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## Uncovering the Challenges of Anti-Corruption Laws and the Position of Public Servant in Nigeria: A Panoramic Review of the Legal Regime

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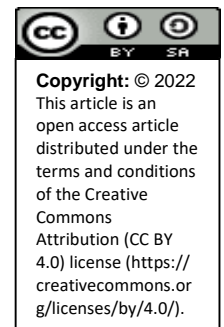
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### Abstract

*Remarkably, corruption is increasingly gaining traction especially in developing countries of the world including Nigeria. Driven primarily by efforts to combat corruption which constitutes threat to national security, good governance and human rights abuses, there is now a compelling need to re-examine the legal and regulatory frameworks in existence. The objective of this paper is clearly to identify the major challenges of anti-corruption laws in Nigeria, and as well make recommendations on how it could be*

*addressed. Contextually, there are a number of anti-corruption laws in Nigeria, such as the Economic and Financial Crimes Commission, Independent corrupt practice commission and other anti-corruption agencies addressing these intractable problems, yet corruption continue to characterize most states in Nigeria. The Paper revealed that this problematic scenario is relatively attributed to greed on the part of public office holders and or weak regulatory constraint, impeding significant implementation of the existing laws and policies. However, despite these developments, this paper seeks to address some of the questions that arise when uncovering the challenges of anti-corruption laws in Nigeria. The first question is: Are these laws adequate to address the challenges? Second, the permissible circumstances in which public servants may resort to looting of public treasury instead of being patriotic. With respect to the above, and in considering appropriate measures for dealing with corruption and overcoming such challenges, this paper suggests a re-examination of the existing legal and regulatory frameworks. The paper adopts a diagnostic approach based on a review of literature and evidence-based analysis of corrupt practices and anti-corruption laws in Nigeria. The paper concludes that the essence of re-examining the anti-corruption laws in Nigeria is to ascertain the level of transparency of the anti-graft laws applicable to the act in question and its adequacy in curbing corruption in public service in Nigeria.*

**Keywords:** Anti-corruption, Uncovering, Public Servant, Legal, Regulatory, Nigeria.

## 1.0. Introduction

This paper examines anti-corruption laws and the position of public servant within the purview of the Nigerian Public Service Rules. Basically, corruption as a complex phenomenon has clearly undermined the chances of the State in making available essential public services to citizens of the country. The paper observed that unabated state of corruption in Nigeria stems from lack of enforcement of extant anti-corruption laws. For instance, the Advance Fee Fraud and Other Related Offences Act.<sup>1</sup> However, the challenges above have informed the need to re-examine the existing anti-corruption laws vis-a-vis the position of public servant in Nigeria. It is with a view of clarifying a vital characteristic of a system that the paper noted that whatever affects one part of a system can potentially affect the whole system.<sup>2</sup> Basically, a question that is sometimes posed relates to the performance of the anti-corruption agencies meant to be the watch-dog, but have failed woefully in their service delivery which led to Nigeria being tagged as “the most corrupt nation”, among the fifty-four countries listed in the study.<sup>3</sup> Furthermore, till date, corruption in Nigeria has remained unabated and most challenging issue that has arisen in the legal and other debates on the continued existence of the so-called anti-corruption agencies.

It is important to stress in this context that for an effective public service performance to be realizable as well as meeting with ever-changing public servant wants and needs, government through its anti-corruption agencies should search for a more better mechanisms that will improve the extent to which public office holders can be

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<sup>1</sup> See The Advanced Fee Fraud and Other Related Offences Act No. 13, 1995

<sup>2</sup> P.P. Schodebek, Management Systems, New York, Wiley, 1968

<sup>3</sup> See The Transparency International Corrupt Index Study, 1996

held accountable and effective in their service delivery.<sup>4</sup> Therefore, the inability of the Nigeria public service to perform optimally does not mean that there are no legal or regulatory constraints. It is submitted that the behavior of public servant which deviates from accepted norms in order to serve personal ends is corruption.<sup>5</sup> From a policy perspective, the misuse of authority as a result of consideration of personal gains, embezzlement of fund, stealing and misappropriation of public funds all amounts to corruption.<sup>6</sup> In a similar vein, from a legal perspective, any person who corruptly gives, confers or procures any property or benefit of any kind on or for a public or person or promises to offer, procure or attempt to procure any property or benefit of any kind to on or for a public officer is guilty of an offence of official corruption and shall on conviction be liable to seven (7) years imprisonment.<sup>7</sup> It could be argued that essentially, the absence of accountability culture and strong anti-corruption agencies to enforce laws and rules has significant influence on the performance of public sector.<sup>8</sup> In this sense, it is worth mentioning that while all these anti-corruption agencies exist, corruption of all sorts still persist in Nigeria.

