8 of the Act as well as the provisions of the Criminal code[14] and the Penal code. There must have been a demand or receipt of the gratification and steps must have been taken towards actualizing the demand and receipt of the gratification.

iv. Fraudulent Acquisition of Property. This section makes it an offence for any person employed in the public service to have an interest in a contract awarded by ministry, Department or agency where he works or any other government agency. The elements of the offence include:

- A person
- Employed in the public service
- Knowingly (MENS REA)
- acquired or holds directly or indirectly a private interest in any contract, agreement or investment emanating from or connected with the Department or office in which he is employed or which is made on account of the public service. (ACTUS REUS)
- Where a company is involved, the offender shall be liable except if he is a member of a registered joint stock company consisting of more than 20 persons. The Court of Appeal in ***F. R. N. Vs Elizabeth Shuluwa*** held that:

> "The elements of the offence are that:
> (i) The accused is employed in the public service;
> (ii) The accused knowingly acquired or holds directly or indirectly (otherwise than a member of a registered joint stock company consisting of more than twenty persons) a private interest in a contract, agreement or investment;
> (iii) The contract, agreement or investment emanates from or is connected with the department or office in which the accused person is employed or is made on account of the public service.[15]

The court further held as follows:

> "Contrary to the holding of the trial court, it is not the requirement of section 12 of the Act that the accused person must be shown to have influenced the award of the contract. The important thing is that he has an interest, directly or indirectly"[16]

The mental element section 12 of the Act is that the Defendant must have knowingly acquired an interest in the company. Interest could be being a shareholder in the company or a director. It could also extend to being a signatory to the company's bank accounts. The mischief this section addresses is the habit of public officers awarding contracts to themselves and cronies. See also the case of ***Mrs. Gbonjubola Balogun Vs F. R. N.***[17]. See also the Criminal code Act.[18]

v. Fraudulent Receipt of Property. criminalizes fraudulent receipt of property knowing that such property was obtained by means of a misdemeanour or a felony and the elements include:

- Any person
- Who receives anything which has been obtained by means of an act constituting a felony or misdemeanour or by means of any act done at a place outside Nigeria, which is an offence under the laws in force at such place and if it had been done in Nigeria would constitute a felony or misdemeanour. (ACTUS REUS)
- Knowledge that the thing received was obtained by an act constituting a felony or misdemeanour. (MENS REA)

The mental element of the offence here is that the Defendant must have the knowledge that the property was obtained by means of a felony.[19]

vi. Deliberate Frustration of Investigation. Section 15 of the ICPC Act criminalizes deliberate frustration of investigation by the Commission. This section envisages a situation where deliberates efforts a made to conceal the commission of an offence. The elements include:

- Any person
- With intention to defraud, conceal a crime or frustrate the Commission its investigation of any suspected crime of corruption (MENS REA)
- Destroys, alters, mutilates or falsifies or omits any material particular from any book, document, valuable security, account, computer system, diskette, computer printout or other electronic device belonging to his employer or received by him on account of his employment or (ACTUS REUS)
- Is privy to any such act (ACTUS REUS)

This section makes the mental element (mens rea) central to the commission of the offence. The destruction, alteration, mutilation of any book or document, making false entries or omitting any material particular from any book must have been done with the intention to defraud or conceal a crime. The words of the ICPC Act here are clear and unambiguous and should be given their ordinary meaning and a

criminal intent must be established to prove that an offence has been committed under this section.

vii. Making False Statement on Returns. Section 16 of the ICPC Act 2000 is akin to the provisions of section 102 of the Criminal code act and both sections criminalize making false statement or return in respect of public revenue or property. The elements include:

- Any person
- Charged with the receipt, custody, use or management of any part of the public revenue or property
- Knowingly (MENS REA)
- Furnishes any false statement or return in respect of any money, property received by him or entrusted to his care or balance of any money in his possession or under his control (ACTUS REUS).

When Government funds are advanced or given to government official to carry out official assignments on behalf of Government, these funds are expected to be retired. Retirement comes in the form of showing or explaining through documents on how the funds were expended on behalf of government. This section makes it an offence if the public officer knowingly furnishes false documents in retiring the said funds. The High Court of Ondo State in ***F. R. N. Vs Gbenga Ojo & Anor*** held thus:

> "One would have thought that the 1st accused person would be the one to appreciate the implications of paying out such monies and what ICPC and the court would do to him than the recipients. It is quite evident, he appreciated this when he went ahead to procure a false and blank receipt filled it and used it to retire the sum of ₦90,000.00. He knew the receipts were not genuine and the contents were false.

The 1st accused person's counsel argued that if he had wanted to commit fraud, he would not have put his signature to the false list. He must have his reasons for signing the receipt of money by other persons. He could be naïve or more like it fraudulent. I find count one of these charges proved beyond reasonable doubt, therefore I find the 1st accused person guilty as charged in count one."[20]

The Court further held that:

> "The third count is similar to the first count with only the sum as the difference, while on count 1, the sum was ₦70,000.00, while the sum in count 3 is ₦90,000.00.

The ingredients of the two counts are the same and they are:

a) The second accused person is a public officer.
b) He must be charged with the receipt, custody, use of any part of the public revenue.
c) He must knowingly furnish a statement or return.
d) The statement must be false, and
e) It must be in respect of any money received by him or entrusted in his care or under his control"[21]

The mental element in this offence is that the public servant must have knowingly used false documents or statements to retire funds entrusted in his care, as in the above case the accused persons obtained a blank receipt, filled and signed it.

viii. Section 17 of the ICPC Act 2000 criminalizes gratification by and through agents, it admits of four scenarios. The elements include:

Variant One

- Any person
- Corruptly (MENS REA)
- Accepts, obtains or agrees to accept or obtain or attempts to obtain from any person for himself of another any gift or consideration as an inducement or reward for doing, forbearing to do or for having done or forborne to do, any act or thing (ACTUS REUS)

Variant Two

- Any person
- Corruptly (MENS REA)
- Gives or agrees to give or offers any gift or consideration to any agent as an inducement or reward for doing, forbearing to do or for having done or forborne to do any act or thing in relation to his principal's affairs or business(ACTUS REUS)

Variant Three

- Any person
- Corruptly and knowingly with intent to deceive the principal and mislead the principal or any other person (MENS REA)

- Gives to any agent any receipt, account or other document in respect of which the principal is interested and which contains any statement which is false, erroneous or defective in material particular (ACTUS REUS)

Variant Four

- An agent
- Corruptly and knowingly with intent to deceive his principal
- Uses any receipt, account or other documents in respect of which the principal is interested and which contains any statement which is false, erroneous or defective in material particular (ACTUS REUS)

From the four variants above the mental element is an essential ingredient of the offence created therein. The mental element in section 17 (a) & (b) is the use of the word "corruptly". The word "corruptly@ signifies an intention to commit a crime. However, in section 17 (c) the drafters of the Act used the following words "Knowingly", "with intent to deceive" and "which to his knowledge is intended to mislead" thereby making *mens rea* an essential ingredient of the offence. This intention can be inferred from the circumstances of each case.

The Supreme Court in ***Adekanye Komolafe Vs F.R.N held*** thus:

> "From the provisions of section 17 (i) (c) for the prosecution to succeed it must prove that the accused knowingly deceived his principal or intended to deceive his principal by presenting a document in which the principal is interested in and that the document contains false material. A man's intentions can only be established by circumstances and facts leading to the commission of the crime for which he is charged. It is very difficult to know what a man intends without resorting to chains of events that culminated into the acts complained of."[22]

See also ***Ruth Aweto Vs F.R.N.***[23]

ix. Bribery of Public Officers. The ICPC makes it an offence to bribery public officers under different circumstances and makes culpable both the giver and taker. The elements include:

- A person

- Who offers to any public officer any gratification as an inducement or reward (ACTUS REUS)
  Or
- A public officer
- Who solicits, counsels or accepts any gratification as an inducement or reward for (ACTUS REUS)

Scenarios

- Voting or abstaining from voting at any meeting of the public body in favour of any measure, resolution or any question submitted to the public body
- Performing or abstaining from performing or aiding in procuring, expediting, delaying, hindering or preventing the performance of any official act.
- Aiding in procuring or preventing the passing of any vote or the granting of any contract, award, recognition or advantage in favour of any person.
- Showing or forbearing to show any favour in his capacity as such officer.

It is worthy to note that the drafters of the Act did not use the words "corruptly" or "Knowingly" in the section. Guilty knowledge or corrupt intent (mens rea) is a necessary element of the offence. The substance of the offence appears to be akin in some ways to the offences created under section 8 and section 9.[24]

x. Using Office or Position for Gratification. The ICPC Act makes it an offence for a public officer to use his office or position to gratify himself or confer corrupt advantage on himself. The elements include:

- A public officer
- Uses public office or position
- To confer corrupt or unfair advantage on self, his relation or associate or other public officer.

This is the omnibus section of the Act[25] and it punishes any officer who uses his office or position to confer and unfair or corrupt advantage on himself, friends or relatives. This is novel in Nigerian Criminal Law and practice. An officer who awards contract to his relative or appoints his child to a job stands the risk of being prosecuted for an offence under the Act. The use of the phrase "*Any*

public officer who uses his office or position to gratify or confer any corrupt or unfair advantage" creates the mental element of the offence.

From the wordings of the section the public officer must hold a position which gives him the opportunity to commit the offence. The import of this section is that the public officer, relation or associate is not entitled to the benefits given or if he is entitled to, a situation must have been created making it unfair for him to have gotten the benefit. The Court of Appeal, Benin Division in ***Chief Callistus Nwawolo Vs F. R. N*** held thus:

> "Essentially the ingredients of the offence under the said section 19 of the ICPC Act, which must be proved beyond reasonable doubt by the prosecution are:
> i. That the appellant was a public officer
> ii. That he used his position as such public officer to corruptly confer an advantage upon a relation (in this case, his wife).

As alluded above, the evidence of the PW1 and PW2 is to the effect that the Appellant was a public officer, and indeed the Chairman of Aniocha Local Government Council from 1999 – 2002. This evidence was duly admitted by the Appellant and the defence thereof. Thus, establishing the first ingredient of the offence under section 19 of the ICPC Act.

Regarding the second ingredient of the offence, the prosecution (Respondent's) evidence is to the effect the Appellant as Chairman of Aniocha Local Government Council used his office and illegally approved a number of payments for use of his wife who was not a staff of the said Local Government …"[26]

xi. Bribery in Relation to Auctions. Section 21 of the ICPC Act 2000 criminalizes bribery in relation to auctions. It makes both the giver and taker culpable. The elements include:

- A person
- Without lawful authority or reasonable excuse
- Offers any advantage to any other person
- or accepts any advantage
- as inducement to or reward for or on account of that person refraining or having refrained from bidding at any auction conducted by or on behalf of a public body.

The mental elements of the offence in this section is that the offender knowingly committed the act and for specific outcomes i.e. stopping that person from bidding at any auction conducted by or on behalf of a public body, and also refraining from participating in the auction.

xii. Bribery for Giving Assistance in Regards to Contracts. The ICPC Act criminalizes bribing a public officer for giving assistance in relation to contracts. This section of the Act[27] is aimed at the practice of public servant receiving kick-backs for contracts they facilitated and in some instances breaching the procurement processes. The elements include:

- Any person
- Without lawful authority or reasonable excuse
- Offers an advantage to a public officer (ACTUS REUS)
- as an inducement to or reward for such public officer giving assistance, using influence or having given assistance or used influence in the promotion, execution or procuring of any contract with a public body or any sub-contract under any contract with a public body. (MENS REA)

On the other hand, section 22 (2) of the ICPC Act makes it an offence for a public servant so solicit or accept any advantage for his assistance in or influencing a contract. The elements of the offence are:

- Any public servant
- Without lawful authority or reasonable excuse solicits or accepts any advantage as an inducement to or reward for or otherwise on account of giving assistance, using influence or having given assistance or used influence in the promotion, execution or procuring of any contract with a public body or any sub-contract under any contract with a public body.

Sections 22 (1) & (2) prohibits contractors from bribing public officers to get contracts and also prohibits public officers from demanding and accepting bribes to assist in the award of contracts. The mental element created here is the intention for which the bribe was offered and received. For the contractor, the purpose is to get the contract, while for the public servant the purpose is to gratify himself.

xiii. Inflating the Price of Goods and Services. Procurement has been identified as one of the major indices of corruption in the public service, and various mechanisms have been put in place to check this

acts of corruption as it relates to corruption and including enacting legislation on procurement.[28] The ICPC Act seeks to criminalise the inflation of the price of goods and services above the prevailing market prices.[29] The basic elements of the offence created therein are:

Any public officer

- Inflates the price of any goods or services in the course of his official duty above the prevailing market price or professional standards. (***Actus Reus***)

From the clear wordings of the section, the offence appears to be a strict liability offence. If it can be proved that the contract was awarded above the prevailing market price, then an offence has been committed. However, *mens rea* can be inferred from the circumstances of each case.

xiv. Award of Contract without Budgetary Provisions, Approval and Cash Backing. Lack of fiscal discipline as it relates to government spending has been one of the major concerns of government in the management of its finances over the years. The curb this lack of fiscal discipline, the Fiscal Responsibility Act was passed in 2007 to ensure there is fiscal discipline and strict adherence to budgetary provisions, both in the short term, medium term and long term expenditure framework. However, before the enacting of thee Fiscal responsibility Act, the ICPC Act, 2000 already criminalized spending of government funds without budgetary provisions.[30]

The Act provides that a public officer;

- Who awards any contract or signs any contract in the discharge of his official duties without budget provision, approval and cash backing. (ACTUS REUS)

From the wordings of the Act, this section is a strict liability offence. The offence is complete by the mere act of signing or awarding a contract without budgetary provisions, approval and cash backing. The need for proving the mental element of the offence is not necessary here. The Court of Appeal, Abuja Division held that where a contract that was awarded by the Finance & General Purpose Committee of a Local Government Council, the body authorised to award contracts, then there is approval and there would be no basis to punish the Chairman for the award of the contract.[31] The decision

in essence says the words "*budget provision, approval and cash backing*" are conjunctive and must be present before a defendant can be punished under the section.

xv. Spending Sums Allocated for a Particular Project on Another Project. Section 22 (5) of the ICPC Act, 2000 makes it an offence for the transfer or spending of sums allocated for a particular project or service on another. The elements are as follows:

- A public officer
- Transfers or spends any sum allocated for a particular project or service on another.

This section is also a strict liability offence and also intended to achieve fiscal discipline in the spending of government funds. The mental element of the offence is not required here. The act of spending sums meant for a particular project on another project completes the offence. Even where the public officer does not benefit from such spending he can still be charged under this section. The High Court of Ogun state in ***F. R. N. Vs Ajisegiri No. 1*** held thus:

> "All things considered therefore and on the totality of the evidence before me, I find that the first accused person cannot be absolved from responsibility on the 2nd count of the offence and he is hereby found guilty on that count. I am not unmindful of the fact that he did not enrich himself or benefit in any way from the transaction, however the strict liability provisions of the law under which he was charged are both clear and unambiguous. What the court is enjoined to do is do justice according to the law"[32]

The Court of Appeal, Ibadan Division, in ***Ajisegiri Vs F. R. N. No. 2*** upheld the decision of the lower court.[33]

xvi. Failure to Report Bribery Transactions. Section 23 of the ICPC Act, 2000 criminalizes failure to report bribery transactions. It envisages two scenarios in which this may play out. The elements are:

- A public officer
- Given, promised or offered any gratification
- Refusal without reasonable excuse to report same to the nearest officer of the Commission or police officer.

OR

- Any person from whom gratification has been solicited or obtained or attempt to obtain such gratification
- Failure to report at the earliest opportunity and without reasonable excuse.

This section of the Act imposes a duty on everyone to report a demand or promise of gratification to the nearest officer of the Commission or a police officer. The words "Any person, who fails without a reasonable excuse", fails to comply with this duty has committed an offence and on conviction may be liable to a fine not exceeding One hundred thousand naira or to imprisonment for two years or both. The imposition of this duty by the drafters of the Act makes the mental element an essential ingredient of the offence.

xvii. Dealing with Proceeds of Crime. Section 24 of the ICPC Act makes it an offence in dealing with proceeds of offences contained in Sections 10 to 20. This section is akin to the provisions of the Money Laundering Act, which criminalizes the concealment or disguising, converting or transferring, removing from jurisdiction, acquiring, using, retaining and taking possession or control of proceeds of crime.[34] The elements include:

- Any person whether within or outside Nigeria
- Directly or indirectly on his behalf or for any other person

Enters into or causes to be entered into any dealing in relation to any property or otherwise uses or causes to be used or holds, receives or conceals any property or any part thereof which the subject matter of an offence proscribed in Sections 10 to 20 of the Act.

This section punishes those who launder the proceeds of corruption. It empowers the Commission to trace the proceeds of crime and seize them. The major ingredients of the offence here is the use of the words "*… or otherwise causes to be used, or holds, receives, (ACTUR REUS) or conceals (MEANS REA) any property or any part thereof….*". The act of concealing the said property creates the mental element of the offence.

xviii. Making False Statement to Officers of the Commission. The ICPC Act criminalizes making false statements to public officers. The offence created here is to ensure that suspects in the course of investigation do deliberately mislead officers of the Commission by

making false statement.[35] It envisages several scenarios in which this may occur. The elements are as follows:

- A person
- Makes a statement or causes someone else to make a statement to an officer of the Commission or any other public officer in the course of such officer's duties (ACTUS REUS)
- Knowing same to be false or untrue in any material particular or intending to mislead OR (MENS REA)
- Knowing same to be inconsistent with any other statement previously made by such person to any other person having authority or power under the law to receive or require the making of such statement. (MENS REA)

OR

- A person
- Makes a statement to an officer of the Commission or Attorney-General and subsequently makes another statement to any person having authority or power under any law to receive such statement inconsistent with that previously made. (ACTUS REUS)

The mental element is an essential ingredient of this offence. The person making the statement must have made it with the knowledge that the statement is false, or is intended to mislead or is inconsistent with any other or other statements made by the person. The Plateau State High Court in ***F. R. N. Vs Ayoade Ogunsola*** held thus:

> "In respect of the first and second counts of the charge, for the prosecution to secure a conviction it has to prove the following ingredients:
> (i) That the accused person made or caused any other person to make to any public officer a statement.
> (ii) That the statement was made in the course of exercise by such public officer of the duties of his office.
> (iii) That the statement was made with the knowledge that that the statement was false or intended to mislead.[36]

xix. Attempt, Abetment, and Conspiracy. These are offences also in the Criminal and Penal Codes, and the ICPC Act also criminalizes these inchoate offences i.e. conspiracy, abetment, preparatory, attempts etc. The elements are:

- A person
- Attempts to commit any offence under the Act OR
- Doing any act preparatory to or in furtherance of the commission of any offence under the Act OR
- Abetting or engaging in criminal conspiracy to commit an offence under the Act

This section creates three different offences. The first offence is encapsulated in section 26 (1) (a) & (b) which deals with attempt and acts done in preparatory to or in furtherance of the commission of an offence under the Act. A person is said to have attempted to commit an offence when he takes steps towards actually actualising the offence. The High Court of Oyo State in ***F. R. N. Vs Adeola*** in defining the offence of Attempt, held thus:

> "It is clear that section 26 (1) (a) of the Acts creates an attempt to commit an offence. An attempt to commit an offence has been defined in many decided authorities and Criminal Code. A person is said to have committed the offence of an attempt to commit the offence when such person, intending to commit an offence begins to pet his intention into execution by means adapted to its fulfilment and manifests his intention by some overt acts, but does not fulfil his intention to such an extent as to commit the offence, he is said to attempt to commit the offence."[37]

The second and third offences are contained in section 26 (1) (c) which deals with the offences of abetment and conspiracy. *Abetment* can simply be defined as aiding or counselling another person to commit an offence. The Court of Appeal, Ibadan Division in ***Kola Balogun Vs. F. R. N.*** outlined the elements of the offence of abetment when it held thus:

> "The law is now settled that in the charge of abetment of an offence, the initial element to be proved is the instigation or positive act of encouragement to the person abetted, to do the act or omission which constitutes the offence.
>
> Furthermore, apart from the abetment, the act abetted should have been committed. The law therefore requires that, since the initial element, which is the actus reus of the offence of abetment is the instigation or positive act of

> encouragement to do the act or omission, there must be proof not only of the acts or omissions constituting the abetment but also of the commission of the act abetted in consequence of the abetment.[38]

Conspiracy can be defined as where two or more persons agree to do or cause to be done an illegal act or by illegal means an act which is not illegal. The Court of Appeal in ***UPAHAR V STATE*** (2003) 6 NWLR PT 816 pg 230, held thus:

> "In proving the offence of conspiracy, sometimes there is direct and distinct evidence on the hatching of the plot, in which case an accomplice or informer is called by the prosecution and he gives evidence of it. Some other times it is open to the trial court to infer conspiracy from the fact of doing things towards a common end.

In Paul Moonachie v. The Republic (1966) NMLR 307 at 308, the Supreme Court, per Bairamian, JSC had the following to say on the law of conspiracy:

> "The trial Judge's view, that evidence in support of either charges must be distinct which led to acquittal on the first count, is contrary to common sense. If two or more persons break into a store in a company, it must be because they had conspired so to do. Sometimes there is direct and distinct evidence on the hatching of the plot; an accomplice or informer is called by the prosecution and he gives evidence of it, but such evidence is not indispensable. It is open to the trial court to infer a conspiracy from the fact of doing things towards a common end. Having found the eight appellants guilty of breaking into the store in company, the learned Judge ought to have convicted them on the first count of conspiracy to break in."

With the above authority in mind, I think the learned trial Judge was right when in convicting the appellants for the count of conspiracy, he said:

> "The accused persons agreed that throughout the relevant period they were together. There is evidence for the prosecution that the second accused aided and abetted the

> first accused to commit sexual intercourse with PW3. The agreement to commit this illegal act is inferred from their conduct".[39]

See also ***Mohammed Adeyemo Oke Vs F. R. N.***[40]

For the offences created under section 26, the mental element of the offences is the deliberate action of the person done in preparation and furtherance towards the commission of the main offence as highlighted in the cases above.

Ancillary Offences

The other offences created by the ICPC Act are ancillary to the investigative powers of the Commission such as refusal to honour invitations and give information,[41] failing in legal obligation to give information,[42] obstruction of inspection and search[43], refusal to disclose information or produce any account, document,[44] failure to comply with order of the Chairman in respect of seizure of movable property in bank.[45] For these ancillary offences, it is not necessary to prove the mental elements of the offences, the mere action of the offender in refusal to give information, honour invitations or frustrates investigation suffices.

Mental Element of Corrupt Practices in Corporate Bodies

In determining the mental elements of corrupt practices in corporate bodies, it is pertinent to first determine the criminal liability of corporate bodies. The old Common Law rule was that corporate criminal liability was impossible.[46] One of the reasons for this old Common Law principle was that there was no one who could be brought before the court and where necessary placed in the dock.[47] Okonkwo in his book further said that the argument in the past was that a company could not be capable of having a guilty mind and therefore could not be convicted for any offence requiring *mens rea*.

There has however been a paradigm shift over the decades from this common Law position on criminal corporate liability. Nigeria's penal legislations and from decided cases the law now is to hold corporate bodies liable for the acts of its executives. The Interpretation Act defines "person" to include includes any corporation, either aggregate or sole, and any club, society, association or other body, of one or more persons.[48]

A person is also defined to include a company or an association or a body of persons whether incorporated or not.[49] The Criminal Code defines a person to include corporations of all kinds and any other association of persons capable of owning property.[50] Also the ICPC Act 2000 defines a person to include natural persons, a juristic person or any body of persons whether corporate or incorporate.[51] The Advance Fee Fraud Act and Money Laundering Act also recognises the criminal liability of corporations for actions of the directors or managers or any person acting in such capacity for the corporate body and such acts shall be deemed to have been committed by the corporate body.[52]

Further, on the criminal liability of corporate bodies, the Companies and Allied Matters Act provides that:

> "*Any act of the members in a general meeting, the board of directors or of a managing director while carrying on in the usual way the business of the company, shall be treated[53] as the act of the company itself and the company shall be criminally and civilly liable therefore to the same extent as if it were a natural person.*"

From the above provisions of the extant laws corporate bodies can be held criminally for offences committed by them.

