

# A Review of Constitutional Safeguards for Anti – Corruption in Nigeria

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**Abstract:** The humongous scale and all-encompassing character of corruption in Nigeria makes a constant evaluation of the laws, principles and organs of state geared towards its eradication imperative. The starting point in any such endeavour is the 1999 Constitution which is the basic law that gives validity to all other laws and institutions in the country. This paper examines the broad framework provided under Section 15 of the constitution which provides that the state shall abolish all corrupt practices and abuse of power. This provision serves as the foundation for all laws, principles, and institutions aimed at eradicating corruption. This piece therefore, examines all other constitutional provisions, principles and measures as well as other legislation pursuant to the said Section 15 to combat the scourge of corruption in. The gaps and challenges in all the relevant provisions and laws are identified and it is emphasized that these laws must be updated to reflect modern needs and realities. The paper finds that the mechanisms of anti-corruption in Nigeria are extensive and if the identified shortcomings are remedied, this will result in stronger institutions which will be better equipped to halt the escalating propensity which corruption has assumed in Nigeria.

**Keywords:** Anti-Corruption Safeguards, Constitution, ICPC, EFCC, Separation Powers, Checks and Balances

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## 1. Introduction

Corruption is an amorphous term for everything unethical, unlawful and illegal within the modern state especially when such is done with a clear intent to undermine the rule of law and enhance personal aggrandizement. The concept of corruption is pervasive and has permeated all facets of life in the Nigerian society [96, 73]. The word corruption stems from the word ‘corrupt’ which is as old as the earliest recorded biblical history of man’s existence. Corruption in public affairs is neither a Nigerian nor even an African phenomenon. It originated from ancient civilisation and was bequeathed to Nigeria by her colonial masters [79]. Thus, Nigeria has in the most recent past and till date held an unbroken record of one of the world’s most corrupt nations [51]. It has even been put forward that Nigeria’s ranking on corruption perception index (CPI) has become too familiar [93].

Corruption, like other social concepts, is difficult to define. No one definition may end all definitions as scholars are incapable of agreeing to a singular definition with empirical

precision [117]. The Black’s Law Dictionary defines corruption as: “*Depravity, perversion, or taint; an impairment of integrity, virtue, or moral principle, especially, the impairment of a public official’s duties by bribery*”. It has also been explained as the perversion of integrity or state of affairs through bribery, favour or moral depravity [118].

Elsewhere, it is argued that a definition of corruption must take two major perspectives into consideration [73]. These are the moralistic/ethical and scientific perspectives and that the moral perspective falls short of explaining corruption as machinery for personal aggrandizement or sectional advantages. The scientific angle to corruption points the inquisitor to political, economic and sociological question plagued with great moral burden which prevents critical analysis. The International Monetary Fund defined corruption as ‘abuse of authority or trust for private benefit. It is a temptation indulged in not only by public officials but also by those in positions of trust or authority in private enterprises or non-profit making organisations [140]. Transparency International (TI) conceives corruption as the misuse of entrusted power for private benefit [121]. The

deficiency in the definition by TI is very crystal as to suggest power within a public office and no more.

Corruption in its manifestations is wide enough to cover private, non-governmental matters. Thus, acts not expressly prohibited by law but which certainly fail the test of morality may qualify as corruption. To this end, posits that corruption may involve an exercise of power neither expressly nor implicitly granted [96].

Unfortunately, reference to statutes has been unhelpful in the search for an all-embracing definition of corruption. Sections 98, 98(a) and 98(b) of Nigerian Criminal Code, section 115 – 122 of the Nigerian Penal Code and section 2 of the Corrupt Practices and Other Related Offences Act (2000) did not provide salutary definition of corruption. Section 2 of the Corrupt Practices and Other Related Offences Act (2000) defines corruption to include bribery, fraud, and other related offences. The Criminal Code used the word ‘corruptly’ but did not, with certainty, define the word ‘corruptly’ which is the ‘controlling’ word in the entire section on corruption.

However, in the case of *Biobaku v. Police* (1951), the court held corruptly to mean “improperly” and the receiving or offering of some benefit, reward or inducement to sway or deflect a person employed in the public service from the honest and impartial discharge of his duties, in other words, as a bribe for corruption or its price. The conceptualisation of corruption as bribes in *Biobaku’s* case appears to be the primordial approach. Bribery as a vice has become the take-off point in all investigations wherever corruption is alleged. Thus, so much scholarly industry has gone into the unveiling of bribery as the superstructure of corruption in Nigeria [60].