## **2.0. Overview of Concept**

### **2.1. The Context of Corruption**

Generally speaking, the concept "corruption" implies a number of things to a significant number of persons and its understanding is dependent on the impression of the writers. For analytical reasons and hopefully to provoke debate, this paper defines corruption as a dishonest or wicked behavior of a person with authority or power. In this context, a person is said to be corrupt if he or she is willing to act dishonestly or illegally in return for a monetary or personal gain.<sup>9</sup> Similarly, from a legal perspective, corruption is defined as depravity, perversion or taint or impairment of integrity, virtue or moral principle, especially the impairment of a public official's duties by bribery, or the act of doing something with an intent to give some advantage inconsistent with official duty and the rights of others, fiduciary's or official use of a station or office to procure some benefit either personally or for someone else, contrary to the rights of others.<sup>10</sup> Also, corruption from the perspective of Civil Law Convention<sup>11</sup> is said to amount to the request, offering, giving or accepting directly or indirectly, a bribe or any other undue advantage or prospect thereof, which overtly distorts the proper performance of any duty or behavior required of the recipient of the bribe.

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<sup>4</sup> E.O.C. Ijeoma and A.M. Sambumbu, "A Framework for Improving Public Accountability in South Africa" *Journal of Public Administration* (2013) 48(2), 282-298

<sup>5</sup> *ibid*

<sup>6</sup> See Section 1 of the Advanced Fee Fraud and Other Related Offences Act, 1995.

<sup>7</sup> S.9 Independent Corrupt Practices and Other Related Offences Commission Act (hereinafter, ICPC), 2000.

<sup>8</sup> E. Osakwe, "Democracy and the Crisis of Accountability in the Public Service in Nigeria", *Journal of Arts and Social Sciences*, (2011), 26:1-5.

<sup>9</sup> See Oxford Advanced Learner's Dictionary 9<sup>th</sup> ed. P. 344

<sup>10</sup> See Black's Law Dictionary 7<sup>th</sup> ed. P.348

<sup>11</sup> See Article 2 of the Civil Law Convention 1999< <https://www.refworld.org/docid/47fdffblfd.html> accessed 31 December, 2021.

Furthermore, a more specific emphasis can be found in Criminal Law Convention on Corruption.<sup>12</sup> One common feature of this Convention is that corruption threatens the rule of law, democracy and human rights, undermines good governance, fairness and social justice, distorts competition, hinders economic development and endangers the stability of democratic institutions and the moral foundations of the society. Therefore, corruption in the context of this paper means dishonest use or abuse of an official power or authority to illegally procure monetary, material or other benefits personally, or to unlawfully incur and confer on someone else any monetary, material or other benefits.

However, from the perspective of the interplay between corruption and the anti-corruption laws, a key issue has been there are a lot factors responsible for corrupt practices in Nigeria which stems from the cultural and moral values of the contemporary Nigerian society. Also, the notion that Nigerian society seems to place very high regard for people who have made money through whatever means without proper investigation on the source of wealth increases corrupt practices in Nigeria. Moreso, the concept "corruption" is otherwise defined as an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism, and other threats to human security to flourish.<sup>13</sup>

### **2.1.1. The Phenomenon of Anti- Corruption Law**

The thematic focus of the anti-corruption law is wide and all-encompassing. The anti-corruption law in a fairly elastic or amorphous sense means the rules established by the legislature against the dishonest use or wrongful use of an official position, power or authority to procure material, monetary or other benefit personally or for the benefit, use or enjoyment of someone else. It seems, however, that anti-corruption bureau is primarily responsible for the detection, investigation and prosecution of cases of corruption among public servant.<sup>14</sup> It must be emphasized that a number of indicators informed the emergence of different anti-corruption laws in Nigeria. Notably, the prevalence of the 419 advanced fee fraud<sup>15</sup> and money laundering crimes that become a constant source of national embarrassment to the government of Nigeria as well as the magnitude and gravity of these crimes also led to the establishment of the Independent Corrupt Practices and Other Related Offences Commission Act,<sup>16</sup> Economic and Financial Crimes Commission Act,<sup>17</sup> Money

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<sup>12</sup> See Council of Europe, Criminal Law Convention on Corruption, 27<sup>th</sup> January, 1999.<<https://www.refworld.org/docid/47fdfbled.html>> accessed 31 December, 2021

<sup>13</sup> See The United Nations Convention Against Corruption adopted by the United Nations General Assembly Resolution 58/4 of 31 October,2003 and entered into force on 14 December, 2005).