On the issue of *mens rea* of corporate bodies, the old common law position was that it was practically impossible to ascribe guilty mind to corporate bodies. However, the courts have over the years seen the natural persons running the companies as the alter egos of the companies and therefore the guilty mind of the natural persons are ascribed to the companies. The state of mind of the managers of the companies are usually attributed as the acts of the company and therefore the mental elements of the corporate body is tied to the mental element of the natural persons running the companies. In ***F. R. N. Vs (1) Sa'adu Ayinla Alanamu (2) Salman Suleiman (3) Def Namylas Nigeria Ltd***.[54] The 1st Defendant being the Chairman of the Governing Board of an institution awarded a contract to the 3rd Defendant while the 2nd Defendant was the managing director of the of the 3rd Defendant. After the award of the contract gratification was given to the 1st Defendant through the bank account of the 3rd Defendant. The 2nd and 3rd Defendants were charged under sections 9 and 22 (1) of the ICPC Act and were found guilty. A fine of

N1,000,000.00 was imposed in sentencing the 3rd Defendant being a corporate body. The Court of Appel, Ilorin Division upheld the decision of the Kwara state High Court.[55]

The Court of Appeal, Kaduna Division, in ***Alhaji Mohammed Abacha & Anor Vs The Attorney General of the Federation & 4 Ors,*** held thus:

> "By virtue of the provisions of section 65 of the Companies and Allied Matters Act, 1990, a company may be liable in crime to the same extent as a natural person. Thus a company could be prosecuted for the common law offence of conspiracy to defraud even though mens rea is an essential element of the offence"[56]

Conclusion

The mental elements of offences can be deduced from the circumstances of each case. This is a major challenge, because as humans, it is impossible to read the minds of men and their intentions, but their state of mind can be determined in certain actions taken by them and the mental elements can be inferred from the facts and circumstances of each case. On the meaning of intent, the Supreme Court in the case of ***Adekanye Akomolafe Vs F. R. N.*** held thus:

> "Intent is defined in *Wager vs Pro C.A. 603 F, 2d 1005* as a mental attitude which can seldom be proved by direct evidence, but must ordinarily be proved by circumstances from which it can be inferred. Also in State vs Gantt 26 NC, App. 554 intent as state of mind existing at a time a person commits an offence and may be shown by act, circumstances and inferences deducible there from."[57]

Endnotes

[1] Sai Hasitha and Ayush Jain in their paper "Actus Reus & Mens Rea"
[2] Sir Edward Coke in his Institutes of the Laws of England (1797)
[3] (2014) ICPCLR 113 @ pg 133 Per Oniyangi J (As he then was)
[4] Baker, D. (2012). Textbook of criminal law. (3rd ed., p. 167). London: Sweet & Maxwell.

[5] Samaha, J. (2010). The general principles of criminal liability: Mens rea, concurrence, causation and ignorance and mistake. In Criminal Law (10th ed., pp. 106-121). Independence, KY: Wadsworth Publishing
[6] Act No. 5 of 2000
[7] Section 2 ICPC Act 2000
[8] Section 53 ICPC Act 2000
[9] Section 8(2) of the ICPC Act 2000
[10] I. A. Ramalan J (2013) 1 ICPCLR pg 896 @ 924- 925
[11] Section 98 of the Criminal Code Act & section 115 of the Penal Code Act
[12] Section 9(2) of the ICPC Act 2000
[13] Section 98A of the Criminal Code Act & section 118 of the Penal Code Act
[14] Section 98B of the Criminal Code Act
[15] Joseph Eyo Ekanem, JCA (2014) 4 ICPCLR pg 257 @ pgs 267 - 268
[16] FRN Vs Elizabeth Shuluwa (Supra) @ pg 271 Paragraphs D - F
[17] H. S. Tsammani, JCA (2016) 3 ICPCLR pg 324 @ pgs 392 - 3936
[18] Section 101 of the Criminal code Act.
[19] Section 12 ICPC Act, 2000, section 424 of the criminal Code Act & sections 316 – 319A of the Penal Code Act
[20] T. O. Osoba J, (2014) 2 ICPCLR pg 515 @ pg 567 paragraphs D - G
[21] T. O. Osoba J, (2014) 2 ICPCLR pg 515 @ pg 572 paragraphs A - E
[22] Paul Adamu Galinje JSC (2018) 4 ICPCLR 856 @ pg 875 paragraphs E - H
[23] Paul Adamu Galinje JSC(2018) 4 ICPCLR 1 @ pgs 27- 28 paragraphs F - C
[24] A. Y Mohammed in his book "The Jurisprudence of Corruption" Volume 1
[25] Section 19 of the ICPC Act, 2000.
[26] Ibrahim M. M. Saulawa JCA pg 219 @ 249 paragraphs B - H
[27] Section 22 (1) of the ICPC Act, 2000
[28] Public Procurement Act, 2007
[29] Section 22 (3) of the ICPC Act, 2000
[30] Section 22 (4) of the ICPC Act, 2000
[31] Emmanuel Egwaba Vs F. R. N. (2003)N.N.L.R. 248 @ pg258
[32] O. A Ogundipe J, F. R. N (2013) ICPCLR pg 927 @ pgs 947 – 948 paragraphs G - A
[33] Chidi Nwaoma Uwa JCA (2013) ICPCLR pg 950
[34] Section 15 of the Money Laundering (Prohibition) Act, 2011 (As Amended)
[35] Section 25 (1) of the ICPC Act, 2000

[36] Y. G. Dakwak J, (2013) 1 ICPCLR PG 860 @ PG 890 Paragraphs E - H
[37] M. L. Abimbola J, (2013) 1 ICPCLR pg 69 @ pg 98 paragraphs A - D
[38] H. S. Tsammani JCA, (2016) 3 ICPCLR pg 396 @ pgs 446 – 447 paragraphs H - G
[39] Obadina JCA, (2003) 6 NWLR PT 816 pg 230
[40] H. S. Tsammani JCA, (2018) 4 ICPCLR pg 69 @ pg 98 paragraphs E- H
[41] Section 28 (10) ICPC Act 2000
[42] Section 40 ICPC Act 2000
[43] Section 41 ICPC Act 2000
[44] Section 43 (4) ICPC Act 2000
[45] Section 45(3) ICPC Act 2000
[46] Okonkwo and Naish, Criminal Law in Nigeria, 2nd Edition
[47] Berkeley J in the Tin Mines case
[48] Section 3 of the Interpretation Act, LFN 2004
[49] Section 5 of the Penal Code Act
[50] Section 1 of the Criminal Code Act
[51] Section 2 of the ICPC Act 2000
[52] Section 10 of the Advance Fee Fraud and Other Related Offences Act 2006 & Section19 of Money Laundering (Prohibition) Act, 2011 (As Amended)
[53] Section 65 Companies and Allied Matters Act, LFN 2004
[54] Charge No. KWS/56C/2019 (Unreported)
[55] Appeal No. CA/IL/C.89/2019 (Unreported)
[56] (2014) NWLR (Pt. 1438) 31 @ pg 50 para E – F. Per Aboki JCA
[57] (Supra) Paul Adamu Galinje JSC at pp. 875-876, paragraphs H - C

CHAPTER 17

DEVELOPMENT PARTNERS AND ANTI-CORRUPTION IN NIGERIA

DEMOLA BAKARE

Introduction

In discussing the contributions of development partners to Nigeria's anti-corruption sector, it would be impossible not to zero-in, identify and discuss their role in the work of ICPC. Generally, contribution of development partners in anti-corruption agenda worldwide are classified into: their agenda setting role for anti-corruption at international and national levels; mainstreaming of anti-corruption into development, public administration and service delivery; support to negotiations of global, regional and national instruments for anti-corruption at conferences; budgetary supports to implementation of anti-corruption programmes and projects; contribution to capacity building and technical assistance in the sector.[1] Nigeria's anti-corruption agenda is not an exception to the outlined classification, which shall therefore form the basis for discussing the contribution of development partners to Nigeria's national anti-corruption agenda, but taking most examples from the ICPC experience.

Role of Development Partners in the Work of the Commission

For the purpose of this discussion, engagement of the Commission with development partners can be categorised into two periods; first, the earliest period was an era of disinterestedness, when the engagement rather cautious and less coordinated. This era covered the period 2000 – 2009. Secondly, the period since 2010, when the Commission's engagement with international development partners became more deliberate, active and coordinated, with a full-fledged unit to coordinate. The change of mind-set associated with this latter period led to the establishment of the International Cooperation Unit, ICU, to plan and coordinate such cooperation and partnerships.

At inception, and based on the general Framework of Engagement defined by National Planning Commission and Ministry of Finance as Nigeria's Point of Contacts (POC) for development assistance, the Commission enjoyed limited level of collaboration and partnership

with international development organisations. Due to the limited experience of the Commission's pioneer staff and the leadership disposition to jealously guard the Commission's independence, the initial engagement was mainly with the World Bank, Department for International Development (DFID) and United States Agency for International Development (USAID). In subsequent periods, more robust relationships have been fostered with bi-lateral organisations such as Embassies, High Commissions, Bi-National Commissions; with country-specific overseas development agencies such as USAID, DFID, United Kingdom Agency for International Development (UK-Aid Direct), Norwegian Agency for Development Cooperation (NORAD), Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ – the German international development agency), Canadian International Development Agency (CIDA), etc.; with multilateral institutions, including United Nations Development Agency (UNDP), United Nations Office on Drugs and Crimes (UNODC), African Union (AU), Economic Community of West African States (ECOWAS), and their affiliated organisations; and with International NGOs, Charity Organisations and Private Foundations like Transparency International (TI), MacArthur Foundation, Ford Foundation etc. (see Fig. 1 for list of some ICPC partners and the areas of support). We now discuss development partners' role in anti-corruption along the sub-themes earlier identified.

(i) Anti-Corruption Agenda-Setting Role

Development partners do provide leadership in creating international transparency standards, offer support for the implementation of open government partnership principles and actively assist in the implementation of transparency and accountability efforts in general.[2]

Shortly before the enactment of the Corrupt Practices and other Related Offences Act in June 2000, and the adoption of an institutional framework, the USAID and World Bank, among others, had assisted the Government of Nigeria to conduct a Nigerian Corruption Survey.[3] Following closely from this, a number of panels of inquiries such as the Kolade Panel to investigate and review all major contracts by the previous military regimes, the panel to investigate the circumstances which led to the liquidation of Nigeria Airways as Nigeria's national carrier, were established with assistance of development partners like Transparency international (TI). They also helped set agenda and provided logistical support

toward a retreat for the new Ministers and Permanent Secretaries, to sensitise the public officials on the policies and programmes of the new civilian administration. Also, the need to exhibit the highest possible integrity and modesty, transparency and accountability by adhering strictly to the civil service rules and financial regulations were propagated through this effort.[4]

Through the urging and prompting of the various development partners working with Nigeria in the areas of governance and accountability, Ministers and Permanent Secretaries appointed in the 4th republic were made to sign undertakings in the form of an "Integrity Pact", which was later known as the "Kuru Declaration." It is to the credit of these international development partners that Government's commitment to recover assets stolen by former government officials was birthed. Other achievements recorded in this regard nationally included the following: the establishment in 2001 of the Budget Monitoring and Price Intelligence Unit (BMPIU, aka Due Process Office), directly under the Office of the President to monitor contracts awards by government ministries in order to reduce incidents of inflated contracts (this was sequel to the 1999 Country Procurement Assessment Survey conducted by World Bank); enactment of Economic and Financial Crimes Act in December 2002, and the subsequent establishment of the Economic and Financial Crimes Commission (EFCC); signing of the Extractive Industry Transparency Initiative (EITI) and the pact with G8 to instil transparency in governance; public service reforms, leading to the establishment of Bureau of Public Service Reforms (BPSR) and, the signing and ratification of the United Nations Convention Against Corruption (UNCAC) in 2004.[5]

Indeed, the process that led to the present Nigeria's e-government system as exemplified by Treasury Single Account (TSA), Government Integrated Financial Management Information System (GIFMIS) and Integrated Payroll and Personnel Information System (IPPIS) was also kick-started at this period in time.[6] That Nigeria today has a National Anti-Corruption Strategy (NACS), is in part due to the advocacy, funding and technical supports of key development partners, namely DFID and UNODC, funded by the European Union (EU).

However, apart from placing anti-corruption on the front-burners of international and national discourse (leading to the adoption of the

various anti-corruption instruments and statutes at global, regional and national levels) development partners working in Nigeria have specifically assisted ICPC to chart a "SMART" course in its mandates.

The first major direct role played by development partners in the work of ICPC was the funding and technical assistance rendered in 2004 toward the first Strategic Planning Workshop organised by the Commission. Rallying technical expertise from UNODC, US Embassy, and some other international NGOs, a comprehensive and inclusive (5-year) strategic framework for the Commission's activities was developed.[7] The document that emerged did not only appraise the problems of corruption and recommended action plans for cooperation and collaboration with different agencies and stakeholders, it also incorporated efficient and effective implementation mechanisms as well as performance benchmarks and indicators for the Commission.

It is worthy of note that every subsequent Strategic Action Planning exercise of the Commission have been supported by development partners. Indeed, the British Council/DFID provided funding and technical supports toward the Strategic Plan 2013-2017 as well as the Strategic Plan 2019-2023.

(ii) Mainstreaming of Anti-Corruption into Development and Service Delivery at National Level

Development partners play important role in adopting and coordinating the socio-economic development of many developing countries, including Nigeria. In adopting anti-corruption as a means of re-building and improving well-being of the people, development partners working in Nigeria have played significant motivating role. Starting with the adoption of Service Compact (SERVICOM) mechanism, to the commitment of Nigeria to the Open Government Partnership principles and culminating in the adoption of National Anti-Corruption Strategy (NACS) in 2017, footprints and impact of development partners could be seen all over.

Indeed, through their advocacy, funding and technical supports for the National Anti-corruption Strategy (NACS) eventually adopted in 2017, the national effort to develop, mainstream and implement mechanisms for removing corruption-related factors that inhibit accessibility and capacity of public institutions to deliver quality services to Nigerians at all levels is being enhanced[8]. Through

implementation of this document, Nigeria is expected to institutionalise results-based systems and structures, as well as appropriate incentives for increasing and sustaining citizen's participation in the fight against corruption in the country.[9]

Specifically, for the Commission, development partners such as UNDP over the years provided funding and technical support to ICPC's public mobilisation initiatives. Initiatives such as the highly impactful Grassroots Participatory Budget Processes, which was implemented in 2009-2010 readily come to mind. That project alone was a reference point in the Commission's outreach to the grassroots and in the overall execution of its education and public enlightenment mandate. Non-governmental organisations, civil society entities were engaged by the Commission and offered practical training to mobilise the entire grassroots for integrity, accountability, transparency and probity, especially in the budgeting processes at local governance level. UNDP thereafter extended grants to some of the NGOs/CSOs trained to cascade the training to the grassroots level. UNDP also funded and technically supported the first and yet the only International Youth Integrity Camp (Anglophone West Africa) organised by the Commission.

Support for Nigeria's Participation at Conferences for Negotiations of Ancillary Anti-Corruption Instruments

Ever since UNCAC was adopted, most development partners, especially UNODC and World Bank, have organised international forums on anti-corruption at which Nigeria participated. Countries, including Nigeria have been assisted to identify possible sources of illicit flows and how to address them as well as with the necessary coordination and mutual legal assistance required to identify and return stolen wealth.[10]

Right from inception and with the active motivation and supports from development partners, the Commission have become prominent in representing the nation at major international conferences, especially those on strategies for enhancing global and national war against corruption.[11] ICPC received technical assistance and funding to lead the country delegation, from the initial drafting stages to the finalisation of key international legal documents such as the African Union Convention on Prevention and Combating Corruption (AUCPCC), and the United Nations Convention Against Corruption (UNCAC). UNCAC was actually signed by the first ICPC

Chairman on behalf of the Federal Government of Nigeria at a ceremony in Mexico (2003).

This trend has continued to date. Indeed, the Commission continues to be assisted to attend and participate in international and regional anti-corruption meetings. Regular attendance of the Commission at UNODC-Implementation Review Group (IRG)/UNCAC Conference of State Parties (CoSP) etc. in Vienna and elsewhere, are also being supported by development partners, especially UNODC.

Budgetary Support to Programmes and Projects Implementation

In most places they operate, development partners indirectly enhance anti-corruption works and activities by providing budgetary support and technical assistance to implement projects and programmes. Development partners also support the fight against corruption across sectors they work in, by integrating anti-corruption mechanisms into such projects and programmes. For instance, development organisations are actively supporting the attainment of Sustainable Development Goal 16 by making the promotion of anti-corruption a part of the prerequisites to achieving all other SDGs. For instance, EU/UNODC as well as DFID in 2015, for instance, conducted Institutional Capacity Assessment of the Commission, which subsequently enabled them to focus and sequence their development support to ICPC's activities under the 10th and 11th European Development Fund (EDF).

UNDP funded the first International Youth Integrity Camp (Anglophone West Africa) organised by the Commission in 2009. UNDP provided funding and technical support to ICPC's most impactful public mobilisation initiatives, the Grassroots Participatory Budget Processes, implemented in 2009-2010. UNDP also supported the Prevention Mandate of the Commission with fund and technical assistance toward the adoption and development of Corruption Risk Assessment (CRA), a novel methodology for corruption prevention (2011 – 2013).

Apart from the development of CRA framework document and knowledge product, 89 Certified Corruption Risk Assessors (CCRA) were trained for the Commission in 2013. UNDP also funded the conduct of a corruption risk assessment in the Ports sector (2013),

Aviation sector (2014) and MDG-related sectors like education, health and water resources sectors (2014 – 2015).

As a result of the CRA conducted for the port sector 2013, an Integrity Plan was developed, which greatly enhanced fundamental reforms of service delivery at Nigerian ports. Up to 2016, UNDP continued to support the CRA process by supporting Anti-corruption Academy of Nigeria (ACAN) to train and certify additional 42 Corruption Risk Assessors. Same year was when the implementation of the recommendation of Ports Sector CRA, which commenced since 2013 materialised into the Harmonised Standard Operating Procedure (SOPs) for ports agencies and a web-based complaint handling mechanism, the Port Services Support Portal (PSSP). The two projects, which have since been enhancing ethical delivery of qualitative port services in line with the ease of doing business policy of the government, were launched by the Vice-President of the Federal Republic of Nigeria in 2016.

On its part, EU/UNODC same year 2016, took turn to support the deployment of the CRA methodology, first by supporting ACAN to conduct training of 25 additional Certified Corruption Risk Assessors to specifically conduct a corruption risk assessment of Nigeria's E-government systems. The development partner went ahead to fund and technically assist the conduct of CRA on the Treasury Single Account (TSA), Government Integrated Financial Management System (GIFMIS) and Integrated Personnel and Payroll Information System (IPPIS) in 2017.[12]

Earlier in 2015-2016, UNODC had supported the Commission with the supply and installation of the criminal investigation case management system (Go-CIS) and some hardware equipment required for the conversion of the Commission's server room into a Data centre. Though this project was not concluded, it succeeded in highlighting the direction in which ICPC was headed.

Noteworthy also, is the support of the British High Commission (and some other embassies) to the Visa Fraud Investigation initiative of the Commission, leading to the establishment of a Visa Fraud Unit at the Lagos Office since 2018. Apart from re-modelling of the Lagos Office to accommodate the new Unit, office of the Deputy British High Commission in Nigeria/Ghana also constructed a standard detention facility and supplied state of the art technical equipment to the Visa

Fraud Unit located in the Lagos state office of the Commission. Also, DFID/J4A supported ICPC to develop an Ethic and Integrity Policy for Nigeria. (the draft policy has been ready since 2015 but yet to be adopted by government).

The British Council, under its EU-funded Rule of Law and Anti-corruption (RoLAC) programme have assisted the Commission to finalise the development an Ethics and Compliance Scorecard intended for deployment at Ministries, Departments and Agencies (MDAs) in Nigeria. DFID/UKAid/MacArthur Foundation are presently providing funding and technical assistance support toward different aspects of the on-going grassroots mobilisation project of the Commission, especially the Constituency Project Tracking (CPTG) initiative.

Contributions to Capacity-Building in the Anti-Corruption Sector

Development partners have contributed not only to enhancing anti-corruption policies in Nigeria, but also to the growth of knowledge and implementation capacity. At the minimum, in the activities conducted or funded by development actors, they have assisted the development of human capacity for improved preventive and enforcement measures by anti-corruption agencies. Through the various capacity building supports, development partners have worked to generally promote government integrity and effective anti-corruption programmes. Indeed, bulk of the capacity-building assistance offered by development partners in Nigeria are aimed at improving the broader governance capabilities and evolving effective governance systems and process in the country. For instance, according to Nigeria's national anti-corruption strategy (NACS), such capacity-building assistance are geared toward enhancing capacities for enforcement and sanctioning in the anti-corruption regime of the nation.[13]

The work of the Commission has been supported in significant ways through the various institutional and process supports by development partners. For instance, in 2002, UNDP donated sets of computers to the Commission's Internet Café, sponsored local basic computer and internet appreciation training for staff and members of the Commission, and offered several sponsorships to international capacity-building programmes. Between 2003 and 2005, the Commission received assistance in the form of training programmes and on-the-job attachments (including procurement of equipment)

from the United States Department of Justice through the Office of Overseas Development Assistance and Training (OPDAT) as well as the United States Department of Commerce, Commercial Law Development Programme (USCLDP).

The World Bank International Development Fund (IDF) grant provided for the Commission covered capacity-building for staff, especially in the areas of developing strategic capacity for law enforcement, prevention and public education. Part of the World Bank-IDF Grant was also used for purchase of resource materials, developing of documentation capacity, purchase of Information Technology (IT) equipment and other office materials and furnishing for the Commission's Library.

During the same period, especially from 2002, the UNODC in association with the Commission and the Supreme Court of Nigeria embarked on Judicial Integrity Project, which was intended to strengthen the capacity of designated judges and courts for trial of corruption cases. For instance, 20 multimedia computers, photocopiers and fax machines were provided to facilitate that project.[14]

It should be stated here that since the establishment of the International Cooperation Unit of the Commission in 2010, capacity enhancement supports from development partners have become more pronounced, better coordinated and documented. For instance, under the 10th EDF, EU/UNODC offered the following capacity building assistance to the Commission: a total of 4 officers of the commission were offered 9 months sponsorship for post-graduate diploma course in Legislative Drafting at the Nigerian Institute of Advanced Legal Studies (NIALS) in 2016 and 2017; 3 officers of the Commission attended international training on Procurement and Financial Management System organised by UNODC/UNCAC Secretariat in Vienna, sets of 3 officers each attended UNODC sponsored Train the Trainers course in Financial investigation, Corruption Casework and Anti- Money Laundering in Ghana. Also 20 staff members of the Commission were trained on Procurement Fraud and Crimes while 12 additional officers were trained on Bid Rigging and Collusive Agreements in Public procurement at the Federal University of Technology, Owerri (FUTO).

Similarly, under 10th EDF, EU/UNODC also offered 6 months intensive and comprehensive mentorship programmes to ICPC staff members as follows: 25 staff of the Commission on Investigation and Prosecution; 40 staff members on corruption Prevention and; 5 officers on Asset Recovery and international cooperation. During the same period, Training of 5 officers on Strategic and Tactical analytical tools (Sentinel Visualiser), 5 officers on Corruption Casework for judges/prosecutors/senior investigators, and 5 officers on Strategic Intelligence-led investigation and Prosecution of Anti-Money Laundering and Corruption crimes in Taxation by UNODC were also achieved.