The definition by the court in *Biobaku’s* case has been expanded to include other forms of benefits like sexual favours, admission into clubs and societies and conferment of chieftaincy title. It has clearly demonstrated that corruption has festered even in non-public sectors [13]. Corruption means much more than inducement of public officers with bribes and gratification. Corruption has also been expanded to include committing frauds, stealing of public funds, deliberate violations, for gainful ends, of standards of conduct legally, professionally, or even ethically established in private and public affairs [138].

The definition of corruption, in terms of bribery which is a bilateral corruption to the exclusion of unilateral corrupt acts by public officers who take undue advantage of their position to corner contracts to themselves or companies of their interests, is rather restrictive and has been criticized [33]. Osipitan has given details to the various forms of corruption to include collusive corruption, where there exists a collaborative intent by the giver and taker; extortionary corruption, where vulnerable victims are coerced by those in authority to offer bribes or concede to other forms of compromises, and anticipatory corruption, where gifts or monies are presented to person(s) in authority for expected futuristic favours from such recipients [116, 9] adopts a rather scientific approach in his conception of corruption in Nigeria. He identifies corruption in categories and forms as

political corruption, economic and commercial corruption, administrative and professional corruption, organised corruption and working class corruption [112].

Although section 2 of the Corrupt Practices and Other Related Offences Act (CPROA 2000) failed and omitted to highlight circumstances of unilateral corruption, it conceives corruption to include bribery, fraud, influence peddling and other related acts. Section 7 of the Act (CPROA 2000) has in line with its conception of corruption, established the following offences:

- (i) Offence of accepting gratification.
- (ii) fence of giving or accepting gratification through an agent
- (iii) Acceptor or giver of gratification to be guilty notwithstanding that the purpose for the gratification was not carried out or matter not in relation to principal’s affair or business.
- (iv) Fraudulent acquisition of property
- (v) Offences committed through postal system
- (vi) Deliberate frustration of investigations.
- (vii) Making false statement in return
- (viii) Gratification by and through agents
- (ix) Bribery of public officer
- (x) Using office or position for gratification
- (xi) Bribery in relation to auctions
- (xii) Bribery by giving assistance with regards to contracts.

The United States Vision 2010 Committee defined corruption and listed sixteen forms in which corruption manifests itself in Nigeria (111TH CONGRESS, Second Session 2010). These manifestations include: advance fee fraud (also known as 419), bribery, extortion, nepotism, favouritism, inflation of contracts, falsification of accounts, perversion of justice by organs administering justice, tax evasion, smuggling and racketeering, money laundering, hoarding/adulteration of market goods and denting of measures to reduce their contents with a view to giving advantage to the vendor, abuse of office, foreign exchange swindling and drug trafficking, heinous economic crimes against the state (most of the time in collusion with multinational companies and foreigners), examination malpractices and election malpractices [53].

Baba - Ahmed identifies different ways corruption is perpetrated in Nigeria to include inflation of government contracts, unremitted and unreported revenue drains, extortion, conversion, conversion of public property into private, the use of security votes as avenue to syphon public funds, deliberate wastefulness and influence peddling (Ajani 2022). He further suggests that the worst form of corruption is fake war against corruption [21]. From the foregoing, it is safe to concede that corruption encompasses all acts undertaken with deliberate target of pecuniary or other advantages by encouraging or collaborating in an illegal or unlawful activity [74]. It is the erosion of rules and norms of official or professional conduct by the enthronement of selfish and unethical considerations in decision-making by a person in authority in contravention of established rules of behaviour/engagement and standards required of such a

person [66, 28].

Akanbi leans in favour of a pragmatic approach devoid of theoretical conception; no matter the definition 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 [24].

## 2. The Fight Against Corruption in Nigeria

Corruption is the bane of the Nigerian state [38]. The phenomenon has escalated from its minutest and barely noticeable level to assume such a humongous status as to occupy the epicentre of all national dialogues [71, 142]. In order to tame this cancerous development, the public policy space has been taken up by the fight against corruption mantra [69]. The fight against corruption has become the point of convergence of the governmental activities and policies in Nigeria. Every aspect of state activities is driven by some policies. It is however imperative that the instruments and technologies for addressing the problem, subject of the policy, is known and a political consensus exists on the goals of the policy [6].