<sup>14</sup> See National Bureau of Statistics, Corruption in Nigeria, Bribery, Public Experience and Response. United Nations Office on Drugs and Crimes, 2017.

<sup>15</sup> The Term "419" refers to the section of the Nigerian Criminal Code that deals with cases of fraud, its charges and penalties for offenders.

<sup>16</sup> Independent Corrupt Practices and Other Related Offences Act 2000-cap c31 L.F.N, 2000

<sup>17</sup> Economic and Financial Crimes Commission (Establishment)Act, 2004.

Laundering (prohibition) (Amendment) Act,<sup>18</sup> The Nigerian Extractive Industries Transparency Initiative Act,<sup>19</sup> the Public Procurement Act of Nigeria,<sup>20</sup> Code of Conduct Act,<sup>21</sup> Fiscal Responsibilities Act,<sup>22</sup> Penal Code Laws of Federation of Nigeria,<sup>23</sup> Criminal Code Laws of the Federation of Nigeria,<sup>24</sup> and Miscellaneous Offences Act.<sup>25</sup> In light of the above, the argument has been that all these anti-corruption laws appears to lack complete independence. This basic position is that the Independent Corrupt Practices and Other Related Offences (ICPC) is found to be slow in action and cannot in strict sense of it, prosecute an offender, while on the other Economic and Financial Crimes Commission (EFCC) seems more effective and can prosecute, but rarely achieves the primary objective of convictions. Also, there are many legal issues surrounding the successful prosecution of corrupt individuals in Nigeria ranging from the provisions of Section 308 of the Constitution of the Federal Republic of Nigeria<sup>26</sup> that provides immunities from prosecution of certain elected public officials. Obviously, this development can be seen to undermine the existence of these Anti-corruption laws. It should be noted that the primary reason for the continued retention of the immunity clauses in Nigeria and in most Countries is the need to prevent unnecessary distraction of those in executive authority from the primary duty of governance. However, it is submitted that this immunity clauses has proven in many jurisdictions especially in Nigeria to be an ideal cover for the involvement of State officials in corrupt practices which has led to the questioning on whether it is still relevant in domestic legal systems. In this context, it has been argued that the immunity clauses as provided in the 1999 Constitution of the Federal Republic of Nigeria does not rest on any ideals of equality, fairness and Justice.

### 2.1.2. Public Servant

From a scholarly perspective, and for a proper and easy understanding of this important phrase or term, it is generally acknowledged that the two words which make up the phrase disjunctively or separately could be defined as follows: “Public” means relating or belonging to an entire community, state or nation or an opening available for all to use, share or enjoy.<sup>27</sup> While on the other hand, the word, “Servant” means:

A Person who, by contract or operation of law, is for a limited period, subject to the authority or control of another person in a particular trade, business or occupation. The word servant in our legal nomenclature, has a broad significance and embraces all persons of whatever rank or position who are

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<sup>18</sup> Money Laundering (Prohibition) (Amendment) Act No.11,2011.

<sup>19</sup> Nigerian Extractive Industries Transparency Initiatives Act cap N159 LFN, 2004.

<sup>20</sup> The Public Procurement Act of Nigeria No. 14, 2007.

<sup>21</sup> Code of Conduct Act cap c.15 LFN 2004.

<sup>22</sup> Fiscal Responsibilities Act 2010 Cap 40 LFN, 2014.

<sup>23</sup> Penal Code Laws of the Federation of Nigeria, 2004. Cap P3 LFN, 2004

<sup>24</sup> Criminal Code Law of Federation of Nigeria 2004. Cap 28 LFN, 2004

<sup>25</sup> Miscellaneous Offences Act Cap M.17 LFN, 2007

<sup>26</sup> See S.308 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

<sup>27</sup> See Black's Law Dictionary, 7<sup>th</sup> ed, p.1242.

under employment, and subject to the direction or control of another in any department. Indeed, it may in most cases, be said to be synonymous with employee.<sup>28</sup>

A similar interpretation of a public servant in the Nigerian context might tend the notion of “Public Servant” as a person of any rank or position employed in the services of a local government, a state or the federal government or any organ of government or corporation and whose duties, responsibilities, functions and services are available for all persons to use, share, enjoy or benefit. Generally speaking, “Public Servant” may mean a “public officer” which is legally interpreted to mean:

A person employed or engaged in any capacity in the public service of the federation, state or local government, public corporations or private company wholly or jointly floated by any government or its agency including the subsidiary of any such company whether located within or outside Nigeria and includes judicial officers serving in magistrate, area or customary court or Tribunal.<sup>29</sup>