Through the support of DFID under its *Justice for All* (J4A) project, a total of 332 officers of the Commission were trained over 4 years (see list of the J4A courses and participants in Fig. 2). Capacity-building exercises under the J4A programme included Training on Criminal Intelligence Analysis by British High Commission and Promoting Transparency and Accountability in Nigeria's Extractive Industry, among others.

Recently, the Commission received several training and capacity-building assistance from British Council under the EU-funded RoLAC programme. At least 50 members of staff of the Commission were trained for the deployment of the Ethics and Compliance Scorecard meant for promotion and monitoring the practice of integrity in Ministries, Departments and Agencies (MDAs). The scorecard was eventually finalised and deployed at 115 MDAs in 2019. Fig. 3 shows few of the capacity-building exercises offered by other development partners such as MacArthur Foundation, US Embassy, Republic of Germany, and National Crimes Agency/British High-Commission in the period 2018/2019.

From the foregoing, it could be seen that development partners have played critical and significant role in Nigeria's anti-corruption efforts and especially in the implementation of the Commission's mandates. From the twenty years of implementing Nigeria's anti-corruption agenda, it is also clear that the resources from national treasury alone cannot support the enormous statutory objectives and responsibilities bestowed upon the Commission, which made it imperative that such is complemented with the huge expertise and material resources available outside of the national treasury and through the development organisations. However, there ought to be

a clear-cut framework for receiving support from development partners such that optimal benefits are derived without compromising national integrity or sacrificing the Commission's independence.

Though there has been a remarkable difference in emphasis placed on the role of international partners in respect of the activities of the Commission, International Cooperation Unit, which was established since 2010 to plan and coordinated the Commission's engagement with development partners should be sustained and further strengthened. The limited capacity and exposure of the unit should be addressed such that the unit would be empowered to seek and coordinate all engagement and liaison with international actors. This will ensure a more active engagement and effective coordination necessary for documentation and institutional memory.

With the benefit of hindsight, one can conclude that engagements of the Commission with key development partners, which is presently helping it to achieve quite a number of its mandates, is on the upward swing. Therefore, as the Commission celebrates twenty years of existence under the present leadership, history beckons it onto the threshold of a more positive, qualitative, effective, robust, better coordinated and impactful relationship with increasing number of development partners.

Fig. 1: List of Some Partners and Areas of Support

S/N	Partner	Areas of Support
1.	GIZ	Capacity Building, Technical Assistance
2.	UNODC	Capacity building, Project Funding, Technical Assistance.
3.	DFID/UK Aid/ BRITISH COUNCIL/ British High Commission	Capacity building, Project Funding and implementation, Technical Assistance.
4.	EU	Capacity building, Project Funding, Technical Assistance.
5.	Transparency International	Technical Assistance
6.	ACTION AID	Project implementation
7.	Norad	Project Funding and implementation
8.	Commonwealth	Capacity building

9.	IMF	Technical Assistance
10.	World Bank	Capacity building, Project Funding, Technical Assistance.
11.	Indian High Commission	Capacity building
12	US Embassy/USAID	Project implementation
13.	UNDP	Capacity Building, Project Funding, Technical Assistance,

Fig. 2: List of J4A Courses and Staff participants

S/N	Courses/Training	Nos. Trained
1.	Leadership in Financial Crimes and Anti-corruption Investigation	26
2.	Major Case Management	30
3.	The Rule of Evidence, Intermediate and Advance Prosecution	50
4.	ACTU Train-the-Trainers Course	44
5.	Anti-corruption and Proactive Operations	19
6.	In-house Training for Prosecutors and Investigators	11
7.	Training on Code of Conduct	82
8.	Advanced Financial Crime	5
9.	Intelligence Course	2
10.	Senior Financial Crimes Investigation Technique	10
11	Intermediate Level Financial Crimes Investigative Technique	17
12	Deepening Collaboration between ACAs and NGOs	2
13	Joint Prosecution Training	26
14.	Seminar on National Security	1
15.	Joint Security Training for Investigators	7
	Total	**332**

Fig 3: Sample Capacity-building exercises offered by other Key Development Partners

S/N	Development Partners	Type of Capacity-building	No. of Staff involved
1.	PACAC with support from **MacArthur Foundation, NoRAD, OSIWA** etc	**Jan, 2018**: Worksop on "Applied Behavioural Insight" by Kennedy School/Harvard University **Aug, 2018**: Workshop on UK Unexplained Wealth Order **Sept., 2018**: Int. Conference on Combating IFI and Enhancing Asset Recovery. **Nov,2018**: Seminar on Understanding the Interface between Crypto currency and Money Laundering.	2 12 3 3
2.	US Embassy	**Jan. 2018**: Executive Policy and Development Symposium **Feb. 2018**: Investigative Technique in Handling Fraudulent Document/ Trafficking in Persons	2 5
3.	Rep. of Germany	**Dec. 2018**: Offer for Electoral Violence and Security (EVS)	14
4.	NCA/British High-Commission	**Mar. 2019**: Open Source Investigation **Oct/Nov, 2019**: Training on Criminal Intelligence Analysis (CIA)	12 12

Endnotes

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CHAPTER 18

CIVIL SOCIETY COLLABORATION IN COMBATTING CORRUPTION

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Introduction

In engaging with the Civil Society Organisations, the Commission relies on its mandate as enshrined in Section 6 (e - f) of the Corrupt Practices and Other Related Offences Act 2000 "to educate the public on and against bribery, corruption and related offences; and to enlist and foster public support in combating corruption"[1]. To give fillip to the collaboration and highlight the seriousness of the Commission's relationship with CSOs, it developed a policy document named Memorandum of Understanding (MOU) and Code of Conduct. This document was formulated as the basis of the Commission's collaboration with individual NGOs registered by the Commission as members of the Coalition. It highlights the philosophy behind the engagement of CSOs in the fight against corruption and provides some guiding principles and terms of reference for smooth coordination.

Under the "Preamble and Rationale for Partnership" of the MOU, the Commission's philosophy in collaborating with Civil Society Organizations to foster public support and take the Anti- corruption crusade to the grassroots is predicated on the belief that they are a veritable platform and vehicle for achieving positive social change, and that for enduring success to be achieved in fighting corruption, the crusade must be people-driven through vehicles such as a vibrant civil society. Thus, the structured framework of the National Anti-Corruption Coalition (NACC) was established to engage the civil society in strategic partnership for harmonized activities and effectiveness.

Civil Society Organizations (CSOs) are defined by the United Nations Guiding Principles as "non-state, not-for-profit, voluntary entities formed by people in the social sphere that are separate from the State and the market (business)."[2] Sometimes referred to as the third sector organizations (government and business sector being the first and second), CSOs are groups/associations that are

voluntary, involve citizens acting collectively in a public sphere to express their interests, passions, exchange ideas and information, achieve mutual goals, make demands on the state, and hold state officials accountable. They are intermediary entities, standing between the private sphere and the state. Civil society is that sphere of "voluntary individual, social, and economic relationships and organizations that, although limited by law, is not part of governmental institutions. Civil society provides a domain where individuals are free from interference from government."[3]

As an important segment of a country's vibrant and challenging democracy, CSOs operate within a space outside the state, and are actually engaging with the state in continuous drive to 'strengthen the citizenships' active participation' in democratic principles, promote ideals of good governance and rule of law that advocate for institutionalized accountability and transparency in the public sector, thus they are formidable change agents.

It is the awareness of the immense strength of the civil society as collaborators in the fight against corruption to ensuring good governance that led to the establishment of the National Anti-Corruption Coalition (NACC).

Coalitions are groups that come together to work to achieve a common purpose. According to Oxford Advanced Learner's Dictionary, a coalition is "a group formed by the people from several different groups, agreeing to work together for a particular purpose.[4] All over the world, coalitions are being formed to further different purposes; anti-corruption, human rights, education, primary health care delivery, etc. When such groups come together, they set out their objectives, strategies and modalities. The effectiveness, survival and success of a coalition depends on the viability of the strategies and operational modalities, as well as the contributions of members to the group goals.

From inception, ICPC had recognized the importance of various categories of stakeholders and interests that it needed to fully conduct its functions. Among these were non-governmental organisations (NGOs) and CSOs who were already championing the cause of anti-corruption, transparency, accountability and integrity issues within the nation. Many of these organisations started and grew as human rights defenders from the days of military

dictatorship, and had track records of holding government accountable for its actions. Many others were newly formed organizations set up with the objective to hold the newly attained democracy (in 1999) accountable to the people. With the commencement of ICPC in 2000, some of the NGOs reached out to the Commission with a view to joining the Commission to fight corruption.

At first, the Commission responded to requests for partnerships and interacted with the CSOs based on individual requests and as needs arose. However, with the passage of time, it became evident that this system was not strategic, and the impact of jointly executed programmes were difficult to measure. In some cases, it was difficult to ascertain the authenticity and track records of the organizations that sought or desired to collaborate with the Commission. In many cases, rather than just one CSO, the Commission identified that a group of CSOs might be in a better position to execute certain assignments. In view of this, there was a need to have a pool of organizations that are interested in working with the Commission.

The National Coalition was therefore established to harness the huge potentials of this vital segment of the society towards the eradication of corruption. The Commission believed that a coalition of organizations working together to achieve a common objective around the issue of corruption and good governance would go a long way in fostering public support. Furthermore, NACC was conceived as a strategy of collective ownership for the crusade against corruption, premised on the fact that more could be achieved in the fight against corruption if all stakeholders participate in eradicating it from the nation.

The Commission's collaboration with civil society has been supported by development partners, particularly the United Nations Development Programme (UNDP), the United Nations Office of Drugs and Crime (UNODC) and the United Kingdom Department for International Development (UKAID/DFID).

Commencement of the National Anti-Corruption Coalition

An advert was placed in the Punch Newspaper of 27 February 2006, requesting NGOs that have anti-corruption, transparency, accountability and good governance as focal areas of interest to indicate interest in collaborating with the Commission by joining the

Coalition. Several NGOs responded to the advert and the Commission registered them into the newly formed NACC. Hence, the NACC became a platform for mobilizing action against corruption and getting the people to own the crusade directly.

Registration of Civil Society Organizations as Members of the NACC

Registration into the Coalition is an ongoing process which is open to interested NGOs and CSOs. They obtain and fill a registration form[5] which is used to solicit information about the location, contact addresses and objectives of the organization. Also contained in the form are the core activities of interested NGO, their areas of focus and corporate registration status. Completed forms are returned to the Education department of the Commission which sifts through the information provided to ascertain their authenticity and the relevance of the focus of the interested CSOs to the fight against corruption.

Previously, an NGO adjudged to be serious based on the information contained in the form was issued a Provisional Registration Letter which meant that the Commission would begin to relate with the NGO on activities and programmes, pending when a full registration letter is issued. However, the process has since been reviewed as the registration letter is issued after a vetting exercise is conducted to ensure that no undeserving organization is registered, to be later de-registered if they are found to be wanting in the requirements for members of NACC. The vetting exercise is the first level of oversight over the activities of the members of the National Anti-Corruption Coalition.

Vetting of Prospective CSOs for Membership into NACC

To gain full membership status, the NGOs are screened for their credibility. This involves a visit to the office location provided and verification of their claims. After the vetting exercise and a trail period to ensure that they are active in the anti-corruption domain, successful organizations are issued a Memorandum of Understanding (MOU) to concretize the relationship with the Commission.

During the vetting exercise, the Commission verifies the following:

1. That the organization is not a business and profit-making entity,
2. Physical office accommodation/address,

3. Staff strength including volunteers (using attendance or salaries register),
4. Documentary/photographic evidence of previous anti-corruption projects and/or campaigns executed,
5. Registration status of CSO by sighting a copy of the certificate of registration with Corporate Affairs Commission or any other evidence of official registration,
6. Proposed anti-corruption project for the year, and
7. Evidence of collaboration with other organizations/donor agencies, if any.

Oversight on the Coalition: Memorandum of Understanding as Guide

As a second level of oversight, coordination and control for NACC members, a formal document highlighting the terms of the collaboration between the Commission and the NGOs and CSOs was designed to serve as guide on the activities of the Coalition. The MOU serves as a guide for their activities in relation to their collaboration with the Commission. In August and December 2007, members of the newly formed Coalition were brought together to discuss the proposed Memorandum of Understanding (MOU). Thereafter, copies of the MOU were circulated for their signatures and the signing of the document entitles an NGO to full membership of the NACC.

The MOU limits members of the Coalition to the following activities:

a. Information gathering (***not criminal investigation***),
b. Research, Studies and Survey,
c. Educational and Sensitization Activities,
d. Production of Information, Education and Communication (IEC) materials,
e. Advocacy and Community Mobilization

The following sections of the MOU highlight important key provisions for members:

4.3 That no member of the Coalition has authority to formally investigate petitions and arrest/prosecute offenders. Members may however engage in information gathering for the purpose of exposing corrupt practices.

4.4 No member of the Coalition is allowed to use the Commission's name, logo or its membership of the Coalition in any regard without prior official clearance.

4.5 That no member of the Coalition should be involved in any criminal act and/or corrupt practices.

4.6 Membership of the Coalition does not in any manner confer immunity or any privilege whatsoever against criminal prosecution.

In 2012, the MOU was revised and renamed **Agreement on Code of Conduct.**

Members that infringe against the provisions of the Agreement are suspended from the Coalition as an interim sanction until the full determination of their infraction. A notice of such suspension is disseminated through the Commission's website, publications and social media platforms to other NACC members and the general public to serve as a deterrence to other CSOs and also to warn the public against dealing with such CSOs as partners of the Commission.

Engaging CSOs in Anti-Corruption Activities

To further strengthen the capacity of members, and make them more vibrant, the Commission holds several training sessions on anti-corruption issues for members. The Commission has also funded CSOs' individual projects, and channelled donor funding from the United Nations Development Programme (UNDP) to members to execute projects such as the organization of rallies, training of the grassroots (community development associations, youth and women groups, religious organizations) on anti-corruption, monitoring of government projects including the National Social Investment programmes as well as-procurement processes, etc. Members have also been involved in tracking constituency projects, organizing an Integrity Youth Camp, launching of Students Anti-Corruption Clubs, organising forums for the transport sector as well as organising anti-corruption sensitization rallies. In addition to all these, members of NACC were among those trained and certified as Corruption Risk Assessors (CRA).

Highlights of the Activities of ICPC and CSOs in Tables

DATE	ACTIVITY	DETAILS
August 2007	3-day Capacity Building Workshop for ICPC staff on	Relevant staff of ICPC attended the workshop to improve their knowledge and skills on dealing

	Running Coalitions of NGOs	with NGOs. Programme was supported by UNDP.
August 2007	One-day Capacity Building and Consultative Forum for Members of the NACC	Discussions were held on the theme, "Empowering Stakeholders for an Effective War Against Corruption". 70 CSOs were present at the event.
December 2007	3-day Capacity Building Workshop for NGOs in the NACC	98 NGOs and 33 Commission's staff participated in the project, which was aimed at positioning members of the NACC strategically to fight against corruption. Programme was sponsored by UNDP.
July 2008	1-day Grassroots Anti-Corruption Workshop for National Union of Road Transport Workers (NURTW) and Road Transport Employee Association of Nigeria (RTEAN) facilitated by members of NACC	Workshops in collaboration with 2 NACC members in Lagos (Save Visions Africa) and in Kano (Democratic Action Group) were held for the NURTW & RTEAN in Lagos and Kano States. Members of the NURTW/RTEAN and some Law Enforcement agencies interacted on ending corruption on Nigerian roads. A booklet "Curbing Corruption on Nigerian Roads" was published from the outcome of the exercise.
21st August to 4th November 2008	Anti-Corruption Rallies organised by NACC members in Bauchi, Lagos and the FCT.	The rallies were funded by UNDP and involved sensitization talks and distribution of IEC materials. Three rallies were organized in Bauchi and Lagos States, and the Federal Capital Territory (FCT). Bauchi: Anti-Corruption Association of Nigeria Abuja: Crusade for Greater Nigeria (CFGN) Lagos: Nigerian Network of Non-Governmental Organizations

Jan-uary 2009	Commencement of Newsletter for the Coalition titled "Coalition Digest"	The Newsletter; 'Coalition Digest', a publication of the National Anti-Corruption Coalition (NACC) was birthed with the aim of propagating the anti-corruption campaign with focus on civil society groups. The newsletter focused on CSOs involvement in the anti-corruption crusade and aggregated their contributions, views and served as a medium of getting feedback on the crusade. The publication of the newsletter was discontinued in 2017.
Octo-ber 2009 Novem ber 2009 Decem ber 2009	Grassroots Capacity Building training on Budget Processes executed by NACC members in the 3 senatorial zones of Delta, Niger and Sokoto States	The objective of the programme was to enlighten and empower grassroots people to be involved in budget processes at the local government level. The following NACC members were deployed to organize the programme: - Delta State: Afro-Centre for Development, Peace and Justice (AFRODEP) /Poverty Alleviation for the Poor Initiative (PAFPI) - Niger State: Anti-Corruption Youth Movement of Nigeria (ACYMN) - Sokoto State: Democratic Action Group (DAG)
April, 2010	A two-day Strategic Roundtable for members of the NACC	70 members of NACC participated in the event which provided opportunity for members to share ideas and experiences on the journey so far and formulate strategies for sustaining the crusade.
Octo-ber 2010	2-Day Follow-up and Assessment of Impact of the	The objective of the follow-up meeting was to measure the impact of the 2009 training and

	2009 Grassroots training on Budget Processes conducted in Delta, Niger and Sokoto States	leverage information gathered as input to improve subsequent conduct of similar trainings. **46** persons, including 30 participants, ICPC staff and officials of the NGOs attended the forum. The exercise revealed that the training had tremendous impact on the trainees and their various communities as they all individually reported actions they had taken in the 10-month time interval. The impact was in two segments. The first segment represented the intangible affective impact which was mainly in the form of community sensitization while the second segment collated the tangible, physical impact of the training detailing results emanating from the direct involvement of the local people in monitoring current budget implementation and insistence on inclusive budget processes across communities in the 3 states.
December 2010	Grassroots Capacity Building training on Budget Processes in Edo and Kano States.	Edo State: Afro-Centre for Development, Peace and Justice (AFRODEP) /Poverty Alleviation for the Poor Initiative (PAFPI). Kano State: Democratic Action Group (DAG) Same objectives as the 2009 grassroots training.
July 2011	Forum for CSOs on promoting public accountability through engagement with budget and	A collaborative training for CSOs. 20 members of the NACC benefited from the training which was organized in collaboration with ActionAid Nigeria and with funding from UNDP.

	expenditure tracking.	
October 2011	Follow-up on 2010 Capacity Building on Budget Processes in 2 states – Kano and Edo	A meeting with participants and organizers of the 2010 project - NGO Engagement to conduct Capacity Building for the Grassroots on Budget Processes in 2 states – to discuss the outcome of their participation in the programme.
December 2011	Production of Print (booklet) and Electronic Documentary on the Impact of the Capacity Building on Budget Processes.	A video and print (booklet) documentary of the outcome of the 2009 edition of the Capacity Building for the Grassroots on Budget Processes in 3 States. The documentary was titled "Real People, Real Impact".
March 2012	1-day stakeholders meeting with NACC members	The ICPC Lagos State office organized a one-day stakeholders meeting of the NACC Lagos Chapter at the ICPC Lagos State office.
July 2012	2-day Public Accountability Forum	A 2- day Public Accountability Forum titled 'Making the Public Budget Process People Centred' for members of the NACC organized by the Education department with about 130 participants including members of the Coalition, Press and staff of the Commission.
Sept. 2012 Sept. 2012 – February 2013 February 2013	Training on Corruption Risk Assessment	2 members of the NACC benefited from the CRA training organized by ICPC in collaboration with UNDP, TUGAR and BPP, to increase the capacity of government institutions to prevent corruption by strengthening internal accountability and transparency in public sector agencies. Certification as Corruption Risk Assessors

November – December 2013	Grassroots Capacity Building training on Budget Processes in Imo, Akwa-Ibom, Anambra, Adamawa states and the FCT	The third edition of the Grassroots Capacity Building training on Budget Processes involved 14 NACC members working in 4 states and the FCT with each CSO conducting 2 sessions of the 2-day workshop in a senatorial zone of the states and 2 federal constituencies of the FCT. The NGOs were as follows: - NGO Network - Adamawa North - National Youth Council of Nigeria: Adamawa Chapter: Adamawa South - People United to Serve Humanity (PUSH Africa): Adamawa Central - SOREX Nigeria: Imo North - Development Watch Initiative: Imo West - CODSBEC Foundation: Imo Central - Save Visions Africa: Akwa Ibom South - Obong Denis Udo-Inyang Foundation: Akwa Ibom North-West - African Centre for Rural Development & Environment: Akwa Ibom North-East - YORDEL Africa: Anambra Central - NEW Foundation: Anambra South - Youth Restoration Values: Anambra North Nigerian Supreme Council for Islamic Affairs: Abaji/Gwagwalada/Kuje - Gospel Redemption Ministries: AMAC/Bwari/ Kuje

May & June 2013	Collaboration on CRA Training	The Commission entered into an agreement with Integrity Organization on CRA Training and complaints handling. Further to this, its corruption complaints website www.egunje.info was linked to the ICPC website.
July 2013	Special Collaboration to produce materials in Hausa	The Commission commenced a collaboration with Independent Hajj Reporters for the sponsorship and production of anti-corruption materials in Hausa.
November 2014	1-day Consultative Meeting with members of the NACC on the Agreement on Code of Conduct for NACC	In continuation of the activities of 2013 during which the Department reviewed the existing Agreement on Code of Conduct for NACC, a one-day consultative meeting with the members of NACC was held at the ICPC with 70 CSOs in attendance. The new agreement on Code of Conduct for the NACC was the focus of discussion as there was a need to streamline and properly delineate the boundaries of the relationship. The programme also featured experience-sharing sessions from some CSOs.
August 2015	Workshop and In-house training for CSOs and NGOs in Kano State.	Strategies for Anti-Corruption Campaigns by Civil Society Organizations.
November 2015	NACC Stakeholders Meeting	The programme had the theme "Towards Effective Anti-Corruption Partnership" and had the objective of reawakening the NGOs to their roles in the fight against corruption, as well as rubbing minds on challenges faced by members and charting a way forward for the coalition. Fifty-five

		(55) members of the NACC participated at the one-day event.
Octo-ber, 2016	One-day NACC capacity building programme	A one-day NACC capacity building programme was organized for members of NACC titled "Towards Effective Capacity Building in the Fight against Corruption" in Lagos State.
Novem ber 2016	Training of CSOs on Procurement and Budget Implementation Monitoring	Education department facilitated a UNDP-funded meeting with CSOs and MDAs to discuss the role of CSOs in Procurement and Budget Implementation Monitoring. The meeting was a follow-up to an earlier one in Lagos with only MDAs.
June – Decem ber 2016	Corruption Risk Assessment Training	Training and Certification of 42 persons as certified Corruption Risk Assessors. 25 of these persons were representatives of civil society organizations.
Janua-ry & Februa ry 2017	Capacity Building for NACC members in Kano for North West and Edo State for South-South NACC members	Capacity Building programme for the North West NACC members, held in Kano while the second session was held in Benin City, Edo State for NACC members in the South-South zone. 70 members of the NACC were present at each of the events. The sessions were aimed at enlightening new and old members on the ICPC Act 2000 as well as their roles as members of the coalition in the fight against corruption.
July 2017	Training of CSO members of the NACC as Independent Monitors of government's	10 members of the NACC were trained as Independent Monitors of government's National Social Investment Programmes (NSIPs) in 5 states. i. Murna Foundation, Kaduna.