This implies that the platform for ensuring the realisation of public policy against corruption in Nigeria must be concrete, accessible for easy interpretation and largely predictable by the citizens [102]. In the light of the foregoing, anti-corruption policies and the fight against corruption in Nigeria must be situated within the ambit of the rule of law and constitutional democracy [30, 86, 17]. This implies that fight against corruption must derive its validity and legitimacy from the Constitution of the Federal Republic of Nigerian.

The constitution is an organic law which validates other laws in any modern society. Appadorai conceives constitution as a body of rules which directly or indirectly affect the distributions of the exercise of the sovereign power in a state [37]. A constitution is a charter of government deriving its whole authority from the governed and sets out the form of government. Jubril defined constitution in terms of a system of law in a sovereign state [72]. The above definition appears more elaborate as it shows that a constitution is beyond any single document; it encompasses the entire legal system and may be rightly wrapped in the concept of constitutionalism [124].

However, in Nigeria the litmus test for the validation of the fight against corruption within the legal system is the Constitution of the Federal Republic of Nigeria 1999 (CFRN). The CFRN lays a broad foundation for the legal regime to be legitimately deployed to combat corruption in addition to sacrosanct provisions inherent in it hence the need to re-view the anti-corruption policy of the Nigerian Government from time to time. These inherent provisions and other laws consistent with them are the safeguards which operate to extinguish corruption without annihilating the rights of citizens.

## 3. Safeguards in the Fight Against Corruption in Nigeria

The 1999 Nigerian Constitution is the organic law/primary policy document in Nigeria. To this end, any policy or action plan must be expressly provided for in the constitution or by necessary implication. By Section 15(5) of the CFRN, the state is granted express powers to abolish all corrupt practices and abuse of powers in Nigeria. Additionally, Section 15(5) of the Nigerian Constitution which declared 'war' against corruption and abuse of power is contained in chapter two of the Constitution of The Federal Republic of Nigeria (1999) which chapter is made non-justiciable by the same constitution [15, 16, 26, 64]. Consequently, the provision is not self-executory or enforceable without more by virtue of section 46 (1) of the Constitution.

Odinkalu argues that no good reason could be advanced to sustain the non-justiciability/non-enforceability of the provisions of Chapter II of the Constitution in the same way and manner as provisions of Chapter IV of the same constitution [94, 23]. As the polemics rage unabated, the Supreme Court has stated the conditions for the enforceability/justiciability of the provisions of Chapter II of the CFRN. in the case of *Attorney-General of Ondo State v Attorney-General of the Federation* (2002). In this case, the Supreme Court of Nigeria held that it would amount to an abdication of obligation on the part of the arms of government if they acted in disregard of the Fundamental Objectives and Directive Principles of State Policy notwithstanding its non-justiciability. The Supreme Court further held that the provisions of section 13 of the Constitution applies to all organs of government and all authorities and persons exercising legislative, executive and judicial powers. The section applies equally to all tiers of government.

The court stated that although the Fundamental Objectives and Directive Principles of State Policy is not generally justiciable, where the National Assembly (legislature) enacts any law making it justiciable then it would be justiciable. The Fundamental Objectives and Directive Principles of State Policy is therefore made justiciable when institutions or enactments are made for of realisation of the objectives [103, 54]. The Supreme Court has also affirmed the justiciability of the Fundamental Objectives and Directive Principles of State Policy when it held that Section 20 CFRN which provides for the duty of the state to protect the environment is justiciable when it is read together with the provision of Section 4(2) on the power of the state to make laws and to give effect to the provisions of the Fundamental Objectives and Directive Principles of State Policy (*Centre for Oil Pollution Watch v. NNPC* 2019).