It is observed however that "public servant" otherwise called "public official" is any person holding a legislative, executive, administrative or judicial office of a state party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority or any other person who performs a public function or provide a public service.<sup>30</sup>

### **2.1.3. Overview of the Anti-Corruption Laws and the Public Servant**

It bears emphasizing that considering the interplay between anti-corruption laws and public servant, the complexity is exacerbated with regard to government unnecessary interference with the operations of the anti-corruption agencies. It is interesting to note that a public office is a public trust and as such every public servant is accordingly a public trustee who should perform his duties and functions for the benefit, purpose, use and enjoyment of the beneficiary public without being propelled by material, monetary or other benefits outside his official remuneration and other entitlements. In this sense, it is worth highlighting that under the criminal content of the principle of the anti-corruption laws at common law as stated by Lord Mansfield, that "If a man accepts an office of trust and confidence, concerning the public especially when it is attended with profit, he is answerable to the king for the execution of the office".<sup>31</sup>

Against this background, the question has always been, are these laws adequate to address the challenges?, and the permissible circumstances in which public servants may resort to looting of public treasury instead of being Patriot. Thus, the Nigerian

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<sup>28</sup> H.G. Wood, A Treatise on the Law of Masters and Servant 2<sup>nd</sup> ed. 1886.

<sup>29</sup> Section 2 of the Independent Corrupt Practices and Other Related Offences Act, 2000.

<sup>30</sup> See Article 2 of the United Nations Convention Against Corruption adopted by the United Nations General Assembly Resolution 58/4 of 31 October 2003 and entered into force on 14 December, 2005).

<sup>31</sup> R.v. Bembridge (1783) 22 How St. Tr. 155.

Criminal Code has been modified and amended in some respects over the years and retained now as the schedule to the Criminal Code Act Chapter 77 of the Laws of the Federation of Nigeria 1990.<sup>32</sup> That said, Section 98 and 111 of Chapter 12 of the Criminal Code deals with corruption and abuse of office.<sup>33</sup> In the same light, S. 98 of the Criminal Code provides that:

1. Any public official (as defined in Section 98 (d) who corruptly asks for, receives or obtains any property or benefit of any kind for himself or any other person, or corruptly agrees or attempts to receive or obtain any property or benefit of any kind for himself or any other person, on account of
  - i. anything already done or omitted, or any favour or disfavor already shown to any person, by himself in the discharge of his official duties or in relation to any matter connected with the functions, affairs or business of a government department, public body or other organizations or institutions in which he is serving as a public official, or
  - ii. anything to be afterward done or omitted, or any favor or disfavor to be afterwards shown to any person by himself in the discharge of his official duties or in relation to any such matter as aforesaid is guilty of felony of official corruption and is liable to imprisonment for seven 7 years.
2. If any proceedings for any offence under this section is proved that any property or benefit of any kind or any promise thereof, was received by a public official or by some other person at the instance of a public official from a person holding, or seeking to obtain a contract, license or permit from a government department, public body or other organization or institution in which that public official is serving as such or concerned or likely to be concerned in any proceedings or business transacted, pending or likely to be transacted before or by that public official or a government, public body or other organization or institution in which that public official is serving as such, or by or from any person acting on behalf of or related to such a person, the property, benefit or promise shall unless the contrary is proved, be deemed to have been received corruptly on account of such a past or future act, omission, favour or disfavor as is mentioned in section 1(i).

However, in the case of *R.V. Smith*,<sup>34</sup> the English Court of Criminal Appeal acknowledged the conviction of accused person who offered bribe to the mayor of a town so as to expose him as being corrupt if he accepted the bribe. The Court held that there was no need for the accused to intend the corrupt action to be concluded or consummated, or for the accused to intend pecuniary or monetary benefit for him. The reason is that the law in that case was meant to prevent public officers from being tempted. In a similar vein in Nigeria, the West African Court of Appeal held in

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<sup>32</sup> See Criminal Code Law of the Federation of Nigeria, 2004.

<sup>33</sup> See Sections 98 and 111 of Chapter 12 of the Criminal Code Law of Nigeria, 2004. Cap c 28 LFN 1990.

<sup>34</sup> *R.v. Smith* (1960) 44 CR App. R. 55.

the case of *Nweke V. R.*,<sup>35</sup> that the liability of a public officer who had asked for a bribe but subsequently changed his mind and decided to do his duty would not be affected. Also, in an English case, *R.V. Carr*,<sup>36</sup> the court held that “If a person does what is called a double-cross and does not do what he was bribed to, that is no reason why he should be acquitted of taking bribe”.