	National Social Investment Programmes (NSIPs) in 5 states.	ii. Zamfara State Coalition of NGOs, Zamfara iii. Divine Era Development & Social Right Initiative, Enugu iv. Neighbourhood Environment Watch (NEW) Foundation, Ebonyi v. Social Economic Research & Development Centre, Kaduna vi. Community Outreach for Development & Welfare Advocacy, Kaduna vii. Ummah Support initiative, Bauchi viii. Youth Progressive Association, Bauchi ix. Centre for Organization & Professional Ethics (COPE) Africa, Ibadan x. Save Visions Africa (SVA), Lagos
July - August 2017	Capacity Building of the Grassroots by NACC members on Budget Processes with a view to mobilizing the grassroots to engage in budget processes – making inputs into the planning and monitoring implementation in Bauchi, Osun, Akwa-Ibom, Benue, Enugu and Kaduna States	The fourth edition of the Grassroots Capacity Building training on Budget Processes involved 6 NACC members working in 6 states. The 6 selected CSOs were: 1. Centre for Juvenile Delinquency Awareness – Bauchi: 148 trained. 2. Centre for Youths Initiative on Self Education – Osun. 155 trained. 3. Anti- corruption and Transparency Support Unit – Akwa-Ibom. 215 trained. 4. League for Human Rights – Benue: 138 trained.

		5. African Centre for Rural Development & Environment – Enugu. 165 trained. 6. NGO Network – Kaduna: 145 trained.
October 2017	2-day Conference of Community Development Associations (CDAs) in collaboration with CSOs	Two-day conferences were held for Community Development Associations (CDAs) in Ogun and Niger States to mobilize them on their role in the anti-corruption crusade with regards to engaging the grassroots. The conferences were held in collaboration with members of the NACC.
January 2018	Training for Community Development Associations in Enugu State	A member of the NACC, Neighbourhood Environment Watch (NEW) Foundation was granted some funding by the Commission and they conducted training for Community Development Associations in Enugu State.
December 2018	One-Day Campaign against Vote Buying organized in collaboration with Youth Alive Foundation and with funding from UKAID.	The department, in collaboration with Youth Alive Foundation and funding from DFID, organized a one-day Campaign against Vote Buying programme. The Campaign was facilitated by NGOs in 5 states as follows: - Akwa Ibom: Anti-Corruption and Transparency Support Initiative (ACTSI). About 200 persons - Lagos: Save Visions Africa (SVA) - Rivers: Neighbourhood Environment Watch (NEW) Foundation - Kano: Democratic Action Group (DAG) - FCT: Ummah Support Initiative (USI)

The Coalition Digest

In view of the vibrancy of members of the Coalition, the need to have a medium for gauging the input and impact of NACC and to have a feedback mechanism, the Commission commenced the publication of a quarterly digest called the ***Coalition Digest,*** with funding support from the Embassy of Switzerland in Nigeria. The goal of the Digest was to "nurture the relationship between Coalition members and the Commission through the sharing of relevant information". Unfortunately, publication of the newsletter was discontinued in 2017 due to funding challenges.

Impact of the Engagement with CSOs

There is no gainsaying the fact that since the formation of NACC and their engagements in the anti -corruption campaigns, the crusade against corruption has been deepened. In states where the Commission does not have offices, they have been deployed as foot soldiers to either carry out programmes or projects on behalf of the Commission. They have engaged in community advocacy and sensitization at the grassroots. They also assist the Commission in tracking government projects – constituency projects and projects executed by the Executive arms of government. Some selected members of NACC are also involved in the commission's Constituency and Executive Project Tracking Initiative. They give reports on government projects either executed, on-going or abandoned within their domain. CSOs also report corruption and point the Commission in the right direction for corruption prevention activities. Some of the CSOs have collaborated with the Commission on spreading the anti-corruption message through the social media.

Some of these activities have translated into tangible outcomes as documented in the documentary, "Real People, Real Impact: Outcome of ICPC/UNDP Grassroots Capacity Building on Budget Processes" which featured the construction of school buildings, a health clinic, market stalls, roads, drainages, provision of boreholes and transformers, all as a result of the activities of the Commission in collaboration with civil society members of the NACC. These impacts are still ongoing, though not always measured and documented.

In another vein, the Commission has been able to develop their capacity through funding from development partners.

Challenges of Collaboration with CSOs

The partnership with CSOs has been mostly productive and mutually beneficial but it has not been without its challenges. Some members of the NACC have exhibited irresponsible and unethical behaviour. They may have started with the highest ideals, but exhibited practices that were unacceptable to the terms of the partnership with ICPC, and thereby jeopardized public trust. This has led to the suspension and de-listing of some members, and the criminal prosecution of some. When this happens, a notice of suspension is disseminated through several media platforms to other NACC members and the general public. A typical example is the Anti-Corruption Awareness Organization which was suspended because of actions which border on the criminal.

Another challenge encountered in the collaboration with civil society is the low capacity of many, especially community-based organizations to execute anti-corruption activities, to organize their administrative activities including keeping good financial records and being accountable for small grants they receive from time to time. CSOs need to put their houses in order if they want to earn the respect of the public, they must reform themselves and ensure that they practise the same standards of transparency and accountability they expect from the public or government. As seen above, ICPC undertook and still undertakes capacity building training sessions to equip NACC members with requisite skills needed to engage productively in the anti-corruption domain.

Conclusion

The fight against corruption must be owned by all citizens and civil society organizations represent a cross section of the citizenry. Their involvement in the fight against corruption demonstrates the involvement of the society in fighting corruption. They have a vital role to play as participants, trainers, educators, mobilizers, re-orientation agents, monitors, whistle blowers, working as watchdogs on the practices and procedures of public agencies, and as collaborators in the national development efforts. There is still a lot of room for engaging more CSOs actively as a voice against corruption in organizing town hall meetings, awareness campaigns and utilizing the provisions of the Freedom of Information Act to demand for accountability. These CSOs working as Coalition in collaboration with ICPC represent the desire of the Commission to see corruption reduced drastically in the nation.

Endnotes

[1] The Corrupt Practices and Other Related Offences Act 2000.

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CHAPTER 19

SHIELDING ANTI-CORRUPTION OPERATIVES FROM VULNERABILITIES

MUSA USMAN ABUBAKAR

Introduction

The nature of the Commission's assignment is such that its operatives deal mainly with a genre of crimes tagged 'white collar crimes'. It is of course, natural that the operatives will be vulnerable to many challenges, and without addressing them the chances of realizing the mandate of the Commission is bleak. Against this backdrop, this article examines the vulnerabilities of the operatives of Independent Corrupt Practices and Other Related Offences Commission in the course of their duties and what need to be done to shield them away from exposure to dangers that may either affect their integrity or even lead to loss of life. Cambridge Dictionary defines 'vulnerability' as quality of being able to be easily hurt, influenced or attacked.[1]

To appreciate the enormity of the vulnerabilities of ICPC operatives it is worthwhile from the outset to ascertain what they do. This will entail analyzing the provisions of the Corrupt Practices and Other Related Offences Act, 2000 (ICPC Act, 2000), which stipulates the powers of the Commission. It is noteworthy that the paper limits itself only to the vulnerabilities associated with the operational component of the Commission's work. While not unmindful of the vulnerabilities of other officers of the Commission in the service departments and units, it is outside the scope of this paper.

The paper is divided into four sections. After the introduction, section two examines the powers of the Commission under section 6 of the ICPC Act, 2000 with a view to demonstrating the instrumentality of the operatives in achieving the mandate of the Commission. This will facilitate our understanding of the challenges the operatives are exposed to. The paper argues that the risks go beyond threats to their lives, to include the risk of being compromised through financial inducement or other benefits. Part three suggested some measures to be put in place to minimize these risks, this it does by identifying actionable steps to be taken by each stakeholder. The role government is expected to play has been catalogued in two parts, i.e.

what the legislature should do on the one hand and the executive on the other. The section equally identifies what is expected from the Commission in terms of policy formulation to minimize the exposure of its operatives to vulnerabilities. The section also highlights what is expected of the operatives in terms of renewed attitude to work, such as avoiding greed, overzealousness and grandiose lifestyle, and adopting a humble and modest lifestyle. Section four concludes the paper.

How do Vulnerabilities Manifest in the Course of Operatives' Work?

It is pertinent to note that operatives of the Commission, especially investigators, prosecutors and system study and corruption risk assessors are the main drivers of the law and policies of the Commission. They are therefore instrumental in actualizing its mandates as enshrined in section 6 of the ICPC Act, 2000. The section empowers the Commission to receive and investigate suspicion of or attempt to commit offences bordering on corruption, and to prosecute the same.[2]

Investigators as Easy Target of Physical Assault

Leveraging on its powers under section 6 of the ICPC Act, 2000, the Commission engages operatives with varied educational background to partake in investigation, including in-depth forensic analysis of financial records. It also included many ancillary measures like sting operation, arrest and detention of suspects, etc. Investigation comes with a lot of risks as officers may be waylaid, attacked, harassed, intimidated or even killed. The 2012 attack on the Commission's office in Kano is instructive.[3] It is possible for a person being investigated to hire thugs to harass the operatives. In 2019, a community rose up against the ICPC operatives under the erstwhile Constituency Project Tracking Team (now Constituency and Executive Project Tracking Team) in Edo State. The community threatened the officers that if they attempt to seize any item in the area they will cause women to protest against them by exposing their nudity.

This public apathy to the fight against corruption is a major impediment to our operatives as they can find themselves in the centre of hostile community ever ready to protect one of their own not minding the dreadful act perpetuated by him. What will happen to the operatives, in a situation where elders of a community claimed

that an accused former governor should not be prosecuted because his people have not complained about his dastardly act, is better imagined.[4] The fanfare that greeted the return of politically exposed persons upon return from prison is enough evidence to suggest that in most Nigerian communities our operatives are not welcome but rather tolerated. If they not properly protected they may be prone to danger of attack and intimidation since they are allowed to carry arms.

Evidently, in a society notorious for flagrant violation of established rules and standards, operatives are likely to face series of challenges when doing their duties. Apart from harm they can inflict on operatives, some suspects can go to any length to persuade the operatives to compromise in return for pecuniary benefits. There were instances when the Commission disciplined a number of operatives for engaging in dealings unbecoming of them as anti-graft officers, such as fraternizing with suspects, generating fictitious petitions to extort money from unsuspecting people, and receiving favours from MDAs being investigated to give it soft-landing.

Prosecutors have their Fair Share

The Commission also engages with qualified lawyers, who are trained to prosecute corruption related offences. Such operatives often report various forms of threats, including open threat to their lives, being accosted or trailed after court session, some are being intimidated by fellow lawyers using seniority, numerical strength or home advantage. Recently, a team of lawyers who prosecuted a renowned politically exposed person in one state would have been lynched or incapacitated were it not for the quick intervention of DSS personnel.

Another challenge they encounter is judges' willful refusal to conclude cases by employing delay tactics such as long adjournment, granting frivolous interlocutory applications, orders restraining ACAs from doing their work[5], etc.[6] Lawyers have been identified as culpable in deploying legal gymnastics to water the ground for some unscrupulous judges to frustrate corruption cases, thereby retaining a case on the cause list for more than a decade.[7] For instance the case of *FRN v EMMANUEL IKOR (HC/53C/2006)* handled by the Commission has been before the High Court of Cross River State since 2006. Interestingly, in March 2020, the case started de novo upon retirement of the last judge assigned the case. Other cases instituted

against the Commission just to frustrate the fight against corruption include *PIONEER SINO INVESTMENT VENTURES LTD AND OTHERS V ICPC AND ANOR (FHC/A1/CS/39/2019) and HON. PHILIP ANYAERU AND OTHERS V ICPC AND OTHERS (FHC/A1/CS/38/2019).*

It is noteworthy that on many occasions courts lambast lawyers who have perfected themselves in the art of frustrating the course of justice as in the Supreme Court case of *Dariye v FRN*[8] thus:

> It is not the duty of learned counsel to resort to motions aimed principally at delaying or even scuttling the process of determining whether or not there is substance in the charges as laid. In my view, this motion is a disservice to the criminal process and a contemptuous lip service to the fight against corruption. The tactics employed here is only one of the means by which the rich and powerful cripple the criminal process. There are cases where the accused develop some rare illness which acts up just before the date set for their trial. They jet out of the country to attend to their health and the case is adjourned. If the medical facilities are not available locally to meet their medical needs it is only because due to corruption in high places, the country cannot build proper medical facilities equipped with the state of the arts gadgets. There should be no clog in the process of determining whether or not a person accused of crime is guilty irrespective of his status in the society.

There were instances in which contempt proceedings were instituted against the leadership of the Commission, which if established can lead a jail term.[9] Similarly, the Commission witnesses cases of defamation and enforcement of fundamental human rights against the Chairman of the Commission. In 2002, when the Commission was investigating alleged misappropriation of N500 million naira by Ondo State Government officials, the Commission was sued because the then Chairman declared the state officials being investigated as 'fleeing criminals' in a radio and television programs. The Chairman made the declaration after they refused to honour his invitations, and the Commission's unsuccessful attempts to have these officials arrested.[10]

These are some of the professional hazards officers often encounter in the course of their duty. Apart from the effect these have on the operatives, the country as a whole becomes vulnerable to being tagged with many unpalatable adjectives. The international community expects to the rate of conviction in corruption cases going up, but it is always abysmally low. Little wonder, Transparency International Corruption Index rates Nigeria among the highly corrupt nations.

Vulnerabilities of System Study Officers and Others

The Act also empowers the Commission to examine systems and processes of all MDAs to ensure that financial hemorrhage that make the system prone to corruption and fraud are blocked. It is the duty of the Commission to offer advice and where necessary instruct MDAs on ways of eliminating or minimizing fraud and corruption, including advising heads of MDAs on measures to be put in place to reduce the incidences of fraud and corruption.[11] This is where corruption risk assessors play formidable role. This gives the Commission the toga of a regulator, and obviously to effectively execute its assignment, this would entail rigorous scrutiny of financial and administrative records of MDAs by the ICPC operatives. This assignment usually take place outside the Commission and within the environment of the regulated agencies. This exposes the operatives to direct contact with the major actors, including the heads of MDAs, who may leverage on that to persuade the operatives to compromise in return for pecuniary benefits. It is therefore possible for agency notorious for flagrant violation of rules to be given a clean bill of health.

There are other functions of the Commission to do with public education and enlightenment, which may not pose risks to operatives. I will be quick to state that even in this area operatives are susceptible to campaign of calumny and litigation. In 2018, the Director of Public Enlightenment was taken to court over a statement made in the course of official duty, in addition to newspaper advertorial attacks all in an attempt to silence the Commission.[12] Politically Exposed Persons have perfected themselves in the art of hiring journalists to do their biddings in order to win public sympathy. The recent case against Pinnacle Communication deserve special mention. A number of advertorials, including articles and editorials against the Commission were sponsored on the pages of newspapers, in order to give the Commission a bad name.[13] Earlier on in 2002, the Ondo state deployed similar tactics when it claimed

that the Commission's investigation of its functionaries was a 'deliberate attempt by the ICPC, which has become an instrument in the hands of their political rivals, to bring down the leadership of the state.'[14]

The above examples demonstrate that vulnerability can also take many forms such as physical threat, including financial inducement to influence officers to look the other way when investigating white collar crimes, or while undertaking system audit of agencies. It also shows that as our operatives are vulnerable to reputational and psychological attacks too, they are equally susceptible to other risks that are seemingly beneficial to them in the short run, yet may earn them serious disciplinary measures leading to dismissal, reduction in ranks and possible prosecution.

How Do We Mitigate Vulnerabilities?

Having analyzed the functions of the operatives and how the exercise of their duties expose them to risks, it is pertinent to examine some measures that would help in mitigating the vulnerabilities. These measures are multifaceted in the sense that they require actions from the major stakeholders, i.e. the government (legislature and executive), the Commission and the operatives.

1. National Assembly to Quicken Legislative Actions

For optimal performance the legislature should as a matter of priority engage with the Act establishing the Commission to address the concerns of the Commission, particularly as regards the court where corruption cases are prosecuted. As earlier noted, the Act only allows cases before under the ICPC to be instituted in any superior court of record of the State or the Federal Capital Territory, which is usually the High Court. [15] Meaning that the Commission's operatives must prosecute a state functionary or a politically exposed person in his comfort zone where he has easy access to the witnesses and in some instance, the judicial officers. Such a scenario affords an accused the leverage to hire thugs, disrupts proceedings, intimidate or even threaten the operatives prosecuting him. It is therefore not out of place to give concurrent jurisdictions to the State and Federal High Court over corruption cases. This will give the operatives wide room for maneuverability in the choice of venue.

2. Executives to Provide Conducive Working Environment

To shield operatives from falling prey in the hands of unscrupulous elements, the executives should ensure that the operatives are fully motivated. Apart from enhanced salary package, which needs to be reviewed constantly regard being had to the exigency of time, operatives will require more working tools such as operational vehicles, surveillance vehicles, computers and other gadgets. A situation where an operative uses his personal computer to do an official assignment may not augur well on the integrity of the Commission. We have had instances where officers lose their computers to burglars and many sensitive information are lost as a result.

It is high time the operatives are empowered to carry arm given their vulnerability to physical attack. Luckily enough, Section 5(1) of the ICPC Act, 2000 confers the ICPC operatives with all the powers and immunities of a police officer, and it now rests on the executives to actualize it as bearing of arms is incidental to the exercise of the Commission's powers. However, despite this clear provision, for 20 years, the Commission remains without an armed squad. It relies heavily on the goodwill of other law enforcement agencies, particularly the police in providing the operatives with security cover when on official assignment. Attempts were made by the previous Board, particularly the immediate past, but had to abandon the move. The present Board is rigorously pursuing this and has reached out to the relevant stakeholders to get their buy-in. It is axiomatic truth that police are overwhelmed. It is indeed a huge sacrifice for the Nigeria Police Force to loan its officers to other agencies when they have to contend with a number of other challenging security concerns.

3. Commission to Formulate Sound Policies

As a regulator, the bulk of measures to be deployed lies on the Board of the Commission which is expected to formulate policies aimed at strengthening its operations in a manner that would protect and prevent risks befalling the operatives. A number of policies have been put in place which complement the Code of Conduct for Public Officers provided in the Fifth Schedule to the Constitution of the Federal Republic of Nigeria, 1999. This include the ICPC Condition of Service, the Behavioral Code of the ICPC and the Standard Operating Procedure for Investigators (under consideration by the Board).

Prosecution of High Profile Cases in Group

Before the legislative action suggested above, the Commission can take some measures to minimize the risks of attacks on the prosecutors, particularly in high profile cases to ensure such cases are prosecuted by a group of lawyers. This will minimize the phenomenon of intimidation by seniors and their utilization of numerical strength. A situation where only one lawyer is posted to state office to prosecute has negative implications on the image of the Commission. The lawyer may be inundated with too many cases before many judges. This may affect the quality of prosecution, coupled with low output as it will take long time before concluding a case. Joint prosecution allows for cross-fertilization of ideas and is likely to yield better output. More importantly, it will reduce their vulnerability to harassment and intimidation.

Alternatively, it is not out of place, in the interim, to outsource prosecution of PEPs to reliable and trustworthy private legal practitioners practicing in the state where the suspect is being prosecuted. They know better the inter working of the system in the state and its political terrain. This will reduce the cost of litigation on the Commission.

Deployment of Technology

Analogue record keeping and registration of petitions provide room for compromise. This is evident from the number of files missing, or to put it mildly, misplaced, and files that in many instances are left unattended. Some operatives simply put a file away only to be discovered several years later, when the subject matter of the petition might have been dissipated, or witnesses untraceable or dead. A deliberate policy of digitizing the petition registry being pursued by the current Board will go a long way in minimizing the risk of compromising investigation. It is worthy of note that part of the ICT roadmap of the ICPC is the deployment of Electronic Document Management System. It is believed that once this is concluded no file will go missing as it can easily be traced. However, this will work better when petition registration is taken seriously. An unregistered petition may be difficult to trace. Hence, the necessity to impress on the state offices to centrally register petitions for records.

Reduce Interface between Operatives and Suspects

In many disciplinary cases recently concluded, a huge gap was found relating to the relationship between operatives and suspects.

Operatives freely contact suspects using their personal phones, and arranging meetings outside the Commission's offices. Given this scenario, their susceptibility to being compromised is obvious. At the moment, a robust system is in being developed that will substantially reduce the interface via the Standard Operating Procedure, 2020 (under the consideration of the Board). As a proactive measure, some operational departments have introduced dedicated phone lines through which suspects can be invited. While not pre-empting what the Board may wish do on the draft Standard Operating Procedure, it is recommended that a separate unit, i.e., Contact and Liaison Unit be created, which will be tasked with the duty of coordinating interface with suspects. This unit can be the driving force of ensuring compliance with Administration of Criminal Justice Act, 2015 on keeping records of arrests, and information about suspects including their biometrics. Reducing interface with suspects may help in improving the integrity of the Commission's investigative processes, as where a relationship exists the suspect may easily reach out to the investigator and influence the outcome of the investigation. At the end of the investigation, if the outcome exculpates the suspect, the investigator may not be absolved even when the petition has no substance, ab initio.

Anonymity of Correspondence

Further to the reduction in contact between operatives and suspects, it is high time the Commission anonymized its operational correspondences. It is usually the case for operatives to initiate investigation by sending a signed invitation to suspects. This from the outset has exposed the identity of the investigator, and of course, most of the suspect will be searching for anyone who knows the investigator to intervene even before the fact is known to the suspect. Apart from making the investigator vulnerable to external pressures and undue influence, such signed correspondence can plunge an operative in danger as he may be a target of physical attack.

There is no denying the fact that persons in authority in the Commission often receive calls for intervention from invited suspects or their associates. This hinders operatives from doing their work and is likely to influence their decision on the petition before them. It is therefore suggested that a policy be formulated to introduce anonymous invitations with no name of investigator. The Contact and Liaison Unit recommended should be responsible for sending invitations to suspects, receive the invitees, and make available the

interview room. It monitors the interaction between the investigators and the suspect, and at the end escorts the suspect to the gate or detention centre, as the case may be.

The paper will not close this discussion without making reference to the visitation policy introduced by the current Board in the first quarter of 2019. The policy, in the main, mandates visitors to undertake in writing not to discuss any on-going petition or case with the Chairman or any Board member. That has significantly reduced pressure on the Board member to intervene in any case/petition.

Collaborative work with sister agencies

It is necessary to have a policy on collaboration with sister agencies at it delivers result within short time with less resources, gives legitimacy and objectivity to the process. This is particularly in the preventive side of the Commission's mandate. It gives room for cross-fertilization of ideas, information sharing and mutual support. The Commission had such a collaboration with the Office of the Accountant General of the Federation and the Bureau of Public Procurement in 2018 on system study and review. A similar collaboration is in the offing at the moment with the office of the Auditor-General of the Federation. It is noteworthy that such collaborative work is in itself a shield as it is easier to approach officer(s) from one agency for 'negotiation' than officers of varied background.

Popularize Gift Declaration Policy

It is a known fact that receiving gratification is an offence under the ICPC Act, and is not condonable by the Commission. Flowing from this, the Commission introduced a Behavioral Code for ICPC Staff in 2013, contain elaborate provisions on hospitality, gifts, donations and honoraria, including any form of inducements, gratifications, free-services and excessive entertainment from any source. It places an obligation on operatives to declare any such gifts. Unfortunately, the Code is only known to exist by very few officers of the Commission. In 2018, the Commission operationalized it when some officers declared monetary gifts and hampers. This policy provides a platform for staff to register anything given to them in whatever guise. It could be a bribe intended to influence his decision or merely a customary gift like hampers. With the policy in place no officer will capitalize on its absence to collect anything and make use of it. The declaration policy provides a leeway for officers offered anything in

the course of their duty to collect, without being discourteous to the giver, and deposit with the Commission. It is a mechanism that shield them from blame, if they have declared it, in the event it is discovered that a certain suspect had given the officer some financial inducement. It is a known fact that not receiving of such inducement may endanger the life of the officer, as it is a signal that the officer is unwilling to compromise the case. Hence, the policy allows an officer to play along only to report to the Commission within reasonable time thereafter.[16]

Operatives to Have Renewed Attitude to their Duty

For the operatives, it is commendable that despite their limited number and scarce resources they are achieving significant feat in all ramifications. What remains is that the operatives must live above board. They must avoid greed like plague and know that contentment is a treasure; the latter gives assurance of sustainability and the former kills aspiration to greater height. Greed makes operatives vulnerable to disciplinary action that can lead to dismissal.