Anti-corruption statutes and institutions abound in Nigeria [132]. These statutes and institutions are meant to give vent to section 15(5) of the CFRN and to give potency to government's policy against corruption and abuse of power. These statutes include: the Corrupt Practices and Other

Related Offences Act (2000), the Economic and Financial Crimes Commission (Establishment) Act (2004), the Money Laundering (Prevention and Prohibition) Act (2022), the Advance Fee Fraud and Other Related Offences Act (2006) and a host of other anti-corruption provisions in the Criminal Code Act (2020) and the Penal Code (1960). The inadequacies in the extant anti-corruption laws and proliferation of crimes (economic and otherwise) through the cyber space in Nigeria resulted in the enactment of the Cybercrime (Prohibition and Prevention) Act 2015 [39]. The foregoing laws, the Public Procurement Act (2007) and other laws made in realisation and pursuant to section 15(5) of the CFRN shall be discussed in the latter part of this work.

#### **4. Express Constitutional Provisions/Safeguards in the Fight Against Corruption in Nigeria**

Apart from the constitutional mechanism through the Fundamental Objectives and Directive Principles of State Policy to eradicate or curtail corruption in Nigeria, there are express provisions for the doctrine of separation of powers/checks and balances, the provision for Code of Conduct for Public Officers, audit of public accounts, and other freedoms guaranteed under the CFRN [108].

##### **1) SEPARATION OF POWERS/CHECKS AND BALANCES BETWEEN ARMS OF GOVERNMENT**

The CFRN embraces the principles of separation of powers as obtainable in modern constitutional democracies. This principle ensures that no one arm of government usurps the duties and functions of the other [77, 84, 120]. The twin manifestation of the principle is checks and balances [97]. It is impracticable to have an arrangement which guarantees absolute separation of the powers [80]. However, Mrabure and Awhefeada argue that separation of powers explains the painstaking constitutional safeguards provided to guarantee the autonomous powers and functions of the executive, legislative and judicial organs of government [85]. A well-developed practice of separation of powers/checks and balances is fundamental for prevention of corruption governance [36]. Thus, in *Attorney – General of Ondo State v. Attorney – General of the Federation* (2002) the Supreme Court of Nigeria held section 26 (3) of the Independent Corrupt Practices and other Related Offences Commission Act unconstitutional for infringing the time – honoured principles of separation of powers. The section which presented ninety working days for a case under the Act to be concluded was held to have interfered with the judiciary's discretionary powers of case management.

##### **2) THE LEGISLATURE**

The CFRN (1999) under section 88(1) established legislative checks on the executive arm of government by clothing the legislature with the power of investigation. Therefore, by virtue of Section 88(1) of the CFRN (1999) the legislature can, among other things, investigate the conduct of any person, authority, ministry or government department

charged with the responsibility of executing or administering laws enacted by the National Assembly, or disbursing or administering moneys appropriated or to be appropriated by the National Assembly. By Section 88 (2) of the CFRN (1999) the primary intendment for the conferment of these powers on the legislature is to expose corruption, inefficiency, or waste of public funds. This power of investigation is wide enough to cover even the activities of the legislature itself. It is therefore expected that for the legislature to adequately check other arms of government, it should be truly independent, stay above board and manifest the ability for self - cleansing.

It has been argued that the reason the legislature has been incapable of dispassionately discharging its constitutional investigative obligations is lack of independence from the executive. This development has subjugated the legislature in the scheme of things and made it a rubber stamp to executive excesses tending towards corruption [96]. This development has become worrisome as most legislators owe their emergence to the executive while some were never validly elected [3]. The flaw in the electoral process emergence of most legislators leaves them at the mercy of the party platform headed by the executive and some who dared to speak against corruption lost their nominations for subsequent terms [2].

The executive induces the legislature by applying direct monetary influence to dictate the course of proceedings in the legislature [104]. The legislature has not shown remarkable resistance to executive 'bread and butter' given its subsistence and subservient economy. Hence, the legislator has been alleged to compromise corrupt acts of "budget padding" by the executive for selfish monetary benefits [20]. Several high level compromises between the legislature and the executive in Nigeria diminish the good intendment of the CFRN in the conferment of investigative powers on the legislature. There is evidence of corruption at the National Assembly when Fabian Osuji, Adenike Grange and other staff of both ministries and National Assembly were charged to court for corrupt practices. Contract inflation and corrupt enrichment were stated as reasons Chuba Okadigbo, Adolphus Wabara and Patricia Etteh were removed from office [45, 88, 83 107, 98].