Indeed, the Court had gone further and argued that if a public officer takes a bribe and immediately exposes the giver, he may not be liable for such a conduct negates such a corrupt intent.<sup>37</sup> However, Section 112 of the Nigerian Criminal Code Law<sup>38</sup> has also acknowledged that where a public officer who acts or received or gives any benefit in respect of any appointment or contemplated appointment to or employment in the public service is guilty of any offence and liable to imprisonment for three years if found guilty. By way of extension, a public officer can be convicted of this offence even if he has no actual power to employ anyone, provided that such a public officer has influence in the selection of candidates.<sup>39</sup> It is submitted that once the facts are established, the same legal criteria apply as with any other attribution of the conduct of the public officer. Thus, Section 404 of the Criminal Code creates the offence of extortion, among others by public servants<sup>40</sup> had escaped conviction for official corruption and other related offences because of legal technicalities or such a public servant being charged under a wrong section of the criminal code law.<sup>41</sup> Nonetheless, while it is true that under the code of conduct in Nigeria, certain people are termed, public officers,<sup>42</sup> and not entitle to any exemption as far as the code of conduct is concerned. The code of conduct for public officers is obviously against corruption by public officers. This is made clear by paragraph 6 of the Code of Conduct which provides that:

A public officer shall not ask for or accept property or benefits of any kind for himself or any other person on account of anything done or omitted to be done by him in the discharge of his duties.<sup>43</sup>

As the wording of Paragraph 6(2) of the code of conduct makes clear, there is a presumption of corruption if a public officer receives any benefits or gifts from any person, commercial or business enterprises who have contacts with the government or departments where the public officer is serving. Thus, the question is not so much whether the rules on conduct of the public officer apply to code of conduct, but rather how they apply, how they must be interpreted to make sense in this new realm. Despite these arguments in favour of expanding the scope of operation of the code of conduct, it is clear that offences created by the Code of Conduct for public officers are

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<sup>35</sup> *Nweke v. R.* (1956) 15 W.A.C.A. 29.

<sup>36</sup> *R.v. Carr* (1957) 1 W.L.R. 165, 40 C.R. App R. 188.

<sup>37</sup> See Okonkwo and Nash: *Criminal Law in Nigeria*, P.358.

<sup>38</sup> Section 112 of the Criminal Code Law of Nigeria, 2004. Cap C28 LFN 1990.

<sup>39</sup> *R.v. Jaja* (1940) 15 N.L.R.97.

<sup>40</sup> See Section 404 of the Criminal Code Law fo Nigeria, 2004. Cap C 28 LFN, 1990.

<sup>41</sup> *Digest of Supreme Court Cases* (1956-1984) vol. 10 pp.332-333.

<sup>42</sup> See Part 11 of the First Schedule to the Constitution of the Federal Republic of Nigeria 1999 (as amended).

<sup>43</sup> Code of Conduct Bureau and Tribunal Act(No.1 of 1989)LFN 1990.



tried by the Code of Conduct Tribunal established pursuant to paragraph 15 of the Code. Thus, where the Code of Conduct Tribunal finds a public officer guilty, the penalties shall include:

- (a) Vacation of office or seat in any legislative house as the case may be;
- (b) Disqualification from membership of a legislative house and from holding any public office for the period not exceeding ten years; and
- (c) Seizure and forfeiture to the state of any property acquired in abuse or corruption of officer.<sup>44</sup>

In light of the above, it must be borne in mind that the imposition by the Code of Conduct Tribunal of any or all of the aforementioned penalties does not preclude the prosecution or punishment for any offence in a Court of law where the public officer's conduct, amount to criminal offence. Also, prerogative mercy exercisable by the President and Governors does not apply to any punishment or penalty imposed on a public officer by the Code of Conduct Tribunal.<sup>45</sup>

Furthermore, given the magnitude and apparently uncontrollable nature of official corruption and related offences committed by public officers, the Federal Government of Nigeria in 2000 enacted the Corrupt Practices and Other Related Offences Act.<sup>46</sup> However, Section 6 of the Corrupt Practices and Other Related Offences Act,<sup>47</sup> provides for the general duties of the independent corrupt practices and other related offences as follows:

- (a) It shall be the duty of the commission 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 inappropriate case 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 parastatal on ways by which fraud or corruption may be eliminated or minimized by such officer, agency or parastatal
- (d) To advice 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

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<sup>44</sup> See Paragraph 18 (2) of the Code of Conduct for Public Officers.

<sup>45</sup> See Paragraph 18 (7) of the Code of Conduct for Public Officers.

<sup>46</sup> Independent Corrupt Practices and Other Related Offences Act , 2000 Cap C. 31 LFN 1990.

<sup>47</sup> Section 5(1) of the Independent Corrupt Practices and Other Related Offences Act, 2000 Cap C 31 LFN 1990.