Care should be taken not to make disclosures without verifying the fact. They must avoid overzealousness and only act in line with the mandate of the Commission otherwise there will no end to litigation against the Commission. In *CHIEF LAWSON OKAFOR AND ANOR V ICPC AND OTHERS (NSD/K11/19)*, the Commission, along with other law enforcement agencies were sued by the applicants challenging their powers to arrest because of a failed contract. The High Court of Justice, Nasarawa State ruled in their favour by giving a restraining order against the Commission and any other law enforcement agency from arresting them because of failed contract. Clearly, violation of contractual obligation is not a criminal matter warranting the Commission to engage itself.

Silence, they say, is golden. The Commission must avoid releasing details of its findings or rushing statements before concluding the investigation, otherwise it will expose itself to allegations of media trials.

A moderate lifestyle has potential of ridding harms away from a person while ostentatious lifestyle attracts the preying eyes of marauders. The recent attack on an operative in a state in the North West is instructive. To this end, ICPC operatives must be conscious of their personal security. They must as much as possible avoid

anything that will expose their identity as that in itself is a recipe for vulnerability. To this end, it is suggested that the Board should reconsider Article 8 of the Behavioral Code for ICPC Staff, 2013, which enjoins officers to display their identity including when on assignment outside the Commission. A leeway be provided to allow them hide their identity where disclosing it may endanger them.

Conclusion

In the foregoing the paper examined the challenges and vulnerabilities of the operatives of the Commission in the course of their duty and found that the vulnerabilities go beyond those that may potentially harm them, such as physical attack, threat to their life, psychological and reputational, to include financial inducement that make them prone to being used as easy tool by suspects to compromise cases. The paper therefore identified some measures that if put in place may safeguard them against falling prey to the unscrupulous elements in the Nigerian society. The measures are multi-dimensional as it will require actions from the major stakeholders, such as the legislature, the executive, the Commission and the operatives themselves. However, the operatives have a lot to do as the driving force of the Commission's mandate. They must be God fearing and remember that one day they will take stock of their deeds and misdeeds.

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[10] David Enweremadu, op. cit., p. 85-6.
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[14] David Enweremadu, op. cit., p. 86.
[15] See section 26 (2) and 61(3) of the ICPC Act, 2000.
[16] Article 14 of the Behavioural Code for ICPC Staff, 2013.

CHAPTER 20

DEFENDING WITNESSES, PROCESSES AND SYSTEMS WHEN CORRUPTION STARES BACKS

ESA O. ONOJA

Introduction

The basic stages of every criminal case are investigation, trial and judgment/sentencing. These represent the pre-trial, trial and adjudication phases of the criminal process. The criminal process operates within the larger criminal justice system;[1] that is, the collection of institutions responsible for criminal investigation, arrest, prosecution, trial, sentencing, custody, and post-judgment stages of criminal trial. Parker in his seminal work captured the essence of the criminal process when he stated that the criminal process is "a compendious term that stands for all the complexes of activity that operate to bring the substantive law of crime to bear (or to avoid bringing it to bear) on persons who are suspected of having committed crimes."[2]

Detection avoidance, denial of guilt, non-cooperation with anti-corruption agencies, deployment of resources, fair and foul, to resist being convicted, and filing of frivolous appeals are some of the cocktail of resistance to the criminal process that corrupt defendants in Nigeria deploy against the criminal justice system to avoid the consequences of offending.

Investigation, arrest, prosecution, and adjudication of corrupt offenders are a risky business.[3] The print and electronic media in Nigeria are replete with commentaries on corruption fighting or staring back.[4] Ngozi Okonjo-Iweala, former Finance Minister in her book chronicled the kidnap of her mother and threats to cause her harm as follows: "So why was my mother kidnapped and almost murdered? And why was a group planning to maim me? The answer to these awful questions was that I had stepped on the toes of some very rich and powerful people who were involved in a corruption scandal in Nigeria as the oil-subsidy scam." Similarly, the last stanza of the poem "Corruption Fights Back"[5] by Haruna Garba reads:

Imagine you taming such vice
Then you'd be calling for a bite.

Ngozi Okonjo-Iweala is not alone. The experience of honest investigators, prosecutors and judges in Nigeria who refused to be compromised in the course of their work include threats, intimidation, campaign of calumny, physical injury and assassination. The bite of corrupt defendants, their legal practitioners and henchmen, penetrate to the bone marrow. The bites take different forms and have corrosive effects on criminal justice processes and the criminal justice institutions.[6] Abdul Mahmud paints a poignant picture as follows:

> *The corruption that fights back when it is fought is that which appears in the form of the law taking sides with the powers that be. Or the law that takes sides with those who are connected to power. Whichever is the case, the law holds itself out as the chief protector of the corrupters in our midst. The law against corruption should ordinarily be neutral and impersonal; but in our experience, and as the Farouk and Otedola bribe saga bears out, those who promote the rule of law are so often the corrupters and abusers of the law—those who make its framework ineffective and give corruption an arbitrary makeover. Here, corruption becomes the prized pugilist, protected by the president, who takes anti-corrupt crusaders as game. Woe betides the anti-corruption crusader who falls prey like a fly to the spider's gossamer threads.*[7]

Witnesses are sometimes at the receiving-end in this game. This chapter discusses the permutations of attacks that witnesses, processes and the criminal justice system face and the imperative to gird processes, systems and witnesses when corruption fights back.

The Criminal Process in the Context of Corruption Cases

Legally speaking, the term "process" could mean: (a) a document, such as a charge, filed to initiate proceedings; (b) to seek a particular relief; or, (c) to comply with a legal requirement or rule. Process could also means procedure; for example, criminal process or civil process.[8] Criminal process is distinctive because it is the procedure prescribed[9] by enabling legislations such as the Administration of Criminal Justice Act 2015.[10] Viewed from this lens, we can talk about the process of investigation, arrest, trial, or sentencing.

On the other hand, "system" can mean the collection of institutions created by law, or it could mean the operation of each institution. System could also be used interchangeably with process in its procedural meaning.[11] In *Izuora v The Queen*[12] the court used criminal process interchangeably with procedure while explaining the term "indictment".[13] That decision also shows that indictment or charge and conviction are distinctive features of a typical criminal process or procedure.

In the context of this chapter, corruption can stare back at the criminal justice system, stages of the criminal process, or operators of the criminal justice system. However, the most vulnerable participants in the criminal process and upon whom the justice systems depends to hold offenders to account are witnesses. Consequently, bulwarks must be erected to protect witnesses, processes and the criminal justice system when corruption stares back to ensure that offenders do not escape justice or keep the loot of jiggery-pockery or cause harm to the eyes and ears of justice.

Typology of Fight-back against Witnesses, Processes and Systems in Corruption Cases in Nigeria

The imperative to "fence off deliberate hindrances stalling quick, diligent and successful prosecution of public officers and other prominent individuals docked for corruption"[14] cannot be overstated. Protection of witnesses particularly requires a nuanced approach because of the importance of witnesses to the criminal justice process. The United States Court of Appeals for the Seventh Circuit observed in *United States v John T. Amrose*[15] that:

> *Without the protection of such high-risk witnesses, many of the most serious federal crimes would escape prosecution. In fact our system of justice depends at the core on the integrity of its law enforcement officers and the ability of witnesses who testify against wrongdoers.*[16]

The Supreme Court of India also underscored the importance of protection of witnesses to trial in *National Human Rights Commission v State of Gujarat & Ors*[17] as follows:

> *"Witnesses" as Bentham said: are the eyes and ears of justice. Hence, the importance and primacy of the quality of trial*

> *process. If the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralysed, and it no longer can constitute a fair trial. The incapacitation may be due to several factors, like the witness being not in a position for reasons beyond control to speak the truth in the court or due to negligence or ignorance or some corrupt collusion. Time has become ripe to act on account of numerous experience faced by the courts on account of frequent turning of witnesses as hostile, either due to threats, coercion, lures and monetary considerations at the instance of those in power, their henchmen and hirelings, political clouts and patronage and innumerable other corrupt practices ingeniously adopted to smother and stifle the truth and realities from coming out to surface rendering truth and justice, to become ultimate casualties.*[18]

In brief, the methods high profile corrupt defendants deploy to incapacitate fair trial and turn witnesses in Nigeria include: (a) interference with investigations; (b) frivolous challenge of the statutory powers of anti-corruption agencies; (c) applications challenging jurisdiction of courts or competence of charges; (d) applications for adjournment, etc.; (e) dilatory cross-examination; (f) inordinate allegations of bias against judges; (g) application for stay of proceeding; (i) interlocutory appeals; (j) witness tampering, to mention a few. The tactics and strategies defendants deploy to undermine the machinery of criminal justice, processes and witnesses are strengthened by such factors as loopholes in relevant legislations, evolving capacity of investigators and prosecutors, striking down of provisions of the ICPC Act, disputable interpretation of legal provisions in favour of politically exposed defendants, non-adherence to provisions of criminal justice legislations. Some of these are demonstrated by case studies below.

Case Studies of Corruption Fighting Back against ICPC Investigator

Politically exposed persons have been known to pull the strings of their puppets exterior and interior to anti-corruption agencies to bamboozle investigation and prosecution. A case in point was the arrest of a permanent secretary by the Commission in sometime in 2010. The permanent secretary resisted the attempt of the Commission in its investigation of a petition which alleged corrupt practices in the award of the N12.3 billion contract for the rail track

between Jebba and Lagos by the Nigerian Railway Corporation.[19] The Permanent Secretary was detained. The Head of the Civil Service of the Federation and other Permanent Secretaries mobilized to the Commission and insisted that they would not leave until their colleague was released. Instead of submitting to investigation, the permanent secretary filed a suit for alleged violation of her fundamental rights. Investigation of the case was truncated and instead of commendation for boldness in discharging his duties, the investigator seemed not to have received the support that he deserved by the hierarchy of the Commission. However, the current Board of the Commission has assured officers of the Commission that so long as they do the right thing, the Commission will support them.

Another officer of the Commission in the Kaduna State Office was sanctioned for his job due to pressures from the political establishment in control of the State at the time. The officer conducted an investigation into alleged corruption by a public official in the State. He has now been restored in rank and his emoluments paid and this has restored the confidence of officers that they would not be thrown under the bus.

The end result of some of these tactics include truncation of investigation, delay in adjudication of cases, loss of evidence, death or disinterestedness of witnesses, negative public perception of investigation, prosecution and trial, and loss of confidence in the criminal justice architecture.

Case Study of Striking-Down of Provisions of the ICPC Act

Despite the fact that the Supreme court of Nigeria considered all sections of the ICPC Act in *Attorney-General of Ondo State v Attorney-General of the Federation*[20]and upheld the legality of same save two sections, some High Courts have, in defiance of the Supreme Court held that sections approved by the apex court are unconstitutional. In that case, Ondo State challenged the constitutionality of the ICPC Act. While the Supreme Court of Nigeria declared that sections 26(3) and 35 of the Act were unconstitutional, the Court upheld all other provisions of the Act. In contrast, a case which exemplifies defiance of the position of the Supreme Court is *FRN v Adeniyi Francis Ademola & Ors*[21]. In that case, a serving Judge of the Federal High Court was arraigned for corruption. The trial court held that section 53 and 60 of the ICPC Act (which create presumption of corruption in certain cases) violate section 36(6)(a) & (b) of the 1999 Constitution.

Case Study of Interference with ICPC Prosecution

FRN v Nasiru Salisu Ingawa[22] was taken over by the Attorney General of Katsina State after a fiat was granted by the Attorney General of the Federation. ICPC was committed to prosecuting the case, but due to the take-over of the case, the matter was struck out after the Commission had been placed in a helpless situation, to wit, that the trial Judge ruled that the Commission must surrender prosecution to the Attorney General of Katsina State.

This case has cast shadows on the provisions of sections 3 (14) and 61(1) of the ICPC Act. Under section 3(14) of the Act, the Commission shall in the discharge of its function under the Act, not be subject to the direction or control of any person or authority, while under section 61(1), prosecution of offences under the Act shall be deemed to be done with the consent of the Attorney General of the Federation. The constitutional quagmire raised by the above provisions was argued in *FRN v Alh. Abdul'Azeez Shinkafi & 1 Ors*[23], (a sister case to the above) on 6[10th] October, 2017, the Solicitor General of Katsina State informed the court that the Attorney General of the Federation had issued a fiat to the Attorney General of Katsina State to prosecute the case which before then was being prosecuted by ICPC. Counsel to ICPC argued that in view of the statutory fiat issued to ICPC by section 61(1), another fiat cannot lawfully be issued to another prosecutor by the Attorney General of the Federation. In a ruling delivered on 14[th] November, 2017, the judge quoted the fiat of the Attorney General of the Federation which read, inter alia, as follows:

> *In the exercise conferred on the Honourable Attorney General of the Federation and minister of Justice by the provisions of section 179(1) of the constitution of the Federal Republic of Nigeria 1999 (as amended), I, ABUBAKAR MALAMI, SAN, HONOURNABLE Attorney-General of the Federation and Minister of Justice hereby authorize you, Hon. Attorney-General and Commissioner for Justice, Katsina State to exercise on my behalf the said powers conferred on me with particular reference to the prosecution of Federal offences which may arise within your jurisdiction and which may be practically impossible for the office of the Hon Attorney-General of the Federation to prosecute.*

In purported exercise of the above general fiat, the Attorney-General of Katsina State sought to take over that case and *FRN v Ingawa*.[24] The trial judge held, inter alia, that:

> The actually speaks for itself that the prosecution of the ICPC in its initial stage presupposes the same situation that the Attorney General cannot practically prosecute the case, hence its being prosecuted by the ICPC. Now that the Attorney General decides to exercise, his constitutional power to prosecute the case by the Hon. Attorney General of Katsina State, that action cannot legally be questioned.

The trial judge made no reference to sections 3(14) and 61(1) of the ICPC Act, or the legislative intention that the Commission be independent. This decision is fertile soil for appeal by the Commission. If the decision is not challenged, it will remain the law and all ICPC cases in Katsina State would continue to be prosecuted by the Katsina State Ministry of Justice until kingdom come. That will not augur well for the work of the Commission.

It is opined that the purpose of section 3(14) and 61(1) of the ICPC Act is to guarantee the independence of the Commission from any interference. The clear intention of the statutory fiat in section 61(1) of the Act is prevention of the Commission having to go cap-in-hand to the Attorney General every time before it can initiate prosecution. The statutory fiat further assures that the Commission can prosecute the occupant of the office of Attorney General where the need arises. However, that does not mean that the Attorney General of the Federation, as Chief Law Officer, cannot take over, continue, or discontinue prosecution undertaken by any other prosecutorial authority. It is doubtful if the Attorney General can empower another prosecutorial authority to take over or discontinue prosecution, without the Attorney General himself first taking over prosecution. Put differently, the AG must can take over a case being prosecuted by a prosecutorial agency but it is not envisaged by section 174 of the Constitution that the Attorney General would directly or indirectly authorise another prosecutorial agency, and a State one for that matter, to take over a case being prosecuted by an agency created by an Act of the National Assembly, without personally taking the step of taking over prosecution, in the public interest. In the above two cases, ICPC did not complain that it could not discharge its statutory mandate, and was indeed coerced out of the matter. Both cases have

now been struck out on the supposed ground that ICPC did not cooperate with the Attorney General of Katsina State. This is a set-back for the fight against corruption in Nigeria.

However, it has been reported that the Office of the Attorney General of the federation denied that the HAGF ever instructed the Attorney General of Katsina State to take over prosecution of these cases.[25] In the said report, the office of the HAGF is reported to have direct that ICPC be allowed to continue with the prosecution of the cases. If the report is true, there is no evidence that ICPC was informed that it could continue prosecution of the matter and no record that the court was so informed.

Case Study of contestable interpretation of statutes to the advantage of high profile defendants

FRN v Ahmed Rufai Sani & 3 Ors[26] concerns the former Governor of Zamfara State. One of the grounds upon which the trial court, in its wisdom, sustained the defendants' no case submission was that the former Governor was not a public officer. Counsel to ICPC argued, inter alia, that the defendant in his capacity as the Governor of Zamfara State was a public officer within the contemplation of section 2 of the ICPC Act, section 18 of the Interpretation Act, and section 318 of the 1999 Constitution. However, the court held that the position of Governor is not in the list of public service of a state listed in section 318(1) of the Constitution. However, the court glossed over the phrase: "Public service of a State means the service of the State in any capacity in respect of the Government of the State and includes service…" It is not surprising that many legal minds find that conclusion legal astounding and mysterious. It is gratifying that the Commission has challenged this decision on appeal.

Deployment of "Weapon of Mass Destruction" against Anti-Corruption Agencies

A weapon of mass destruction in this context is a court order restraining all or any law enforcement agency from performing their statutory functions. More curious is that such orders are often made without hearing such agencies. ICPC was not a party in *Attorney General for Rivers State v The Speaker, Rivers State House of Assembly & 36 Ors*[27], *or Attorney General of Rivers State v EFCC & Ors*[28], or *Attorney General of Ekiti State v EFCC & Ors*[29], yet the courts granted reliefs against the Commission from investigating certain politically exposed persons. Despite observing that "the incident of corruption

has become endemic in our society and all hands must be on deck to stem it," it is not inconceivable that anti-corruption agencies may probably feel that Taiwo Taiwo J, in the Ekiti case removed his hands from the deck when he failed to abide by decisions of the Court of Appeal[30] and Supreme Court that law enforcement agencies should not be restrained from performing their statutory functions. Even if ICPC were to decide to appeal the above cases, there is the challenge that the Commission would have to seek leave to appeal as a party interested, extension of time to appeal, and explain why it took the Commission so long to wake up from slumber after discovering that adverse orders were made against it. These challenges are not trivial, but having regard to the fact that the Commission was not made a party and was not served or heard, it is highly probable that the appeal may not be discountenanced.

Celebration of the Tainted – Case Study of Bishops, Clerics Conducting Prayers for Orji Uzor Kalu

A novel method of corruption fighting back and staring unblinkingly against morality, witnesses, processes and the criminal justice system is celebration of high-profile convicts by "religious leaders".[31] Some clergy gathered in March 2020 to pray for the release of the convicted former Governor of Abia State, Orji Uzor Kalu, for what they called "Senator Orji Uzor Kalu's service to God and humanity, his contributions to national development, economic empowerment of individuals and families across the nation in the past…"[32] This writer is not imputing any mental or moral distance to those who pray, because as one of them said: "The God we are calling upon in this regard is a God of peace. He is not the author of confusion."[33] There can therefore, in their wise estimation, not be any confusion in the minds of youths who may be misled into emulating crimes that ordinarily should shock a normal conscience.

Interrogating Ways and Means for Defending Witnesses, Processes and Systems in Corruption Cases

It is desirable to erect ramparts of defence of the various stages of the criminal process and system (pre-trial, trial, and post-trial stages) from penetration, pacification and attacks by defendants. Such defences should reflect the nuances of potential or actual assault. High profile corrupt defendants, their henchmen and hirelings can deploy tactics such as intimidation, bribery, seduction and murder of witnesses, subversion of the legal process, pacification of actors at various layers of the criminal justice system, to stultify investigation,

prosecution and trial, hence the need to articulate measures to secure fair trial from defendants. The first layer of defence is realization by actors at various stages of the criminal process that they are fundamental to formulation and implementation of such measures. Cooperation of the judiciary, effective investigation and prosecution, improvement in the trial process, application of sanctions against parties and counsel for default, and witness protection are some of the other layers of defence.

Cooperation of the Judiciary

Cooperation of the judiciary is a prerequisite in the fight against corruption. This can take the form of active case management, intolerance for dilatory tactics, sanction for judges who gag anti-corruption agencies from performing their statutory functions or fail to adhere to decisions of the Court of Appeal and the Supreme Court. Femi Falana, SAN, had cause to complain that:

> *In spite of the clear pronouncements of the appellate courts to the effect that no court can confer immunity on criminal suspects, high court judges have continued to frustrate the anti-graft agencies from arresting, investigating and prosecuting influential persons accused of involvement in serious cases of corruption, fraud and other economic crimes. No doubt, the lawyers involved in the charade are promoting corruption and subverting the rule of law under the guise of protecting the fundamental rights of their clients to personal liberty and fair hearing.*[34]

Femi Falana, SAN, may not have predicted that the Court of Appeal can re-write a principle stated by the Supreme Court, and weaken the impact of section 221 and 396(2) of the Administration of Criminal Justice Act, 2015, as the Court of appeal did in Ibrahim Shehu Shema v FRN.[35] The brief of the appellant was settled by J.B. Daudu, SAN, a former President of the Nigerian Bar Association. The Court of Appeal held that all objections to jurisdiction must first be resolved before hearing on the substantive matter notwithstanding that the Supreme Court held in *Chief Olisa Metuh v. FRN & Anor* [36] that a trial court can suspend ruling on every objection until the judgment in the substantive case.

The Supreme Court of Nigeria had also cautioned in *Dariye v FRN*[37] as follows:

> *It is not the duty of counsel to resort to motions aimed principally at delaying or even scuttling the process of determining whether or not there is substance in the charges as laid… there should be no clog in the process of determining whether or not a person a accused of crimes is guilty irrespective of his status in the society.*[38]

In *National Human Rights Commission v State of Gujarat & Ors*[39] the Supreme Court of India eloquently captured the role of courts, *inter alia*, as follows:

> *This Court has often emphasized that in a criminal case the fate of the proceedings cannot always be left in the hands of the parties, crime being public wrong in breach and violation of public rights and duties, which affects the whole community as a community and is harmful to society in general. The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and it is the community that acts through the State and prosecuting agencies. Interest of society is not to be treated completely with disdain and as persona non grata. The courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice-often referred to as the duty to vindicate and uphold the majesty of the administration of justice-often referred to as the duty to vindicate and uphold the "majesty of the law."*[40]

Public consciousness must not be encouraged to sense that justice in corruption cases in Nigeria is "like cobwebs, which may catch small flies, but let wasps and hornets break through"[41] or that criminal justice is for the rich and not the poor.[42]

Effective Investigation and Prosecution

There is palpable deficit in the rate of conviction in corruption cases in Nigeria.[43] The negative conviction rate for politically exposed persons is a matter of great concern. The National Judicial Council has blamed investigators and prosecutors for the failure of prosecution in many corruption cases.[44] Investigators and prosecutors may regard the defensive response of the NJC as protective of the role of judges in the failure of prosecution; but that notwithstanding, it is fair to say that poor investigation and

prosecution is a factor in relative lack of success in this area. The Court of Appeal implicitly blamed investigation and prosecution in *Oke v FRN*[45] when it held that the prosecution failed to lead evidence to show that the defendant made or furnished false returns in respect of the money that he received. The charge under section 19 of the ICPC Act also did not allege that the appellant conferred corrupt advantage on himself or used his office to confer corrupt advantage on another person. No evidence was also led to show that the money the appellant gave was intended to influence another person in the discharge of official duties. Prosecutors must therefore step up their game to match the trickery and technical arguments of defence counsel.