The National Assembly has obviously attempted some level of self-cleansing following public outcry. Between 1999 and 2009, the National Assembly recorded about nineteen (19) cases of self-cleansing on corruption related issues [107]. These cases include cases of forgery of academic records, falsification of age, shady contract deals, complicity in contract scams and so on [27, 7, 126, 113]. However, most recent developments reveal that the legislature is yet to stay above board and without scandals [106, 114].

##### **3) THE JUDICIARY**

The Nigerian judiciary is not insulated from corrupt practices and allegations of corruption [76]. The allegations of corruption in the judiciary have been on the increase [40, 48].

In 2002, a judge of Kano State judiciary was arraigned before a High Court on a three-count charge for demanding and receiving one hundred thousand naira bribe [12, 14]. In 2005, the Niger State judiciary suspended one Seidu Ibrahim, a Chief Magistrate alleged of demanding and receiving one hundred thousand naira from some herders (Saturday Punch Editorial 2005).

A corrupt judiciary severely impedes successful combating of corruption in any society [25]. The UNODC (2003) carried out technical project/research in Nigeria sometimes in July 2003 targeted at strengthening judicial integrity and capacity in Nigeria. The recommendations of the project have become the framework for the fight against judicial corruption in the Nigeria in its diverse manifestations [91, 34]. Sagay argues that corruption in the judiciary is worse than crimes against humanity. He noted that judicial officers cannot afford to be corrupt as they are the custodians of the hope to the common man [44]. Consequently, the CFRN (1999) has established potent safeguards to combat corruption in the judiciary through the establishment of the National Judicial Council (NJC).

The community reading of sections 158(1), 231(5), and 292(1) of the CFRN takes away the power to exercise disciplinary control over persons/personnel of the judiciary from any other arm of government or agencies other than the NJC. This further demonstrates the principle of separation of powers [85]. It is, however, arguable whether the NJC is a product integral to the judiciary as an arm of government. This is because the NJC is an executive body of the Federal Government of Nigeria. Nevertheless, because the NJC is specifically created to insulate the judiciary from the whims and caprices of the executive, the CFRN has guaranteed its independence as its composition, powers, duties and functions are geared towards internal cleansing and discipline of the judiciary, particularly, as it relates to corruption matters [78]. Consequently, the NJC is the 'court' of first instance in all matters regarding the discipline and investigation of judicial officers in Nigeria on allegations of corrupt practices. In *of Nwaogwugwu v. President the Federal Republic of Nigeria* (2007), the Court of Appeal held that the NJC is a creation of the constitution with traditional roles which include making appointments and exercising disciplinary control over judicial officers. Similarly, in *Opene v. NJC and Others* (2011), the Court of Appeal clearly stated the independence of the NJC from direction and control by any other authority in the exercise of its powers to make appointments or to exercise disciplinary control over judicial officers in Nigeria (UNODC, n.d.).

Thus, where in the guise of fighting corruption, a judicial officer is targeted by state agencies without recourse to the NJC, the court has likened such acts of the state to a *coup d'etat* against the judicial arm of government aimed at trampling upon the independence of the judiciary and making a mockery of the principle of separation of powers as enshrined in the CFRN [85]. In *Federal Republic of Nigeria v Hon. Justice Sylvester Ngwuta* (2017), the defendant was arrested in a sting operation by State Security Service (SSS)

in October 2016 and arraigned for money laundering. In discharging the defendant, the Federal High Court, Abuja Division held that it had no jurisdiction to entertain the charge because the defendant was not first reported to the NJC before his arraignment. Reporting a judicial officer to the NJC in the first instance is a condition precedent for arraignment and failure to comply with such condition precedent robbed the court of requisite jurisdiction. It is therefore valid to state that the process of disciplining judicial officers even in cases of alleged corrupt practices is elaborate but cannot be circumvented.

The NJC has lived up to some expectations as it has dismissed some frivolous petitions against judges [92]. Conversely, it recommended the dismissal of some judges on the basis of meritorious petitions [100]. Despite the eloquent achievements of the NJC in the fight against corrupting in the judiciary, it is clear that political intervention and primordial sentiments of members of NJC has militated against its capacity to stand against executive intimidation of judicial officers.

The fight against corruption can only be a mirage where judges are not permitted the constitutional protection and job security without harassment [57].