(f) To enlist and foster public support in combating corruption.

It goes without saying that Section 5 (1) of the Independent Corrupt Practices and Other Related Offences Act,<sup>48</sup> confers on an officer of the commission while investigating or prosecuting a case of corruption all the powers and immunities of a police officer under the Police Act<sup>49</sup> and other statutes empowering and protecting law enforcement agents. More obviously, in order to meet the requirements of investigating or prosecuting cases of corruption against public officers, the main or principal offences created and under the corrupt practices and other related offences Act are accepting gratification, giving or accepting gratification through an agent, fraudulent receipt of property; making false statements or returns; bribery of a public officer' using office or position for gratification, failure to report bribery transactions and making false or misleading statements to the Independent Corrupt Practices and Other Related Offences Act.<sup>50</sup>

Interestingly, it is worth noting that under the independent corrupt practices and other related offences act 2000, a public officer has a duty to report to the nearest officer of the commission or a police officer all transactions in which gratification is offered, given or promised. In light of the above developments and notwithstanding the numerous offences created by and the far-reaching provisions of, the corrupt practices and other related offences Act, there has been very little success in the legal battle against public official's corruption in Nigeria. In this regard, It is however necessary to emphasize that the Economic and Financial Crimes Commission (EFCC)<sup>51</sup> was conceived as an independent anti-graft agency. Its enabling statute sets out its objects, functions, powers and jurisdiction for ease of administration and to deal with unforeseen regulatory issues which may from time to time arise in the administration of the organization, the National Assembly made provision for a section in the Economic and Financial Crimes Commission Act<sup>52</sup> empowering the Honourable Attorney General of the Federation of Nigeria<sup>53</sup> to "make rules or regulations with respect to the exercise of any duties, functions or powers of the commission under the Act" some of the provisions of the regulations include paragraph 10 which provides that:

Where the Economic and Financial Crimes Commission conducts investigation in respect of a case of complaint which is serious or complex, it shall forward to the Attorney General of the Federation the outcome of the investigation with its recommendations on whether there are sufficient grounds to initiate prosecution. Specifically, the regulation provides that for the purpose of these regulations, a case or complaint is serious or

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<sup>48</sup> The Nigerian Police Act Cap p.19 L.F.N. 2004.

<sup>49</sup> The Nigerian Police Act Cap p. 19 L.F.N. 2004.

<sup>50</sup> See Sections 8, 9, 12, 13, 15, 16, 18, 19, 23 and 25 of the Independent Corrupt Practices and Other Related Offences Act, 2000.

<sup>51</sup> See Economic and Financial Crimes Commission (Establishment) Act, 2004.

<sup>52</sup> See Section 43 of the Economic and Financial Crimes Commission (Establishment) Act 2004.

<sup>53</sup> See Section 150 of the Constitution of the Federal Republic of Nigeria (1999) (as amended).

complex if the case or complaint has a significant international dimension, involves money or assets of a value exceeding fifty million naira; requires specialized knowledge of financial commercial, fiscal or regulatory matters such as the operation of markets, banking systems, trusts or tax regimes, involves allegations of fraudulent activity against numerous victims, involves substantial and significant loss of funds by a ministry of department or a public body and involves an alleged misconduct which amounts to an act of economic sabotage.

Also, paragraph 18 of the Regulations provide that,

The Attorney General of the Federation of Nigeria may designate legal officers from his office to work in the Economic and Financial Crimes Commission for the purpose of facilitating the prosecution of the commission's cases.

While section 24 stipulates that:

The Chairman of the commission shall within thirty (3) days of the signing of receipt of any foreign aid or grant inform the Attorney General of the Federation of such grant with details of terms and conditions of the grant or aid.

From the foregoing, while we do not argue against the making of regulations by the executive arm of government which the Attorney General of the Federation represents or try to argue the relevance of the commission, this paper tends to argue that regulation being subsidiary legislation to the main statute is a legislative function reserved for the federal legislature. But it is the same legislature that has delegated its law making powers to the Attorney General of the Federation to promulgate the regulations. With the above, one cannot be surprised with the current state of the operations of the Economic and Financial Crimes Commission and its endemic problems.

#### **2.1.4. Impediments of the Ant-Corruption Laws in Nigeria**

Evidently, the challenges of the anti-corruption laws in Nigeria is really a complex one. However, there are practical and political reasons why this may be so. The challenge which the anti-corruption agencies has to grapple with is how to deal with unnecessary interference by government and amendment of the anti-corruption laws to be in line with international best practices in crime prosecution and investigation. It is an acknowledged fact globally that crime detection and pre-emption are best achieved by people with the most intimate knowledge of the relevant locality its norms, nuances and languages.