The phenomenon of poor investigation and prosecution is not peculiar to Nigeria. In *Zahira Habibullah Sheikh and Anor v State of Gujara and Ors*[46], a case decided by the Supreme Court of India, faulty and perfunctory investigation combined with biased trial culminated in the acquittal of the defendants by the trial court. Sensitization, training and re-training of investigators and prosecutors could enhance their capacity and promote efficiency. However, while it is easy to make investigators and prosecutors scape-goats in favour of high-profile defendants and their usual phalanx of lawyers, in *Zahira Habibullah Sheikh and Anor*[47]the court cautioned that a court must not overlook "the obligations cast on the Courts also to ensure that the truth should not become a casualty…"[48]

Effective investigation and prosecution are the linchpin of high conviction rate. The current Board of ICPC has invested heavily in training, retraining and tools for investigators and prosecutors. It is expected that investigators and prosecutors manifest the effect of the investment sooner than later.

Improvement of the Trial Process

Trial and adjudication of corruption cases is fraught with difficulties. Delay, adjournments, dilatory tactics by defendants, complexity of cases, case management skills of judges, burden of trial-within-trial in contested confessional statements, are amongst factors responsible for delay in adjudication of corruption cases in Nigeria. The Administration of Criminal Justice Act, 2015 sought to ameliorate some of the causes of delay in the trial process.[49] Section 306 of ACJA prohibits stay of proceedings, but courts have designed ways to "tarry awhile"[50] despite the clear statutory prohibition and decisions

of the Supreme Court.[51] Some courts grant adjournments of more than two months, some courts do not sit on dates slated for hearing, corruption cases are stood down for civil cases in the interest of some senior lawyers despite the age-long practice that the case of the State must be heard first. Heads of some courts do not assign cases timeously. Remand orders, search warrants and other orders that can aid investigation are not signed at all, or signed after the exigency must have been over-taken by events. Greater consciousness of effective case management is required from courts. In *National Human Rights Commission v State of Gujarat & Ors*[52] the Supreme Court of India opined that:

> *If a criminal court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and the community it serves. The courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the judges as impartial and independent adjudicators.*[53]

The National Judicial Council monitors performance of judicial officers in Nigeria. However, the parameters of the monitoring need to be reformed. Greater emphasis should be laid on disposal of corruption cases, particularly adherence to the provisions of ACJA and other relevant legislations. Heads of Courts should not only assign judges to handle corruption cases but enhance supervision of courts charged with trial of corruption cases.

However, in the long run, the three arms of government should work together and establish a special court for corruption cases. This court should be empowered with clear statutory framework to implement active case management to prevent delay and ensure justice.

Sanctions for Dilatory Tactics in Administration of Criminal Justice Act 2015

The Administration of Criminal Justice Act 2015 is a water-shed in criminal justice sector reform in Nigeria.[54] This writer was privileged

to contribute the proviso to section 6(2)(c) of ACJA which was adopted from the Memorandum of the Nigerian Law School which he drafted.[55] The writer was also part of the NLS team to the Working Group on ACJA. However, notwithstanding the congestion of dockets, cases fixed for hearing should be accorded priority. Parties who display lack of readiness should be sanctioned in accordance with section 396 of ACJA. Punitive cost should be imposed on defense counsel who deploy dilatory tactics and their conduct should be referred to the Legal Practitioners Disciplinary Committee or the Legal Practitioners' Privileges Committee where counsel is a Senior Advocate of Nigeria, or both.

ACJA has, however had some unintended consequences. Section 98 of the Act was designed to prevent spurious applications by defendants for transfer of cases as a strategy to delay trial. The legislature did not envisage that the State may have legitimate ground to apply transfer of cases on the basis of bias or other factors. Except as provided by section 98 of the Act, where trial has commenced the Chief Judge lacks the competence to transfer a matter.[56] The legislature may have to redefine this provision in future.

Reform of Anti-Corruption Legislations

Defence counsel and sympathetic judges latch on to loopholes in enabling legislations to create escape routes for defendants even where evidence is heavily stacked against them. Femi Falana SAN[57] rightly stated that: "Indeed, it is public knowledge that some senior lawyers have since been recruited to frustrate the prosecution of corrupt elements in the society." Unless investigators and prosecutors are creative to discover money laundering offences (which carries heavier punishment than predicate corruption offences), prosecution under the ICPC Act must be undertaken in State High Courts, inclusive of the High Court of the Federal Capital Territory. The legislature should cure these and similar loopholes to limit the scope for resort to technicality in corruption cases. However, nimble investigators and prosecutors can minimize limitations in relevant law by looking for offences that are easier to prove and exercise caution in prosecutorial charging decision-making.

Witness Protection

Witnesses are the eyes and ears of justice. No case can succeed without witnesses. The competence and ability of a witness to assist investigation and prosecution is dependent upon his/her perception

of fear of reprisals[58] and several other factors. Factors that discourage witnesses from volunteering to give evidence include the "come today, come tomorrow" phenomenon, that is constant adjournments; distances that witnesses must travel; expenses; risk of harm, (personal and to loved ones); fright of the court-room atmosphere. Witnesses must be protected from all influences that may prevent them from giving evidence or turning hostile and perjure themselves. When a truthful witness is made to turn hostile, prosecution suffers because under Nigerian law, a court cannot pick and choose between different versions of testimony of a hostile witness.[59]

The types of witness protection that have been practiced in other jurisdictions[60] include police protection to and from court, restraint orders against persons that pose a threat, protection for family members, seclusion in a safe house, screening of identity of the witness,[61] witness relocation and change of identity.[62] Under section 4(3) of the Witness Protection Act, 2012 of Kenya, a court may take measures such as:

a) holding *in camera* or closed sessions;
b) the use of pseudonyms;
c) the reduction of identifying information;
d) the use of video link; or
e) employing measures to obscure or distort the identity of the witness.

Witness Protection under the ICPC Act

Nigeria does not currently have a distinct comprehensive witness protection legislation.[63] However, Section 64(1) of the ICPC Act provides, inter alia, that the identity of the person from whom information is received shall be secret and the identity of the witness or the circumstances relating to the information he/she gives, including the place where it was given, shall not be disclosed or ordered or required to be disclosed in public but only to the trail judge and defence lawyer in attendance in any civil, criminal or other proceedings in any court or tribunal. In addition, a court can order obliteration, removal, or concealment of any part of any book, paper or other document, or any visual or sound recording, or other material which is given in evidence or liable to inspection in any civil, criminal, or other proceedings, if disclosure is necessary to protect the identity of a witness from discovery. However, protection of the

identity of a witness would not apply for investigation or prosecution for giving false information.

Apart from section 64 of the ICPC Act, the Commission has developed a Whistleblower and Witness Protection Policy to guide investigators and prosecutors of the Commission. The first draft was drawn in 2014 but was not adopted by the Board of the Commission. The current draft is being reviewed by the 4th Board of the Commission and it is probable that it will be adopted before the end of 2020. In addition, the Draft ICPC Standard Operating Procedure for Investigators requires that identity of petitioners and witnesses (especially whistle blowers), and the extent of their evidence, must be kept in confidence by the investigators and not shared with other investigators not directly involved in the investigation. Interview of witnesses must be conducted under strict confidentiality and information concerning the process is disclosed only on the authority of the Chairman (in the case of whistleblowers) and on the "need to know" basis to superior officers. This protocol upholds the safety and security responsibilities of the Commission.

However, there is a need for the Commission to formulate a policy for witness protection during trial and post-trial stages. Admittedly, it is better for the National Assembly to pass an all embracing witness protection legislation than for one agency to adopt her one strategy. But even where a national scheme exists, ICPC may still need to device in-house measures to secure the identity and protection of witnesses for effective prosecution of cases and to assure would-be witnesses that they would not be used and dumped after trial.

Witness Protection under the Administration of Criminal Justice Act 2015

The Administration of Criminal Justice Act 2015 contains innovative provisions to address some of the difficulties that witnesses face in Nigeria. These include:

a. Compelling attendance of witnesses;[64]
b. Witnesses' expenses;[65]
c. Power of court to call or recall witnesses;[66]
d. Power of court to admit certificates of experts in certain government employment issued under section 55 of the Evidence Act without the need for such witness to appear under certain circumstances;[67]

e. Power of court to screen the identity of witnesses or take evidence in camera.[68]

The measures prescribed by ACJA can suffice in many cases. However, as recent experiences show, these measures do not prevent witness tampering or threats of harm to witnesses and those they love. The necessity for Nigeria to develop a witness protection programme is therefore a national imperative. Nigeria can learn from the experiences and witness protection schemes of countries such as the United States, Ethiopia,[69] South Australia,[70] and South Africa.

The United States Federal Witness Protection Programme is perhaps the oldest and most well developed programme in the world[71] because "the United States was first to formalize the notion of *a* government protecting witnesses who provide valuable testimony in the crime fighting effort…"[72] The programme, introduced by the Organized Crime Control Act 1970[73] was specifically created to fight organized crime, particularly the Mafia, but since then, a number of countries and international tribunals have adopted formal witness protection schemes.

The Attorney General of the United States administers the programme. He considers the suitability of witnesses for protection based upon applications made by law enforcement authorities, *the possibility of securing similar testimony from other sources, the need for protecting the person, the relative importance of the person's testimony, results of psychological examinations,…"*[74] It is also a requirement that the witness shall sign a Memorandum of Understanding with the United States Government. The terms of the MOU would specify the obligation of the parties. Actual day to day protection of witnesses is handled by the Federal Marshalls Service. Quite a number of Marshals have given their lives in the discharge of their duties under this programme. While the necessity for witness protection legislation and witness protection scheme in Nigeria cannot be denied, the practical challenge with operation of witness protection scheme in Nigeria include the likelihood of distrust by witnesses in the operators of such a system to guarantee their safety without compromise.

Conclusion

In Nigeria, three powerful forces triangulate and combine with other influences to undermine the effectiveness of criminal justice

processes and the system in corruption cases. The triangle of forces are inchoate investigation and prosecution, substantial absence of effective case management, and regularity of sanctions for bad behaviour by lawyers. Nigerian anti-corruption legislations and procedural laws have gaps and loopholes, but these laws are the envy of other nations. Less elegant and embracing laws were effective in Nigeria in the 1970s and 80s to sanction corruption and minimize industrial-scale corruption of the magnitude that now be-devils Nigeria. It is opined that unless actors within the criminal justice system change their attitude and improve their capacity, the most despicable corrupt conduct would largely remain undetected and without application of deserving sanctions. Legal and procedural reforms are important, but the best defence for witnesses, processes and systems is change in the mind-set and capacity of criminal justice practitioners at the investigation, prosecution and trial stages of corruption cases. The dilemma of actors within the system is the choice between short-term private pecuniary interests and the long-term security, economic and political impact of their decisions on their lives and the welfare of society.

Endnotes

[1] Jacqueline Hodgson and Andrew Roberts "An Agenda for Empirical Research in Criminal Justice: Criminal Process and Prosecution" University of Warwick School of Law Legal Studies Research Paper NO. 2010-13 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1650552&download=yes last accessed 3/18/2020 10:35 AM

[2] Herbert L. Parker "Two Models of the Criminal Process" University of Pennsylvania Law Review, Vol. 113 (No. 1) (1964) pp 1-68 at p. 1 Available at https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=6428&context=penn_law_review last accessed 3/18/2020 10:42 AM

[3] See Ngozi Okonjo-Iweala, Fighting Corruption is Dangerous: The Story Behind the Headlines, available at https://medium.com/@bekohe/epub-pdf-fighting-corruption-is-dangerous-the-story-behind-the-headlines-p-d-f-61b9f57b775c last visited 3/9/2020 5:03 PM

[4] See, for instance, Abdul Mahmud, "When Corruption fights back" Daily Post June 14, 2012 https://dailypost.ng/2012/06/14/when-corruption-fights-back/ last accessed 4/6/2020 2:50 PM; Johannes

Tobi Wojuola, "When corruption Fights Back" The Premium Times, January 2, 2016 https://opinion.premiumtimesng.com/2016/01/02/corruption-will-fight-back-by-johannes-tobi-wojuola/; Femi Falana, "As Corruption Fights Back" The Premium Times, November 10, 2015 https://opinion.premiumtimesng.com/2015/11/10/as-corruption-fights-back-by-femi-falana/.

[5] Available at https://www.poemhunter.com/poem/corruption-fights-back/ last accessed 3/9/2020 4:57 PM

[6] On methods high profile defendants in Nigeria use to escape justice see generally, Dr. Esa Onoja and Dr. Kolawole Olaniyan, *Letting the BIG FISH SWIM" How Those Accused of High-Level Corruption are Getting away with their Crimes and Profiting from Nigeria's Legacy of Impunity* (Lagos: SERAP, 2018)

[7] supra

[8] The civil or criminal process can be perverted for a purpose or result for which it is not intended. For instance, the criminal process can be abused and invoked to determine a civil right which is outside the purview of anti-corruption agencies.

[9] In *R v DPP, Ex Parte Kebeline* (1999) 4 All E.R. 801, Lord Craighead spoke about "an effective remedy in the course of the criminal process" suggesting that the criminal process is procedural.

[10] For instance, as held in *Alake v State* (1991) 7 NWLR (Pt. 205 567, plea is a fundamental stage of criminal trial.

[11] In *Ajakaiye v FRN* (2010) 11 NWLR (Pt. 1206) 500 for instance, the Court of Appeal made a distinction between when a civil process can be used and a criminal process used at different stages of habeas corpus proceedings.

[12] (1953) A.C. 327

[13] Ibid at p. 335

[14] Idike, Adeline Nnenna, Eme, Okechukwu Innocent, and Ugwu, Christian Chibuike (2017) "Political Exposed Persons and the Need for special Courts in Nigeria" International Journal of Philosophy and social Psychological Sciences, Vol. 3 (1), (2017) pp 1-20 at p. 1 https://sciarena.com/storage/models/article/rLzTGoEcPYzyPGnNlEUTkh6MG7PLeCu5AW1nZ2w5sh054VXoZMNYbd6xCpHK/political-exposed-persons-and-the-need-for-special-courts-in-nigeria.pdf

[15] (Unreported) Appeal No. 09-3832 decided on February 16, 2012

[16] Ibid

[17] supra

[18] Ibid, Para 40

[19] See https://www.vanguardngr.com/2010/07/perm-sec-vs-icpc-court-gives-judgment-sept-24/ last accessed 4/28/2020 2:39 PM
[20] (2002) 9 NWLR (Pt. 772) 222
[21] (Unreported) Suit No: FCT/HC/CR/21/2016
[22] (Unreported) Case No:KTH/8c/2017 decided on 27/11/2018 by I.M. Bako, J, of the High Court of Katsina State
[23] (Unreported) Case No. KTH/9c/2017 before Hon. Justice I.M. Bako
[24] Supra
[25] See "AGF denies report he stalled corrupt case against former Katsina governor, others" https://elombah.com/agf-denies-report-he-stalled-corrupt-case-against-former-katsina-governor-others/ last accessed 4/28/2020
[26] (Unreported) Case No: ZMS/GS/53/2017 decided on 5th December, 2017 by Bello M. Tukur, J, of the High Court, Zamfara State, Gusau
[27] (Unreported) Suit No; PHC/114/2007 decided on 16th February, 2007 by P. N. C. Agumagu, J of the High Court of Rivers State, Port Harcourt.
[28] (Unreported) Suit No: FHC/PHC/CS 178/2007
[29] (Unreported) Suit No: FHC/AD/CS/32/2016 decided by Taiwo Taiwo J, on 30/11/2018
[30] See, for example, *Dododo v EFCC & Ors* (2013) 1 NWLR (Pt. 1336) 468 at 510 where the Court of Appeal held that ICPC and EFCC are obliged to investigate complaints and cannot suppress same.
[31] See "Bishops Begin Prayer, Fasting for Kalu's Release," https://leadership.ng/2020/03/26/bishops-begin-prayer-fasting-for-kalus-release/
[32] ibid
[33] ibid
[34] "As Corruption Fights Back", supra
[35] (Unreported) Appeal No. CA/K/432/C/2018 decided on the 5th day of February, 2019 by the Court of Appeal, Kaduna Division.
[36] (2017) 11 NWLR (Pt. 1775) 157 (SC)
[37] (2015) 6 NWLR (Pt.1467) 325
[38] ibid
[39] Op. cit.
[40] Ibid, Para 35 of the judgment of Dr. Arijit Pasayat, J. who delivered the opinion of the court. Underlining mine for emphasis.
[41] Jonathan Swift, "Essay on the Faculties of Mind" quoted in *National Human Rights Commission v State of Gujarat & Ors,* supra.

[42] See Sunday Abraham Ogunode "Criminal Justice System in Nigeria: For the Rich or the Poor?" Humanities and Social Sciences Review, Vol. 04 (01) (2015) pp 27-39 http://www.universitypublications.net/hssr/0401/pdf/DE4C318.pdf

[43] See generally, Oluwafemi Alexander Ladapo "Effective Investigations, A Pivot To Efficient Criminal Justice Administration: Challenges In Nigeria" file:///C:/Users/sec2/Documents/DEFFERED%20PROSECUTION%20AND%20NON%20PROSECUTION%20AGREEMENTS/Effective%20Investigation,%20A%20Pivot%20to%20Efficient%20Criminal%20Justice%20Admin%20in%20Nigeria.pdf last accessed 3/9/2020 5: 51 PM

[44] See "NJC Indicts Prosecutors, Investigators For Delay In Corruption Cases"[44] Leadership Newspaper, May 21, 2018 available at https://leadership.ng/2018/05/21/njc-indicts-prosecutors-investigators-for-delay-in-corruption-cases. Last accessed 14 February 2020m 9:32AM.

[45] (2017) 4 NWLR (Pt 1556) 473 (CA)

[46] (2006) (3) SCC 374

[47] Ibid.

[48] Ibid.

[49] See generally Olanrewaju Onadeko (SAN) and Esa Onoja, "An Appraisal of the Attitude of Courts to the Administration of Criminal Justice Act 2015," Miyetti Quarterly Law Review Vol 1 (Issue 1) (June 2016)
pp 9-31

[50] See *Dr Olubukola Abubakar Saraki v FRN* (2016) 3 NWLR (Pt 1500) 531.

[51] See *Chief Olisa Metuh v FRN & Ors*, supra

[52] supra

[53] Ibid, Para 35 of the judgment

[54] For a detailed review of the provisions of ACJA, see A. F. Afolayan and E. O. Onoja, "A Critical Appraisal of the Administration of Criminal Justice Act, 2015" A.B.U.L.J. Vol. 36 (2016) pp 1-20

[55] The proviso obliges law enforcement agencies to notify the family or next-of-kin of detainees of the place of detention, at no cost to the detainee. The intention of the proviso is the prevention of incommunicado detentions.

[56] See *FRN v. Farouk Lawan* (2018) LPELR-43973 (CA)

[57] "As Corruption Fights Back", supra.

[58] See generally, UNODC, Good practices for the Protection of witnesses in criminal proceedings involving organized crime (United Nations: New York, 2008)
[59] See sections 230 and 231 of the Evidence Act 2011.
[60] See, for example, the Witness Protection Act No. 112, 1998, Republic of South Africa.
[61] For example, under the Witness Protection Act of South Africa, a Judge in appropriate cases must make an order prohibiting the publication of any information which may disclose the identify or location of a protected person.
[62] See, for example, section 4(2) of the Witness Protection Act cap. 79, 2012 of Kenya.
[63] For discussion of the legal framework for witness protection in Nigeria, see generally, Dr. Fatima Waziri-Azi, "Legal Framework of Witness Protection Measures During Criminal Trial in Nigeria and Emerging Practices" European Journal of Research in Social Sciences Vol. 7, No. 1 (2019) http://www.idpublications.org/wp-content/uploads/2018/12/Abstract-LEGAL-FRAMEWORK-OF-WITNESS-PROTECTION-MEASURES-DURING-CRIMINAL-TRIAL-IN-NIGERIA.pdf Last accessed 4/27/2020 10:30 AM
[64] See sections 241-250 of the Act
[65] See sections 251-254 of the Act
[66] Section 256 of the Act
[67] Section 257 ACJA
[68] Section 259 and 261 of ACJA
[69] See the Ethiopian Witness and Whistleblower Protection Proclamation No.699/2010
[70] See the Witness Protection Act 1996 of South Australia
[71] For a history and operation of this programme, see Raneta Lawson Mack, "The Federal Witness Protection Program Revisited and Compared: Reshaping and Old Weapon to Meet New Challenges in the Global Crime Fighting Effort" 21 U. Miami Int'l & Comp. L. Rev. 191 (2014) pp 191-239. Available at: http://repository.law.miami.edu/umiclr/vol21/iss2/4 last accessed 2/3/2020 10:06 AM
[72] Ibid, p 196
[73] It was amended by the Witness Security Reform Act of 1984 U.S.C. §§ 3521-28.
[74] Ibid.

CHAPTER 21

RE-AWAKENING THE GIANT: A NEW VISION FOR ICPC AT 20

BOLAJI OWASANOYE

Introduction

Anti-Corruption agencies (ACAs) in Africa are young as most are below 20 years of age making them teens at best.[1] Most were set up to deal with systemic challenges of corruption that regular law enforcement notably the police could not deal with and in response to the demands of UN Convention Against Corruption (UNCAC) 2003 which awakened the world to the best legal framework of how to deal with corruption.[2] The few ACAs established before UNCAC were motivated by Donor country demands attached to provision of development assistance to some African countries within the same period when demands for economic liberalization, political democratization, promotion of human rights and cessation of authoritarian rule was in vogue.[3]

In the 70s only Tanzania could be identified as having an ACA. By the 80s to 90s the pressure on developing countries to establish specialized agencies to deal with corruption had increased and this culminated in the passage of UNCAC in 2003. Besides, given the stark realities of how corruption had truncated development in Africa, fighting corruption inevitably became an electoral campaign issue. In any event, this had since the early 60s been one of the excuses for military intervention in politics in Africa.[4]

The situation is compounded by the fact that corruption continued to grow with subsets. For example Chapter 3 of UNCAC[5] recognized variants such as bribery,[6] embezzlement,[7] trading in influence,[8] abuse of function,[9] illicit enrichment,[10] laundering of proceeds of crime,[11] concealment,[12] obstruction of justice,[13] etc. These variants all subsumed under the generic word corruption leads people to wonder: what is corruption? Indeed, UNCAC avoided answering that question of what corruption is. This short write up is not intended to answer the question either, but to evaluate what the 4th Board of the *Independent Corrupt Practices and Other Related Offences Commission (ICPC)* has achieved under my watch and use the modest

achievements to crystal ball the future and possible impact of the Commission which was established by the Corrupt Practices and Other Related Offences Commission Act.[14]

The 4th Board of the Commission was inaugurated by President Muhammadu Buhari on the 4th of February 2019 with members representing five of the six geo-political zones of the country.[15] As is widely known, the Board was appointed in August 2017 but could not assume office until February 2019, 18 months after appointment due to political differences between the Executive and the 8th National Assembly led by Dr. Bukola Saraki. Thus the Senate imposed an embargo on confirmation of nominees from the Executive. By the time the Board was inaugurated the excitement of the appointment and public/media attention had somewhat waned thus allowing the Board opportunity to settle in quickly to evaluate state of affairs within the institution.

I directed that the Board should commence work with a two-day retreat to be wholly facilitated by management staff with the exception of the immediate past Chairman. The retreat indicated availability of capacity within the management of the Commission which, if well channeled and motivated, could facilitate a redirection of the institution. However, there were other strong signals that all was not well given the level of inertia and of course negative public perception of the institution as a sleeping giant.[16]

As a result of this perception I decided to conduct a short survey on staff perception of the institution before I resumed. I designed a questionnaire that was administered by the Secretary to the Commission who had assumed duty almost immediately after appointment in August 2017 as the position did not require the Senate's confirmation.[17] An extract of the findings in the following tables is instructive. 74.5% of respondents described the performance of the Commission as satisfactory, 66.9% said the Commission was meeting up its statutory mandate but another 60% of respondents said the Commission was under performing.

When asked what factor was responsible for underperformance, the responses were incoherent and did not indicate a singular factor as outstanding. 38.5% of respondents felt it was a combination of motivation, management and funding. Another 37.8% did not answer the question.