## 5. The Code of Conduct Under the Constitution

The Code of Conduct for Public Officers is one mechanism that has aided the fight against corruption in Nigeria. The state, in contemporary societies, is in control of the distribution of benefits and imposition of cost liabilities. The state does its bidding through public officers otherwise called the bureaucrats who may deploy their vintage position for corrupt and personal enrichments [123]. It has been observed that corruption in civil/public service in the various governmental ministries, departments and agencies in Nigeria is responsible for the lethargic economic advancement of Nigeria [31]. The Code of Conduct (CC) which was originally developed as code of ethics by the Public Service Review Commission in 1974 presently constitutes an oath for public officers in Nigeria [19]. The Code of Conduct for Public Officers is enshrined in the Fifth Schedule to the CFRN (1999 as amended). Accordingly, all persons in public service of a state or the federation are mandatorily required to observe and comply with the Code of Conduct. Section 153(1) (a) of the CFRN established the Code of Conduct Bureau (CCB). Though creation of the constitution, the CCB is strengthened by the further enactment of Code of Conduct for Public Officers under the fifth schedule, Part 1.

Public officers have been defined by the CFRN to include all political office holders and bureaucrats. Section 15(1) of the Fifth Schedule, Part 1 of the CFRN established the Code of Conduct Tribunal (CCT) with powers and constitution akin to a superior court of record. The provisions of the CFRN in relation to the CC have been elaborated in the Code

of Conduct and Tribunal Act (2014). The aims and objective of the CCB is to establish and maintain a high standard of morality in the conduct of government business and to ensure that actions and behaviours of public officers conform to the highest standards of public morality and accountability (UNODC 2013). It functions to prevent and punish illicit enrichment through the mechanism of asset declaration and verification. Paragraph 8 of the code prohibits all kinds of bribery and gratification of public servants. By virtue of Section 308 of the CFRN (1999) no immunity shields any public officer from prosecution and scrutiny at the CCB. It is worthy of note that by the provisions of Paragraph 18(7) of the Code of Conduct for Public Officers, any conviction pronounced by the CCT though appealable, is not amenable to the constitutional provisions relating to prerogative of mercy.

The foregoing provision is in direct conflict with the express provisions of the CFRN which empowers the president of the country under section 175 and governor of any federating states under section 212 of the CFRN to grant pardon to persons convicted of various offences including capital offences. It has been put forward that the above provisions of the code of conduct Bureau and Tribunal Act is a legislative overkill [67]. Furthermore, that even in a deserving case of deploying draconian measure to fight corruption, there should be uniform application of the laws. Convicts should be treated equally. Under Fifth Schedule, Part 1, Paragraph 2(b), of the CFRN the Code Conduct prohibits a public officer in full time employment from engaging or participating in management or running of any private business, profession or trade other than farming. The foregoing provision against “side-hustle” is a dead letter and may appear incapable of enforcement given the economic realities in Nigeria. However, in *Okoya v. Santilli* (1994). The Supreme Court held that a contract entered into by a defendant while still a public officer is illegal and unenforceable. In the case, the Court affirmed the law precluding a public officer from engaging in any other business in contravention of section 20(1) of the Code of Conduct Bureau Act.

In *Nwankwo v. Nwankwo* (1995), the Supreme Court clarified the meaning of ‘engaging in business’ (by a public officer) to exclude acquisition of interests in business (such as partnership or share-holding). A public officer is however prohibited from managing or running such business outfits in managerial or executive capacity. The court in this case further held that the CC is meant to protect public interest and no private citizen has *locus standi* to prosecute its contravention. It is doubtful if the Supreme Court’s position on *locus standi* in matters relating to breach of CC could stand the present re-engineering of the *locus standi* doctrine which favours public interest litigation [82]. *Locus standi* is a serious question of law and any person seeking to be heard by any court or tribunal must deal with it [47].

The CCT is a special court. In *Ogbuagu v. Ogbuagu* (1981), the Supreme Court held that only the CCB and CCT could entertain allegations of breach of CC. In *Adam*

*Aburime v. Olusoji* (2021), the defendant at the trial High Court, Benin Division filed a motion to bar one G. E. Oaikhena, a law lecturer at the University of Benin from conducting the suit claiming a breach of the CC for public officers under the CFRN. The court refused the application. On appeal, the Court of Appeal held that any allegation that a public officer has committed a breach of or has not complied with the provisions of the CC shall be made to the CCB. The provision expressly ousted the powers of the ordinary regular courts in respect of such violations (Ahmed v Ahmed 2013). However, in *Saraki v. FRN* (2016), the Supreme Court held that the CCT is not a court of superior record jurisdiction but of a quasi – criminal jurisdiction. The above decision implies that the decision of the CCT may still be challenged in the High Court thereby making the statutory ousting of the jurisdiction of the ordinary law courts in the circumstances, a mere academic exercise.