In the face of rising corruption by public servants in Nigeria, particularly embezzlement of public funds and abuse of public office by public servants, many, perhaps most Nigerians view it as a weakness of the Anti-corruption legal

frameworks. Also, in the midst of the glaring gap in law enforcement, it is however important to state that unnecessary government interference in the operation of the anti-corruption agencies has so far contributed to the ineffective nature of the anti-corruption laws. Here it may be worth stating that in light of the above development, attempts to stem corruption by both past and present governments in Nigeria have failed to achieve the desired results.<sup>54</sup> It would also incidentally mean that these anti-corruptions laws created to fight corruption are political manipulated and not totally independent. The question, then, is whether Nigerian political leaders are ready to fight corruption. Since in the views of this paper there is lack of adequate punishment for the offenders in the anti-corruption laws. Even if this were true, it is also true that government are unlikely to see any act of corruption as corruption from their most favoured public servant or are given minor punishment for a major offence of corruption.

In addition to this general sense, a similar argument is often made on the gap between the rich and the poor public servant, wherein the rich public servant believe that the anti-corruption laws are made for the poor. This notion has created an impression for a serious social problems and has continued to serve as a boast for the practice of corruption in Nigeria, as well as weakened the enforcement mechanisms of the anti-corruption laws.<sup>55</sup> Indeed, while these and other arguments on the gap between the rich and the poor in the prosecution of corruption offences in Nigeria are undoubtedly compelling and deserve serious consideration, it must be emphasized that these has informed the responsibility for failure by the anti-corruption agencies thereby create unequal opportunity for all in Nigeria when it comes for prosecution or investigation.

### **2.1.5. Proposal and Way Forward**

The law regulating any human activity is an enabling instrument. Enforcement authorities and regulators derive strength and jurisdiction from it. The strength and capacity of an enforcer depends on the legal authority given to him. While this perception may appear to be appealing, it is submitted that the extent to which the law is comprehensive and error-free also goes a long way to determine the success of its enforcement. By way of proposal, this paper suggests that:

- i. There should be harmonization and independence of the anti-graft laws. This body of rules aims at salvaging Nigeria, not only from financial offences but all forms of corrupt practices in the public sector. These Anti-Graft Laws was a democratic alternative to what the likes of Failed Bank Decree,<sup>56</sup> the money laundering law<sup>57</sup> and Advance Fee Fraud attempted to achieve, but with the added scope of dealing with general corruption. It is

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<sup>54</sup> Y. Ali, "The Challenges of Fighting Corruption in Nigeria Islamic Perspectives, being a lecture delivered at the Ogun State Judiciary 2016/2017 Muslim Legal Year Service 26 September, 2016.

<sup>55</sup> Victor Usifo, War Against Corruption in Nigeria, Success, Challenges and Prospects <http://www.intoguidenigeria.com/> accessed 2 January, 2022.

<sup>56</sup> See The Failed Bank Decree of 1996.

<sup>57</sup> See The Money Laundering Laws of 1995.

- however unfortunate that the enforcement of these laws has not matched the zeal with which it was enacted. The Litany of litigations and the recent amendments have brought both legal and political pressures on the law.
- ii. Re-structuring of the Criminal Justice and Security System. It is pertinent to mention that the criminal justice and security system in Nigeria should be restructured in such a manner that all the relevant anti-graft agencies with the exception of the state security service be subsumed into parent ministries. In this sense, the Economic and Financial Crimes Commission (EFCC) should become a special parastatal under the Nigerian police or ministry of justice with the responsibility to conduct all investigations of fraud after which the commission shall make its findings which shall contain its recommendations and advise to the office of the Attorney General of the Federation<sup>58</sup> as to whether the latter should commence criminal proceedings or not. This is also applicable to the Independent Corrupt Practices and Other Related Offences commission (ICPC).
  - iii. Appointment of Federal Prosecutors for the Thirty-six States of the Federation: The challenges above have emphasized the need to appoint federal prosecutors by the Attorney General of the Federation who exercises exclusive powers. In this context, the federal prosecutors for the thirty-six states shall be responsible for commencing and conducting criminal proceedings, with regards to corrupt practices in office or other related offences emanating from a particular state in the name of Federal Republic of Nigeria and on behalf of the Honourable Attorney General of the Federation.<sup>59</sup>
  - iv. Appointment of State or Local Prosecutors. In order to achieve a very effective and efficient enforcement of the anti-graft laws at the state or local government levels, the Attorney General of the State<sup>60</sup> should appoint local prosecutors who will be responsible for commencing and conducting investigation on corruption against any public servant at the state ministries or local government areas with regards to corrupt practices emanating from the state or local government areas in the name of the state and on behalf of the Honourable Attorney General of the State. It was with a view of making the anti-graft laws proactive that this suggestion has become necessary.
  - v. Amendments of all the Anti-Graft Laws. In the face of rising corrupt practices by public servants in Nigeria, there is incontrovertible evidence that all the existing anti-graft laws has failed to meet the yearnings of the people of Nigeria with respect to the prosecution and punishment of crime offenders. Consequently, corruption at public service have continued to exist. One of the factors that has been identified for the continued existence of corruption at public service is ineffectiveness and inefficiency of the anti-