Q8. How will you describe the performance of ICPC

	Frequency	Percent
Very good	19	6.8
Good	207	74.5
Poor	47	16.9
Very poor	5	1.8
Total	278	100.0

Q9. How satisfactory is the commission presently meeting its mandate?

	Frequency	Percent
Very satisfactory	12	4.3
Satisfactory	186	66.9
Unsatisfactory	80	28.8
Total	278	100.0

Q10. Is the commission underperforming?

	Frequency	Percent
Yes	167	60.1
No	106	38.1
Don't Know	5	1.8
Total	278	100.0

Q11. If yes, what is the most significant factor responsible for under performance of the Commission

	Frequency	Percent
Motivation	13	4.7
Good management	12	4.3

Funding	35	12.6
Capacity	3	1.1
All of a-c	107	38.5
None of the above	3	1.1
Missing	105	37.8
Total	278	100.0

However, the same question was asked in a different way and the culprit could be better identified. When asked what are the major challenges faced by the Commission, and unequivocal 66.2% said it was funding followed by 9.4% for poor management, i.e. leadership and third training, i.e. capacity building. This parameter, gave a clear roadmap for re-directing the Commission towards performance and better service delivery.

Q12. What are the major challenges faced by the Commission

	Frequency	Percent
Funding	184	66.2
Law enforcement / security	3	1.1
To post / Transfer more staff	2	.7
Poor management	26	9.4
Misplaced priority	1	.4
Inadequate personnel	3	1.1
Judicial delays	3	1.1
Centralized administration	6	2.2
Inadequate man power	4	1.4
Inadequate logistic supports	2	.7
Proactive in responding to corruption reports	3	1.1

Identity crisis	3	1.1
Indiscipline	4	1.4
Training	15	5.4
Corruption	1	.4
Recruitment not based on proper factors	1	.4
Amendment of ICPC Act	5	1.8
Political will	6	2.2
Capacity building	2	.7
Lack of case management	1	.4
Missing	3	1.1
Total	278	100.0

Upon assumption of office, further interaction with staff at various levels also revealed lethargy, absence of initiative, compromise, competence deficit, corruption and lack of direction albeit not in all but in a sizable number of the staff. To compound the problem, the level of institutional funding for operations, as already indicated in the pre-assumption of office survey was low and budget release unpredictable. Staff motivation, leadership example and improved funding thus became imperatives for moving the institution forward.

In terms of infrastructure, the physical edifice hosting the institution though elegant and befitting in outlook was inadequate in space and structurally aging. Operational infrastructure for ICT, forensics, enforcement, administration, etc. was manual, outdated, grossly inadequate and its composition was misplaced. There were no meeting rooms aside the board room. Document management was disarrayed and loss or misplacement of files was rampant. Space constraint was a reality and a discouragement to staff expansion. However, the legal framework was robust and motivational enough to remain hopeful that if other variables were tackled the giant could wake up to a morn of glory. All things considered therefore, the "inheritance" of the 4th Board was mixed blessing.

Identity Crisis

As suggested in my introduction, I believe that the Commission was set up in year 2000 to deal with issues that regular law enforcement notably the police could not deal with but using the powers of the police.[18] In other words, the intention of the legislature was not to substitute the police with ICPC but to complement the police in such a way that the specific objectives of the new law would be met for the benefit of society. Aside the background to the emergence of ACAs in Africa provided in the Introduction to this piece, there is a good precedent to cite for extracting and creating specialized law enforcement agencies from existing framework. The National Security Agencies Act was passed to isolate three specific areas of national security from the Nigerian Security Organization (NSO) to newly created specialized agencies trained and equipped to deal with the issues in a more effective manner better than the previous institution could.[19] Unfortunately, due to gaps in the operational take off and perhaps conservative interpretation and implementation of its enabling statute, the ICPC took off with an identity crisis that lingered till advent of the 4th Board of the Commission. This observation is in spite of the outcome of the survey that only 1.1% of respondents felt identity crisis was a problem.

The first part of the identity crisis relates to the extent of its intervention in the anti-corruption effort. In light of the somewhat fluid and elastic definition of corruption and its rather broad all-encompassing nature, it was not surprising that the 4th Board found that virtually all petitions whether relevant to the core statutory mandate of the Commission or not were entertained. Some petitions though disclosing wrong doing and acts of corruption but of relatively low value compared to the potential cost of taking up investigation and in light of original intent of setting up a specialized agency to deal with systemic corruption by a high end institution, were taken up. More disturbing was the fact that the legal profession exploited this situation by requesting the Commission's intervention for matters that were civil in nature rather than litigate such cases for their clients in civil courts. Lawyers desirous of avoiding the negative consequences of the failed civil and criminal justice system for fast track justice by the intervention of anti-corruption agencies manipulated petitions to create crime out of civil matters. Granted that there are sometimes grey areas in petitions, nevertheless, the discretion of the Commission ought not to be in favour of grey areas. Such cases accounted for almost 40% of the Commission's petition

portfolio.

The Board within two months of assumption of office streamlined cases that the Commission would entertain. The information was published on the website[20] and a practice of politely declining such petitions was introduced. Such petitions were acknowledged but the petitioner or his or her agent was informed of the fact that it would not be entertained.

The second part of the identity crisis is with regard to the extent of the powers of the Commission. Section 5(1) of the Corrupt Practices and Other Related Offences Act provides:

> "(1) Subject to the provision of this Act, an officer of the Commission when investigating or prosecuting a case of corruption shall have all the powers and immunities of the police officer under the police Act ***and any other laws conferring power on the police, or empowering and protecting law enforcement agents."***[21]

This clear provision notwithstanding and the extension of powers beyond the police to "... other laws empowering and protecting law enforcement agents" some operatives of the Commission still wondered whether they are law enforcement agents or mere civil servants. One of the reasons for this is probably because at take-off, the Commission "borrowed" enforcement operatives from the Police and the Department of State Services because pioneer ICPC operatives were not trained to bear arms in spite of the fact that the enabling law gave them all the powers of the Police which includes the power of the Police to bear arms.[22] In the fullness of time, when the Commission trained its staff to handle arms, and requested permission from necessary agencies of government for support, it appeared politics had taken over and active and passive resistance kicked in. Up till now, securing administrative approval for operatives of the Commission to bear arms matter remains work in progress for the 4th Board. Needless to say, this is one of the major reasons for the identity crisis of some operatives. Once this administrative hurdle is cleared, the necessary budgetary, further training, logistical matters etc. will be accelerated to enable the Commission fully utilize its statutory power like the police.

Conspiracy theorists have posited that by refusing support to the

request for operatives of the Commission to bear arms, other law enforcement agencies upon whom it must depend are able to hold the Commission to ransom in its operational matters. Although this theory can be faulted by evidence of the long years of seamless support that the Commission has enjoyed and continues to enjoy from the Police, DSS and Nigeria Security and Civil Defence Corp, nevertheless it is a theory that should not be summarily dismissed because the risk of disappointment remains. Occasionally, the Police withdraw its officers without recourse or consultation with the Commission. Though such officers are replaced, it is not without disruption to the work of the Commission no matter how negligible.

Investigation and Prosecution

Section 6 of the Corrupt Practices and Other Related Offences Act provides as follows:

> 6. It shall be the duty of the Commission -
> (a) Where reasonable grounds exist for suspecting that any person has conspired to commit or has attempted to commit or has committed an offence under this Act or any other law prohibiting corruption, to receive and investigate any report of the conspiracy to commit, attempt to commit or the commission of such offence and, in appropriate cases, to prosecute the offenders.
> (b) To examine the practices, system and procedures of public bodies and where, in the opinion of the Commission, such practices, systems or procedures aid or facilitate fraud or corruption, to direct and supervise a review of them;
> (c) To instruct, advise and assist any officer, agency or parastatals on ways by which fraud or corruption may be eliminated or minimized by such officer, agency or parastatal;
> (d) To advise heads of the public bodies of any changes in practices, systems or procedures compatible with the effective discharge of the dues of the public bodies as the commission thinks fit to reduce the likelihood or incidence of bribery, corruption and related offences;
> . (e) To educate the public on and against bribery, corruption and related offences; and
> . (f) To enlist and foster public support in combating corruption.

This section is the most popular of the powers of the Commission especially section 6(a) thereof. Indeed, it is generally believed that investigation and prosecution should be central to the functions and activities of any anti-corruption agency notwithstanding that the UN Convention Against Corruption actually recommends more prevention measures as focus of anti-corruption initiatives for state parties. [23] The investigation and prosecution capacity of the Commission has been challenged by myriad problems some of which are discussed in subsequent parts of this chapter and other chapters of this book. The challenges range from weak infrastructure, capacity deficiencies, funding and of course weaknesses in the enabling statute and the criminal justice process in particular. Aside the undeniable poor investigation sometimes carried out, equally poor prosecutions have accounted for some of the wasted opportunities to justify the establishment of the Commission in the past years.

There have, of course, been momentous occasions of successes but structural deficiency as mentioned above and the criminal justice ecosystem cannot be exonerated. For example, section 61(3) of the enabling statute provides:

> "(3) The Chief judge of a state or the Federal Capital Territory, Abuja shall, by order under his hand designate a court or judge or such number of courts or judges as he shall deem appropriate to hear and determine all cases of bribery, corruption, fraud or other related offences arising under this Act, or any other laws prohibiting fraud, bribery or corruption; a court or judge so designated shall not, while being so designated, hear or determine any other cases provided that all cases of fraud, bribery, or corruption pending in any court before the coming into effect of this Act shall continue to be heard and determined by that court."

In spite of this unequivocal provision, some State Chief Judges refuse to designate any judge to handle corruption cases. Where this is done, such judges do not concentrate exclusively on corruption cases thus defeating the purpose of the law to prioritise corruption cases and enable them to be concluded on time by the designated judges. An additional challenge is the vulnerability of state high courts generally to political manipulation and interference when it comes to electoral matters and corruption cases. Many state high courts refuse to prioritise corruption cases against politically exposed persons in the

state thus frustrating the efforts of the Commission in this important mandate. The concern of the judiciary is not unconnected with fear of backlash or further political interference in the affected states. As a result, the Commission is desirous of seeking amendment to enable it prosecute its cases concurrently in the Federal High Court or State High Court just as the EFCC is able to do. However, where the violation of law falls across statutes where the Federal High Court has exclusive jurisdiction and the ICPC Act, charges are filed at the Federal High Court.

Infrastructure Deficit

The structure housing ICPC Headquarters was constructed late 1980s by the administration of General Ibrahim Babangida, as headquarters for one of the two political parties created by fiat. Following the frustration of the longest political transition in the history of Nigeria by the same General Babangida and the ignominious exit of that government from office, the building was handed over by the General Abacha government to the defunct Petroleum Trust Fund (PTF) then headed by Major General Muhammadu Buhari (Rtd.), now President.

On the dissolution of the PTF by the President Obasanjo administration in early 2000, the building was allocated to the newly established ICPC. Twenty years after moving in and about thirty years after construction, we find that though structurally sound with expansive grounds in a very good location within the central business district of Abuja, the office building was dilapidated in a number of areas, inadequate for the growing number of staff in the headquarters and lacking space for required expansion for modern infrastructure such as interview rooms and detention facilities. Besides, there were no drawings of the existing structures neither at headquarters nor with the Land Development Department of FCT, to guide any proposed expansion or modifications. There were no meeting rooms besides the Board Room adjoining the office of the Chairman. The auditorium was archaic and not adaptable for diverse kinds of public engagement, thus many activities were conducted outside the premises at great cost to the Commission.

As a result of these inadequacies and more, the Board decided to engage the services of experts from the Federal Ministry of Works and Housing to produce as-built drawings, design expansion of existing building to create more rooms in a seven floor structure,

produce a dilapidation schedule to upgrade existing structures and suggest external consultants to conduct structural integrity and soil tests on the building and the land respectively.

The intention was to close the documentation deficit by obtaining for records the entire design of the building and its landscape and file same with the Development Control unit of FCT, provide a futuristic drawing for inevitable expansion of existing physical structure to include modern interrogation rooms, gate house with a modern reception, detention and other security facilities, new board and meeting rooms, offices for Chairman and Board members, training rooms, etc., all geared towards improving services and inevitable consequential increase in staff.

If new structures could not be done for whatever reason, there would be drawings for upgrade of existing building including creation of some meeting rooms, upgrade of auditorium, creation of more offices or sitting spaces, relocation or rearrangement of operating units within departments to allow for sharing of equipment such as network printers, copiers, dedicated internet services etc.

This ambitious program depended on financing by government, thus there were alternate plans. The best scenario was to have additional buildings with new offices. This was, however, an expensive option. Given the reality of the economic situation within the country and government's freeze on new projects, the best option was to be kept in view. The second best option was to have a mix of the ambitious and the realistic by having one or two new buildings and upgrade of the main building and in the process create more offices or sitting spaces and at the same time implement a dilapidation schedule within the annual building maintenance program. This option was preferable and the Commission settled for it. Within this plan, the Commission is in the process of upgrading its auditorium, has created two meeting rooms and commenced upgrade of dilapidated facilities such as toilets, floor tiles windows, repainting of entire building etc.

Leveraging Technology

a. Forensic Unit

The Commission had a Forensic Unit in name driven by open source software useful for modest capacity building of staff. It lacked secure reputable software to assist investigation by analysis of digital devices such as phones, tablets, laptops, desktops and the like. It had

no polygraph unit, no handwriting expert or capacity. A fairly modern software donated by a development partner was abandoned in the store until 2019. In summary, there was a Forensic Unit in name that competed with other departments and units in manual, analogue physical investigation of cases and nothing more. Whatever technological capacity of staff deployed there was underutilized and they were at best redundant.

The state of affairs was caused by lack of visionary procurement of soft and hard security and forensic software required of a top grade law enforcement institution. This lack of vision was terminated under my watch. Within one year of assumption of office, ICPC can now boast of three top grade internationally acclaimed forensic software to analyse all digital devices, two polygraph units, a handwriting expert and world class certified polygraph examiners and forensic investigators that can compare with peers anywhere in the world. This feat was made possible by legitimately reversing the inherited 2019 procurement plan of the Commission to a more modern and world class forensic unit and building the capacity of staff to the same level.

The Commission invested in a Handwriting expert within two months of my assumption of office. The retired police expert was mandated to serve as in house document examiner and handwriting expert to train at least four more document examiners and handwriting experts within a period of two years. Based on this decision eight members of staff are currently undergoing in- house training out of which three or four will be internationally certified to support the work of the Commission.

b. Petitions Registry

Although there was a Petitions Registry whose operations were partially digital in the sense that submissions were scanned unto a data base, there was no document management system integrating petitions with investigation, prosecution, staff records and administration generally. There were no servers to host records. Case portfolio as at 2019 February, revealed pile of legacy petitions abandoned and in disarray. Investigation departments and the prosecution could not readily provide data on active caseload, nor reliable case status report. There was no reliable data on cases outsourced for prosecution, nor evidence of policy on cases to be outsourced. Investigations were not time bound nor progressively

monitored to timely conclusion. Everything was basically like the time of judges in Israel - "Everyman did as it was pleasing in his own eyes..."[24]

To solve this problem, the Commission introduced a robust electronic data management project starting with overhaul and digitization of the petitions registry. All petitions no matter where submitted nationwide, will be assigned numbers electronically. Investigations including interview of suspects, forensic reports on analysis of digital devices, outcome of polygraph examinations will be digitally available. When cases progress to prosecution, sub files are digitally created and copies of all court papers are held on the servers that have been procured for this purpose. More importantly, legacy documents comprising over 20 million pages of investigations records since inception of the commission in year 2000 are being uploaded on the server.

The Electronic Data Management System (EDMS) project is currently on-going, once completed, it will cover administration files including staff records and records of time and attendance at headquarters and all state offices, full digital records of investigations and prosecutions, integration of finance records and procurements, system study reviews especially the ethics compliance scorecard, corruption risk assessment and ultimately, holdings within the stores of the Commission. The project includes a disaster and business recovery plan as security against hazards. This project is already in progress and should be completed by end of 2020.

c. Interview Rooms

The Commission had seven Interview Rooms with cameras installed for monitoring but without recording capacity to strengthen investigation and aid prosecution with digital evidence required by law. Although the impression was created that interviews were recorded and recordings could be retrieved for future purposes, this was not the case. Furthermore, there were no biometric machines to capture data on suspects as required by law. Thus records of investigation especially interview of suspects remained manual subject to dispute while records of suspects remained anonymous and were at best manually kept in the Commission's books Indeed, there had been absurd situations where suspects returned to stand surety for other suspects without anyone being aware because there was no database of suspects.

These anomalies have been reversed first with acquisition of biometric machines for suspects. All suspects are presently profiled on arrival at the commission. In accordance with the Administration of Criminal Justice Act 2015, ICPC has established a database for all suspects. It is expected that this database will be integrated with a central database to be held by the police in the fullness of time.

Furthermore, the interview rooms are redesigned to properly record interviews and secure the recording as part of the digital file of investigation. The facility includes speech to text and enables investigators search specific aspects of interview for use in prosecutions.

d. Human Resource Management

Daily time and attendance of staff in the headquarters and state offices was questionable and there were rumours and actual cases of staff who never came to work or stayed substantially abroad but continued to earn salaries. Although there was a time and attendance machine located at the entrance of the Commission through which staff religiously purportedly "registered" their arrival and departure from work, it turned out to be a hoax as it was not connected to any server and kept no records of touch-in-touch out ritual by staff.

To address this problem, the Commission acquired new time and attendance machines with servers for the headquarters and state offices. Furthermore, we introduced new biometric cards for access control to better secure the commission and reduce the incidents of suspects seeking to see Chairman, board members or other staff without invitation or restraint. The equipment sited at state offices will be linked directly to servers in the headquarters in order to register staff attendance at work. Records will be automatically updated upon connection to internet.

e. ICT and Network Management

The ICT unit had no designated network or system administrator nor system security expert. Its role was muted and its capacity to advance the mandate of the commission suspect. In consequence of this, I requested the office of National Security Adviser (ONSA) to conduct a review of the Commission's ICT and security infrastructure within 3 months of assuming office. Needless to say the result was as anticipated an abysmally low 10% compliance score. The good thing

was that a local area network optimizations plan was already in progress before the resumption of the 4th Board. The LAN upgrade is key to improving the role of infrastructure and therefore very timely. Other necessary steps within the ICT roadmap strategy document include upgrading the servers and introducing disaster recovery plan in case the system collapsed.

In response to the recommendations of the NSA, we have appointed from amongst the staff a Network Administrator, a network/Cybersecurity expert, forensics focal points including focal point with ONSA. We have also upgraded all expired software licenses and are building capacity of staff in cyber security, network administration, and other ICT driven capabilities required for a modern day law enforcement agency.

Engaging Stakeholders: MDAs, Development Partners, CSOs and Media

The enabling statute of the Commission gives it absolute independence in its enforcement mandate.[25] Apart from section 3(14) of the Act which provides that the Commission shall in the discharge of its functions under the Act, not be subject to the direction or control of any other person or authority, under section 61(1) every prosecution for an offence under the Act or any other law prohibiting bribery, corruption and other related offences shall be deemed to be done with the consent of the Attorney-General. Section 61(1) of the Act is designed to enable the Commission to initiate prosecution independently, subject only to the power of the Attorney-General of the Federation to take over, continue or discontinue prosecution.

Independence can however be wrongfully interpreted as being an island that is self-sufficient. The reality of the situation is however that the commission requires strategic collaboration to achieve its mandate. In the first place, the absence of an intelligence and information sharing protocol within government weakens agencies of government generally and law enforcement in particular thus reducing effectiveness and value for money.

a. MDAs

Since 2019, the commission has escalated its partnership with other agencies of government by seeking active collaboration in fulfilment of its mandate. A few examples will suffice. The commission has a regular operational enforcement with Federal Road Safety

Commission (FRSC) to fight corruption on the road. In the areas of fiscal management, we signed an MOU with the office of Auditor-General of the Federation to jointly focus in the first instance on revenue generating agencies that consistently fall below revenue projections despite huge economic potential and prospects. We have also strengthened collaboration with EFCC by exchanging information on on-going investigations and cases that overlap the jurisdiction of both agencies.

One of the flagship projects of the Board under my watch is the constituency project tracking initiative which comprises a steering committee made up of representatives of Budget Office, Accountant-General of the Federation, Bureau for Public Procurement, selected civil society and the media. The steering committee selects projects for tracking based on equal representation across the six geopolitical zones of the country. ICPC leads the initiative but enjoys absolute support of all the participating MDAs. The project has successfully redefined the implementation of constituency projects to the extent that over 500 long abandoned projects have been resuscitated and being delivered across the country and beyond the focal areas of the first phase of the project. ICPC is also Secretariat to the Inter agency group focusing on illicit financial flows and coordinates information sharing towards diminishing capital flight.[26]

b. Development Partners

For the first time in the history of the commission its collaboration with the donor community resulted in the grant of $1.5m dollars by MacArthur Foundation over a two-year period in support of the commission's mandates. The initiative for this incredible support goes to the proactive Country Director of the Foundation in Nigeria Dr. Kole Shettima who with insight of programmatic challenges anticipated the support that the 4th board would require and thus initiated a conversation in this regard. Needless to say, the timely approval and release of the first tranche of the grant assisted the Commission to build capacity of investigators, mobilise for system study reviews, deploy the ethics compliance scorecard and engage with media and civil society in the constituency projects tracking initiative. The grant also bolstered the confidence and ability of the office of the Chairman to oversight diverse projects within the commission by engagement of critical consultancies.

In a similar vein, UKAid through DFID is providing indirect support of over £2m to civil society partnering with the commission in its people oriented projects such as constituency project tracking group (CPTG), campaigns for citizen involvement in project monitoring and engagement. Again, credit for grounding this support goes to Sonia Werner the Governance Advisor to DFID who anticipated the role civil society could play in the constituency tracking project initiative and offered to expand funding for its CSO partners to support the work of the commission and advocacy around it.

The commission is also partnering with the EU funded Rule of Law and Accountability project (RoLAC) in prevention mandate with emphasis on design of the Ethics Compliance Scorecard, conduct of corruption risk assessments and strengthening of the Anti-Corruption and Transparency Units (ACTUs) embedded in MDAs.

c. CSOs and other Non-State Actors

In the same vein, the commission enlisted and secured the strategic support of Nigerian Institute of Quantity Surveyors as part of the CPTG group to evaluate project costs and implementation pro bono and assist the commission determine the actual levels of project implementation in the tracking effort. This collaboration enables the commission make informed decisions in investigations of constituency and other government projects. It is expected that the Council for the Regulation of Engineering will join the steering group in the coming months. Other CSO partners actively supporting or facilitating the work of the commission in diverse areas include Action Aid of Nigeria and Centre for Democracy and Development amongst others.

Reclaiming Government Confidence: Escalating Prevention; Asset Recovery and Administrative Sanctions

The ICPC despite being the pioneer anti-corruption agency in Nigeria had not been aggressive in applying its powers. It's most potent being its prevention powers. Although it had successfully conducted system study reviews in the past it hardly pursued the enforcement angle of its findings of infractions by public servants.

As I have posited often, systemic corruption cannot be fought by enforcement measures only because the key institutions required would have been affected. This is a truism for Nigeria. Years of unbridled corruption had weakened anti-corruption agencies in

different ways, lowered integrity standards in professional bodies most especially the Nigerian Bar Association and significantly weakened the judiciary. As a result, criminal justice administration was at its lowest before the tenure of President Muhammadu Buhari who provided the much required political will to push enforcement measures forward.

However, Nigeria's constitutional democracy requires absolute deference to the rule of law thus constitutional safeguards such as presumption of innocence, fair hearing, right to property, freedom of expression etc. are to be fiercely guarded in the interest of all. Unfortunately, these same safeguards are exploited by the corrupt to maximum advantage thus the slow progress of cases in court and the manipulation of the criminal justice process by defendants is legendary in Nigeria. Indeed, the courts' seeming deference to the will of high profile defendants has cost the judiciary much respect and lowered its estimation in the eyes of the public until things began to change under the Buhari administration using the Administration of Criminal Justice Act which was pushed through in the dying days of the previous administration.