Without doubt, the CCB and its twin pillar of CCT are well intended to combat corruption in the bureaucracy, top members of the executive and legislature violate the CC with impunity. For instance, under paragraph 6 (2) (b) of the Code of Conduct, the CC prohibits the president, vice-president and other categories of public officers from receiving gifts or donations from government contractors. President Olusegun Obasanjo and Vice President Atiku Abubakar openly and brazenly received sundry donations from contractors, government parastatals and corporate bodies towards their second term re-election bid [52]. In *Yusuf v. Obasanjo* (2003), the appellant-petitioner raised the issue of the respondent (Obasanjo) receiving donations in contravention of the law.

The Supreme Court held (obiter) that political donations to Obasanjo do not constitute undue influence or a corruptible act. Ogbu argues that Obasanjo should have been charged before the CCT for violating the CC in jurisdictions where the rule of law strictly applies [96]. This writer agrees with Ogbu but adds that the Supreme Court missed an opportunity to root out corruption from the entry point as electioneering campaigns funding herald corruption and absence of transparency in government businesses in Nigeria. It remains a difficult task for public officers in Nigeria, particularly elected officers, to declare their assets publicly as required by law [126]. The application of the strict weight of the law on CC has become an instrument of witch-hunt against perceived non-conformists to the whims and caprices of the executive [85].

## 6. Audit of Public Accounts

The combined sections of 85 and 125 of the CFRN (1999) makes the office of the auditor general one of safeguards to curtail and stamp out corruption in Nigeria. The auditing process is meant to monitor spending of public funds and to ensure that all expenditures are in accordance with budgetary stipulations [68, 90]. Sections 125 (4) and 87 (4) of the CFRN empowers the auditor-general to conduct periodic checks of all government statutory corporations,

commissions, authorities, agencies, including all persons and bodies established by law of the House of Assembly or an Act of the National Assembly as the case may be [112]. By sections 85 (6) and 125 (6) of the CFRN (1999) it can be adduced that the auditor general is a lord unto himself in the exercise of his/her duties and enjoys rigid security of tenure.

The auditor-general lays its periodic reports before the legislature. By Rule 9 (1) (e), (2), (3) and (4) of the Standing Rules of the House of Representatives, the House of Representatives (the National Assembly) must refer such reports to the public Accounts Committee for scrutiny and recommendations. The CFRN did not however specify time within which auditor-general may submit reports to the legislature. This has left the making and submission of reports to political manipulations. The *lacunae* accounts for why public accounts may not be audited for years [10]. Consequently, it is suggested that the duty to audit and submit relevant reports should be mandatory and backed by sanctions. Such reports once submitted should be placed in public domain for the independent scrutiny/debates. This would reduce incidences of collusion between the executive and legislature.

The Nigerian experience shows that the fight against corruption is loud and potent only when the vulnerable or political opposition is on the wrong sides of the law. Heilbrunn argues that Nigerian President Obasanjo's commitment to combating corruption demonstrates that only few political leaders are able to bind themselves effectively to anti-corruption reforms over an extended period of time [62]. The audit report submitted in 2002 by Vincent Azie, the then acting auditor-general, was described as a watershed being the first of its kind to expose monumental corruption which also indicted the National Assembly and Federal Judiciary [10]. The Federal government openly castigated the auditor-general and removed him in such a manner that cannot be explained without reference to a cover-up.

In a system that sincerely condemns corrupt practices, Azie should have been decorated with national honours for having the courage to discharge his constitutional duties. Regrettably, it has not been so in Nigeria.

## 7. Fundamental Rights

The Fundamental Rights provisions under chapter four (sections 33-46) of the CFRN contain loud safeguards for the fight against corrupt practices in Nigeria. Prominent among the fundamental rights provisions which checkmate corruption are sections 35, 36, 39 and 44 of the CFRN. Section 36 establishes the citizens' rights to fair trial. It shows the limits to judicial rascality and the corrupt practices of perversion of justice (*Onagoruwa v IGP* 1991). Thus, compliance with the section has become a pointer to incorruptibility or otherwise of a judicial tribunal [33].