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<sup>58</sup> Ibid.

<sup>59</sup> See Section 174 of the Constitution of the Federal Republic of Nigeria, 1999(as amended).

<sup>60</sup> See Section 195 of the Constitution of the Federal Republic of Nigeria, 1999(as amended).

graft laws. It is however important to suggest for an amendment of the anti-graft laws. In this regard, it is important to stress that the Federal and State Governments should set out clear operational guidelines regulating the conduct of public servants. In amending the anti-graft laws, there should be an operational guideline regulating the conduct of public servants across the tiers of government. This may also include a requirement that all state and local government prosecutors file monthly reports of their activities to the Attorney-General of the state. It could be pointed out that the constitution of the Federal Republic of Nigeria<sup>61</sup> appears to have achieved desirable equilibrium and had given sufficient room for states to develop their system of monitoring in accordance with peculiar aspirations this implies that by virtue of section 4 (7) of the constitution,<sup>62</sup> the creation and punishment of offences belongs exclusively to the states as a residual matter. Also, the provisions of the section 15(5)<sup>63</sup> obliges the state to “abolish all corrupt practices and .abuse of power”.

- vi. Creation of Balance in the Exercise of Prosecutorial Powers. Broadly speaking, the perceived imbalance in the exercise of the prosecutorial powers of the anti-graft agencies should be addressed. In this context, it is submitted that since the Attorney General of the Federation is constitutionally vested with prosecutorial discretionary powers under the constitution of the Federal Republic of Nigeria, 1999 (hereinafter referred to as the “1999 constitution”), he should ensure that this imbalance is properly addressed. However, the Attorney General and arguably any prosecutorial authority and obliged to comply with the yardstick for the exercise or prosecutorial powers set out in the constitution.
- vii. Use of Custodial Disposition Methods by the Anti-Graft Agencies. It is posited that it would be more legally and practically round to suggest that there is need to develop the institutional capacity for the use of non-custodial disposition methods by the anti-graft agencies. In effect, the society stands to benefit where a minor offender, or a first offender for a minor offence is not imprisoned and forced to mix with hardened criminals.

### 3.0. Conclusion

Ultimately, with respect to several anti-graft laws against corruption by public officers in Nigeria, it is important therefore to state that there is inadequate implementation, application or execution of the relevant anti-corruption laws. With the surge of brazen crimes in public service, this paper notes that there is very little impact of the various anti-corruption laws on the conduct of public servants. The consequences of official corruption seem to be indelibly written all over Nigeria with no immediate hope of remediation.

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<sup>61</sup> See the Constitution of the Federal Republic of Nigeria 1999 (as amended).

<sup>62</sup> Section 4(7) of the Constitution of the Federal Republic of Nigeria (1999).

<sup>63</sup> Ibid, Section 15(5)

The usual argument against this position is that it threatens the corporate existence of the nation. Indeed, one of the most reliable indicators of a failed state is a situation where the anti-graft laws cannot deliver law and order.<sup>64</sup> The paper revealed that corrupt public servants today are basking under the euphoria of the obvious lack of implementation and execution of various anti-graft laws. Furthermore, there is urgent need for building institutional structures and developing the required capacity such as retraining for anti-graft agencies officers and a further review of the anti-graft laws. The writer will align himself with the submission of Eyre, B, in the case of *Sutton V. Johnstone*<sup>65</sup> where he said “men of honour will do their duty and will abide by the consequences”. Since there is a legal regime of laws against corruption, such laws will catch up with the corrupt public servants at any time. They should learn from the bitter end of Charles Stuart – King Charles of England, who was later charged to court and finally executed.

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<sup>64</sup> Dina, R. Rose and Tod R. Clear, “Incarceration, social capital and Crime: Implication for Social Disorganization Theory” <http://www.web.jrn.columbia.edu/studentwork/children/incar-soc.cap.doc> accessed 5<sup>th</sup> January, 2022.

<sup>65</sup> *Sutton V. Johnstone* (1786) I.T.R. 504