To complement the slow but perceptible push in enforcement measures and in furtherance of my previous engagement as Executive Secretary of the Presidential Advisory Committee Against Corruption where I worked with others to prepare strategy documents for other enforcement measures beyond prosecution most notably the use of civil forfeiture mechanisms for assets recovery , I pushed for more effective application of assets recovery and the prevention mandate of the Commission leveraging technology and the deployment of administrative sanctions against erring public servants pending the conclusion of usually protracted criminal prosecution in court. This approach enabled the Commission reclaim government and public confidence because within 9 months we had recovered by civil interim and final forfeiture orders physical and soft assets worth almost N50b. By the end of the year 2019 the total was above N80b.

Basically, the effort involved review of personnel and capital expenditures of MDAs both electronically and manually. The exercise throws up various infractions including padded payrolls that often result in excess personnel fund allocation that is then diverted by the management in collusion with others by the end of the fiscal year.

This practice otherwise referred to as the phenomenon of ghost workers was rampant, known to those who ought to know but allowed to continue perhaps for a piece of the pie. By reviewing the systems and processes of the MDAs before end of the fiscal year and not after like the auditors do, we were able to save money that would otherwise have been diverted and become irrecoverable even if we were to prosecute the defaulters.

In the same vein, the Commission collated a list of all public servants who had been charged to court with a few names of those already convicted but quietly back in service as if nothing happened. All these were recommended for suspension or interdiction in accordance with public service rules. Those who had been convicted had to be dismissed. The impression that there would be no consequences for wrongdoing within the public service had to change. Happily, Mr. President approved the recommendations and affected officials were suspended including political appointees who are the usually well-connected and powerful genres.

Furthermore, the commission arrested senior public servants whose personal and private accounts had been used to launder money in the name of project implementation whether or not they were project accountants. Hitherto, the practice was to use the private accounts of staff to move funds to implement projects for whatever reasons even though this was clearly prohibited by statutes, regulations and extant circulars. Nevertheless, the practice was rampant and virulent within the service. ICPC enforcement action such as recovery of diverted funds and prosecution of the most egregious of these cases was followed by engagements with the body of Permanent Secretaries who in fact as accounting officers could not claim ignorance of these infractions. Active investigations against egregious cases, disclosure with facts and the high risk of indictment has led to reduction but not elimination of the practice. In this regard, the commission's publication in 2019 of findings from its system study review and specific reference to some of the worst cases sent shock waves within the service and a notice that it would not be business as usual.

Public Enlightenment and Education

One of the key mandates of the Commission is public enlightenment and education through which the Commission was to enlist the cooperation and support of citizens in the fight against corruption. As is generally accepted, corruption thrives in societies where the

people condone and promote it. In fulfilment of this mandate, the Commission had over the years worked with two sets of advocates - the National Anti-Corruption Coalition comprising civil society organizations and the National Anti-Corruption Volunteers Corp a group of presumably notable individuals across the country enlisted to put their weight and reputations behind the anti-corruption effort.

While these initiatives were commendable and necessary to expand the scope of advocates required to fight corruption there were anomalies regarding the quality and character of some of the individuals who enlisted. Amongst the NAVC for example there were reports of abuse and use of the Commission's name and the identity cards issued to NAVC members for malfeasance. In the case of the NACC some members represented themselves as partners inserting the Commission's logo on their letter headed paper thus confusing the public or defrauding them outright. More importantly, many of the NACC members depended on the Commission for financial support to mobilize citizens against corruption.

In light of widespread reports of abuse by NAVC in particular the scheme was suspended and remains so until a clear vision of how best to minimize abuse is proposed. The NACC on the other hand holds great potential provided stable and solid organizations are enlisted not those requiring to be spoon-fed who cannot raise funds in support of ICPC programs but rather await funding from the Commission.

The more critical challenge for fulfilling this mandate however is the absence of a communication strategy. To close this gap, the Commission invested in a comprehensive capacity building program for all members of the Education and Public Enlightenment departments in the first month of year 2020. The intensive capacity building was led by a Nigerian communications expert based in the UK with very strong grounding in campaigns supported by others. The outcome of the training has provided a road map that will hopefully improve the commission's engagement with the publics. The road to reorientation is long and narrow but can be traversed including leveraging social media to increase communications and widening followers on its various social media handles. To achieve this feat the Commission must remain engaging holding the attention of its on-line well-wishers and more. In this regard, we have directed that all staff of the education and public enlightenment departments

must have social media handles and communicate as a matter of duty all public activities of the commission. The PE department is mandated to implement activities for constant engagement on social media. This directive is to enable it set the pace of social media discourse around the anti-corruption agenda without let except by occasional breaking news on other matters of public interest.

We are working hard to be less reactive and more proactive and public agenda setting. Doubtless, the Commission is caught between its need for professionalism in its law enforcement mandate especially the need to avoid media trials, balancing the right of the public to know and at the same time setting the agenda for anti-corruption advocacy especially via social media.

Upscaling ICPC in the International Arena

On resumption I found that the commission's potential within the international anti-corruption community was muted apart from its active role within the International Anti-Corruption Academy (IACA) where my predecessor in office is a Board member and Nigeria had in recent past made a pledge of financial support part of which was outstanding.

Given its potential and pioneer position I requested the Honourable Attorney-General of the Federation to designate the commission as additional focal institution to the AU in accordance with the AU Convention on Preventing and Combatting Corruption. Furthermore, as the foremost corruption prevention institution in the country with clear statutory powers for prevention, I also requested that in accordance with UN Convention Against Corruption, the commission should be designated as focal agency for prevention. Both requests were granted by the Honourable Attorney General and the commission is today designated country focal points to the AU and the UN.

Meanwhile, the Commission had prior to my assumption of office initiated moves to be accredited as the African regional partner to the International Anti-Corruption Academy (IACA) located in Vienna for capacity building in Africa. In December 2018 the Commission in solidarity with President Buhari's role as AU-Anti-Corruption Champion successfully hosted a capacity building exercise on corruption risk assessment for officials of some African anti-corruption agencies. This activity complemented its desire of being

the focal point for IACA therefore the desire is being vigorously pursued with the exchange of MOU and on-going consultations between the institutions.

The Commission got a further boost within the international community when an initiative that I commenced at PACAC for the adoption of a Common African Position on Asset Recovery (CAPAR) gained traction with the AU which pushed it through and ICPC was the agency invited to the drafting consultations and the eventual debate and subsequent adoption of same by AU Heads of Government in February 2020.

The adopted political document titled Common African Position on Asset Recovery (CAPAR) is a milestone guideline for African countries seeking to pursue the return of stolen or diverted public assets by public officers or through commercial transactions otherwise called illicit financial flows. The opportunity to contribute to these milestones positions the commission as lead agency to build capacity in this area and complements the drive of the Anti-Corruption Academy as Africa regional leader in anti-corruption capacity building. The icing on the cake is my recent appointment as member of the High-Level Panel on International Financial Accountability, Transparency and Integrity for achieving the 2030 Agenda an initiative of the President of the UN General Assembly (PGA) and the President of the Economic and Social Council of the UN (ECOSOC)[27].

Improving funding

Prior to 2019 the Commission operated on a shoe-string budget that incapacitated functionality and operational effectiveness. Records showed that full payment of staff salary was the only thing guaranteed in any fiscal year. Operational funds could be released up to two thirds of appropriations but hardly in full and in an unpredictable manner thus affecting effective planning. Indeed, I was informed that from September in a fiscal year new projects or investigations or prosecutions could hardly commence as there usually would be no funds to back such. Capital releases suffered the same fate as operational funds and international travels for staff was prohibited except funded or sponsored by a third party.

This dismal situation was early revealed to me shortly upon announcement of my appointment in 2017. I encouraged my

predecessor in office to immediately initiate requests to government for intervention funds to improve ICT infrastructure, procurement of operational vehicles, upgrade of headquarters building and lifting of ban on international travel for staff to enable much needed foreign capacity building amongst few other requests. The request for lifting ban on international travel was approved while the intervention funding was approved in principle subject to other parameters.

Upon assumption of office in 2019, and in order to reverse or at least ameliorate the negative effect of underfunding of an anticorruption agency that ought to be proactively assisting government fight corruption but had been incapacitated in this function, I pushed not for increase in the commission's budget but for regular release of appropriated funds, the 2017 intervention fund and prioritization of the commission's monthly operational fund in aid of government's economy. My argument was simple, fund diversion is one of the biggest headaches of government and capital being very timid takes flight at the slightest inclination of investigation. However, financial incapacitation hindered the commission from proactively following suspected stolen money. By the time operational allocation is released the investigation is more complicated and opportunity of any asset recovery lost and very forlorn. In effect, the prevention component of the commission's mandate was severely hindered as it only often cried over spilt milk.

It is to the credit of the government that it approved our request for regular release of appropriated operational funds, intervention for operational vehicles and some ICT upgrade and released the modest capital allocation in full for the fiscal year 2019. This had not happened in 10 to 15 years and the Commission was most grateful and reflected this gratitude in its 2019 performance and escalation of prevention measures to ensure value for use of public funds. The funding situation was also ameliorated by donor funds most notably the direct grant from MacArthur Foundation and indirect support to CSO partners by DfID. To underscore its confidence in the Commission, government increased 2020 operational funds by N500m. Mr President also approved N500m intervention fund for the commission to purchase operational vehicles.

Capacity Building

The effectiveness of any organisation is not only determined by quality of leadership but also the quality of its workforce. Indeed,

capacity building is a central focus of the public service reform agenda [28] . For anti-corruption agencies, this cannot be over emphasized because criminals always seem to be ahead of law enforcement. The Commission devoted a lot of resources to building capacity in the first year of the current board including creating pools of forensic experts as mentioned above. It also afforded 46 members of staff opportunity for international capacity building thus rightly prioritizing its staff above board members in exposure.

The practice of leaving out staff from state offices from benefiting from capacity building and the commission's main activities was reversed. Every major training and activity was to be national in orientation, planning and delivery. This is the value of having offices across the country. I was determined to remove the impression or implication that a posting to a state office is punishment rather than equal opportunity to perform as those in the headquarters. The investment in capacity building for staff prioritized critical foreign capacity building for staff that never had opportunity in the past but were recommended as promising and talented.

These efforts yielded some results as a number of hitherto comatose departments, individuals, management staff and state offices rose to the occasion. It is to the credit of staff that its positive response resulted in the modest achievements of the Commission in 2019.

Coming Out of the Dark: The National Summit on Diminishing Corruption

The Summit on Diminishing Corruption was held in November 2019 in collaboration with the office of the Secretary to the Government of the Federation. The Summit was declared open by Mr President. It was convened to alert the country that a sleeping giant was awake and ready to contribute its quota to the anti-corruption effort. To underscore this reality, the summit revealed the commission's activities and achievements in the nine months of the 4th Board. It released three reports namely findings from the pilot investigations on constituency projects tracking, outcome of the system study review of the personnel and capital budgets of 201 MDAs, analysis of the Ethics Compliance Scorecard administered on MDAs with a rating of vulnerability risks and integrity deficits in MDAs.

The Summit was also used to celebrate Mrs Josephine Ugwu, a civil servant who had been consistently honest in returning large sums of

money that she found in the course of her duties as cleaner at the Murtala Mohammed International airport despite a meagre salary of N12,000 and ACG Bashir Abubakar (NCS) a customs officer who refused a bribe of almost half a million dollars to confiscate a container load of hard drugs illegally shipped into Nigeria. Mr President presented the awards to the recipients and commended them for their honest and integrity. He also commended the commission for its initiative especially for homeless Mrs Josephine Ugwu who was given a modest bungalow purchased with contributions from Bank of Industry, NNPC and the Commission.

Needless to say, the feedback was that the summit was a huge success and its objectives were fully accomplished including its message to the public service that ICPC would intensify its prevention mandate and take action against abuse of office, infractions related to application of budget and more importantly vigorously track the use of public funds for projects irrespective of who sponsored or implemented the projects.

Awakening the Giant

The Commission's niche as the first anti-corruption agency in Nigeria is in its wide and foresighted statutory powers of enforcement viz. to investigate, prosecute, seize and forfeit assets by civil non-conviction and criminal conviction based methods; prevention powers by systems reviews and corruption risk assessments; and engagement with the society by education and public enlightenment activities.

To realize the full impact of this statutory mandate, bring out the latent capacity inherent in staff, reclaim and sustain government and public trust, redirect the trajectory of the staff and generally reclaim the Commission's original pride of place required clear policy direction, constant communication of vision and policy choices, shared leadership responsibility between Board and management, leadership by example by the Chairman, board and management, fair and equitable distribution of resources, motivation and reward for hard work and punishment for indolence, capacity building and effective supervision etc. It would have been futile to throw more money at incompetence and expect result.

To achieve the above and more, early Board meetings considered and approved draft of the 2019 – 2023 Strategic Plan of the Commission as a road map with key performance indicators of what the

Commission planned to do. The KPIs offered a road map but not slavish adherence impervious to review. Thus, as exigency demanded the indicators are subject to review towards improving the Commission's performance and fulfilment of its mandate. The Board introduced weekly Board/Management meetings to communicate policy and track implementation. Formal and informal board meetings were also scheduled to be monthly or as frequently as occasion demanded.

Conclusion

Twenty years in the life of an institution especially a law enforcement agency is a short time. But it is opportunity for reflection and it is a privilege to be part of the history of the ICPC. There is yet much to do and a long way to travel in fulfilling the objectives for which the commission was established which is to diminish corruption to its barest minimum and send the message that crime does not pay.

It is a good and fortuitous time to be involved in the commendable though precarious pursuit of fighting corruption because the government of the day prioritizes the fight against corruption. This provides much needed political will without which the efforts of anti-corruption agencies become more onerous and difficult. It also offers some psychological and emotional respite that all is not fruitless. Although surrounded by latent animosity of those whose illicit livelihood is truncated by the fight against corruption especially politically exposed persons many of whom are directly or indirectly within and on the fringes of political power, it is gratifying that numbers one and two citizens of Nigeria, namely the President and the Vice-President remain unequivocally committed to the fight against corruption because as Mr President has consistently cautioned, if Nigeria does not kill corruption, corruption will kill Nigeria. The ICPC remains committed to ensure that corruption does not retain the upper hand.

Endnotes

[1] With the exception of Tanzania which had an anti-corruption unit as far back as 1971, most countries in Africa joined the anti-corruption train post UNCAC

[2] UNCAC was adopted by the UN General Assembly Resolution 58/4 of 31st October 2003. It entered into force 14th December 2005. As at February 2020 187 state parties have signed the Convention.

[3] For example, development partners like the World Bank and OECD included anti-corruption measures in conditions for assistance to developing countries while they also set up anti-corruption units to engage the subject.
[4] In Nigeria for example the military coup of 1966 was said by the coupists to be largely driven by the need to fight corruption. See http://www.vanguardngr.com/2010/09/radio-broadcast-by-major-chukwuma-kaduna-nzeogwu-%E2%80%93-announcing-nigeria%E2%80%99s-first-military-coup-on-radio-nigeria-kaduna-on-january-15-1966/#sthash.h9hsqUNC.dpuf
[5] Articles 15-42
[6] Articles 15, 16 and 21
[7] Article 17 and 22
[8] Article 18
[9] Article 19
[10] Article 20
[11] Article 23
[12] Article 24
[13] Article 25
[14] Act. No. 5 of Year 2000
[15] The North East geo-political zone had a serving Board member at the time of the appointment of members of the 4th Board. That member has since completed his tenure and as at the time of this write up, the zone has no representation.
[16] While serving as Executive Secretary of PACAC and long before I was ever appointed as Chairman of ICPC, I received on the 17th of September 2016 a mail which is largely redacted but to this effect – "The ICPC of our dream and that of the initiator former President Olusegun Obasanjo and members of the National Assembly that gave it the breath of life through the enabling law is being killed by incompetence and ineptitude … It is truly the wish of Nigerians that it should not be left to die … The Commissions spends all its allocation in chasing around low life people engaged in low level corruption which makes it ridiculous anytime ICPC matters are mentioned in courts… Thanks for your envisaged quick and prompt intervention to save the Commission and give a better bite to the Anti Corruption Crusade." The mail was discussed at the Committee level in the context of reforms to be recommended to government and the matter ended there until I was appointed to lead the Commission.
[17] The questionnaire was administered without indication of source or reference to the Chairman in waiting.

[18] See section 5(1) of the enabling Act on Powers and Immunities of Officers of the Commission

[19] National Security Agencies Act Cap N74 Laws of the Federation 2004 passed as Decree No.19 of 1986. Section 1 of the Act created the Defence Intelligence Agency; the National Intelligence Agency and the State Security Services.

[20]https://icpc.gov.ng/petition-2/

[21] Emphasis mine

[22] Till date, the enforcement capacity of the commission is supported by officers of the Nigeria Police and the Department of State Services because the Commission staff do not carry arms.

[23] Prevention measures found in Chapter 2 of the Convention include establishment of independent anti-corruption body or bodies – Article 6 (mandatory); Enhance transparency, efficiency and the use of objective criteria in the recruitment, hiring, retention, promotion and retirement of public officials – Article 7.1 (non-mandatory); Enhance transparency in the funding of electoral campaigns and political parties – Article 7.3 (non-mandatory); Apply codes of conduct (and of ethics) to the performance of public functions – Article 8.2 (non-mandatory); Establish measures and systems aimed at facilitating the reporting of corruption by public officials to appropriate authorities – Article 8.4 (non-mandatory); Promote the establishment of asset declaration systems for public officials regarding their private interests – Article 8.5 (non-mandatory); Establish appropriate public procurement as well as public finance management systems based on transparency, competition, and objective criteria – Article 9 (mandatory); Enhance transparency in the public administration (mandatory), including by adopting procedures to facilitate public access to information and to competent decision-making authorities (non-mandatory) – Article 10; Strengthen integrity among members of the judiciary and the prosecution service – Article 11 (mandatory); Enhance ethics, integrity, and transparency in the private sector through, inter alia, promoting transparency among private entities, post-employment restrictions on public officials, the adoption of accounting and auditing standards as well as the establishment of penalties at civil, administrative and criminal levels – Article 12 (mandatory); Promote active participation of civil society and non-governmental organizations in the prevention of and fight against corruption (mandatory), including by measures such as enhancing the transparency of and promoting the contribution of the public to decision-making processes, ensuring effective public access to

information and promoting and protecting the freedom to seek, receive and publish information concerning corruption – Article 13; Establish regulatory and supervisory regimes to deter and detect money-laundering – Article 14 (mandatory). See https://www.u4.no/publications/uncac-in-a-nutshell-2019.

[24] Judges 17:6; 21;25

[25] See section 3(14) of the Act.

[26] The 22-member group comprises FIRS, CBN, Customs, NFIU, EFCC, NDLEA, NEITI, CAC, NAPTIP, CCB, FMoJ, SEC and PACAC. It is chaired by the Special Adviser to the President on Economic Matters.

[27] https://www.factipanel.org/

[28] See FGN Policy Programs and Projects 2019-2023

APPENDIX 1

PAST CHAIRMEN, SECRETARIES AND MEMBERS OF COMMISSION (BOARD) OF ICPC, 2002 - 2020

PIONEER COMMISSION, 2000 - 2004

Hon. Justice Mustapha Akanbi, CON (late)		– Chairman
Mrs. Hairat Balogun	2000	– Member
Fr. Moses Adasu	2001 – 2002	– Member
Hon. Salome Kande Jankada	2000 – 2003	– Member
Alh. Shehu M.D. Haliru	2000 – 2004	– Member
Mr. A.O. Fadaka, OON, CON	2000 – 2004	– Member
Professor (Mrs.) Uche Modum	2000 – 2004	– Member
Alh. Zubairu Mohammed	2000 – 2004	– Member
Alh. Muhammed M. Maishanu	2000 – 2004	– Member
Mrs. Adeline Uwanaka	2000 – 2004	– Member
Professor Sayeed H. Malik	2000 – 2004	– Member
Dr. Asikpo Ekpo Ibok	2000 – 2004	– Member
Mr. Gabriel T. Aduda	2000 – 2004	– Member
Senator Adejo A. Ogiri	2000 – 2004	– Member
Dr. Uriah A. Angulu	2000 – 2004	– Member
Alh. Abdulrasheed K. Saba	2000 – 2004	– Member

CHAIRMAN AND MEMBERS OF THE COMMISSION, 2005 – 2010

Hon. Justice Emmanuel Olayinka Ayoola, CON		– Chairman
Senator Adejo A. Ogiri	2005 – 2007	– Member
Dr. Uriah A. Angulu	2005 – 2007	– Member
Alh. Abdulrasheed K. Saba	2005 – 2007	– Member
Sir (Chief) Simeon Oguntimehin	2007 – 2011	– Member
AIG (Dr.) Rose Aloho Mbua-Wushishi	2007 – 2011	– Member
Dame Julie Onum-Nwariaku	2007 – 2010	– Member
Alh. Abdullahi Bako	2009 – 2010	– Member

CHAIRMAN AND MEMBERS OF THE COMMISSION, 2011 – 2016

Mr. Ekpo Nta		– Chairman
Dame Julie Onum-Nwariaku	2011 – 2015	– Member
Alh. Abdullahi Bako	2011 – 2018	– Member
Prof. Olu Aina, OFR	2011 – 2015	– Member
Alh. Isa Ozi Salami, OFR	2011 – 2015	– Member
Prince Abdullahi Ado Bayero	2011 – 2015	– Member

CHAIRMAN AND MEMBERS OF THE COMMISSION, 2019 - DATE

Professor Bolaji Owasanoye	– Chairman
Justice (Rtd.) Adamu Bello	– Member
Mrs. Olubukola Balogun	– Member
CPL (Rtd.) Titus M. Okolo	– Member
Barrister Samuel Obiora Igwedibia	– Member
Dr. Grace N. Chinda	– Member
Alh. Abdullahi Maikano Saidu	– Member
Alh. Dauda Yahaya Umar	– Member
Hajia Hannatu Mohammed	– Member

ACTING CHAIRMEN

Dr. Uriah A. Angulu	2010 – 2011
AIG (Dr.) Rose Aloho Mbua-Wushishi	2011
Alh. Abdullahi Bako	2017 – 2018
Professor Musa Usman Abubakar	2018 – February 2019

SECRETARIES TO THE COMMISSION

Mr. Peter Odili	2000 – 2002
Dr. Bello Tukur Ingawa, mni	2003 – 2009
Alh. Haliru Aliyu Tambawal, OON	2009 – 2010
Dr. Elvis Ebipamo Oglafa	2010 – 2017
Professor Musa Usman Abubakar	2017 – Date

ABOUT THE EDITORS AND CONTRIBUTORS

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INDEPENDENT CORRUPT PRACTICES AND
OTHER RELATED OFFENCES COMMISSION

PC and the War against Corruption in Nigeria: Reflections for a new Vision covers the rk of the ICPC during the first twenty years of the Commission's existence. itten from the perspective of practitioners, the chapters discuss the proaches of the ICPC to the fulfilment of its three-fold anti-corruption ndate. The authors are drawn mostly from the ranks of practitioners and ers who have worked with or are associated with the Commission's work. er getting the reader acquainted with the establishment and early years of the mmission and the leadership profile, the following chapters introduce the der to various anti-corruption interventions of the ICPC including the tools ts disposal and how these have been utilised. The final part discusses the lving future of the Commission as envisioned by its present Board.

impossible to capture everything the ICPC has done during the past 20 years this book gives the reader a good idea of how the commission functions. It kes available both to anti-corruption practitioners and other stakeholders ch valuable information that helps to preserve the institutional memory of commission in a publicly accessible format. The book is a major contribution the body of knowledge on anti-corruption practice in the country. It is a ource for scholars and practitioners seeking to appreciate the intellectual nensions to the war against corruption in the country and even beyond.

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