Bribery and extortion by the Nigeria police who are critical stakeholders in the administration of justice is a flash-point in the fight against corruption in Nigeria. Bribes are paid for the purpose of speeding up or finalising

administrative bail procedures with the police (Gibbons 2019). There is therefore the high record percentage of bribery for bail from jail with the police in Nigeria. Consequently, citizens who have shown unwillingness to 'perfect their bail' are kept in jail without trial sometimes on flimsy and sometimes 'civil' allegations (*Dilly v IGP* 2016).

Section 35 (4) and (5) of the CFRN limit the police powers to detain a citizen without trial. This is posited to be the greatest check on police highhandedness in Nigeria as shown in the ever rising cases of fundamental rights judgments against the police in Nigeria (*Anogwie v. Odom* 2016). In order to ensure compliance with the fundamental rights enshrined in section 36 of the CFRN, particularly as it relates to the right of an accused person, the Administration of Criminal Justice Act (ACJA 2015) was enacted.

The ACJA (2015) has been deployed to extend the frontiers of the reasonable time provision of the CFRN (1999 as amended) and to ensure speedy dispensation of cases [43]. By section 306 of ACJA (2015) 'stay of proceedings' has been expunged in criminal trials which was a mechanism deployed by lawyers to frustrate substantive speedy trial of high profile corruption cases. The delay in justice delivery in Nigeria has become internationally notorious. In *IPOC Nigeria v. NNPC* (2014), the English Court of Appeal observed that the Nigerian judicial system is bedevilled by catastrophic delays.

In *Olisah Metuh v. FRN* (2017) the Supreme Court strengthened the constitutional safeguards on speedy dispensation of criminal justice by upholding the denial of the trial court of an application for stay of proceedings obviously meant to delay prosecution in the high profile corruption case. It is most unfortunate that defence lawyers in high profile cases are yet to come to terms with the decision in Metuh's case. In the on-going case of alleged N2.5billion fraud being prosecuted by the ICPC, the defendants refused to open their defence.

They informed the court that they had filed interlocutory appeal against their no-case submission which was overruled by the court. Defendants insisted that they would move the Appellate Courts to revisit the interpretation of section 306 of the ACJA which was interpreted in Metuh's case to forbid delays in the trial process occasioned by interlocutory applications [11].

Beside the fundamental rights provision for fair trial, the right to freedom of expression and the press guaranteed under the CFRN has helped the fight against corruption in Nigeria. The right to receive and impart ideas and information without interference has been further expanded in the Freedom of Information Act (FOIA 2011).

Alabi argues that unhindered access to and flow of information are capable of reducing corruption in the society [107]. The press is critical in the fight against corruption hence any act to shut down the press is perceived as an attempt to cover up corruption [33]. Thus, where corruption has been suspected, it is the press/media that expose and escalate it.

UNODC report shows that people report cases of bribery

and extortion more to non-governmental organisations and the press than to explore internal oversight mechanism within the institutions [60]. The current revelations from the Nigerian oil sector showing a four kilometre illegal bunkering pipeline in Delta State was escalated by the media [42]. Edun (a two-time National Executive of the Nigeria Bar Association) argues that such revelation would not have shocked the government hierarchy as the bureaucracy in (its hierarchy) ought to be aware of the fraud. According to him reporting the fraud to the government officials would amount to reporting a thief to a thief [133]. The illicit and corrupt activities of the disbanded Special Anti-Robbery Squad, (SARS), of the Nigeria Police had gone on for so long unattended to by the authorities until the press/media escalated it [22]. The media help to galvanise the citizenry for effective participation in governance which reduces chances of corruption [81].

## 8. Other Laws/Institution

### 1) THE CORRUPT PRACTICES AND OTHER RELATED OFFENCES ACT, 2000

The Corrupt Practices and Other Related Offences Act (2000) was an initiative of the Obasanjo led administration. Section 3(1) of the Corrupt Practices and Other Related Offences Act established the Independent Corrupt Practices and Related Offences Commission (ICPC) to prosecute corrupt public officers. By the provisions of sections 8-26 of the Act nineteen specific offences were created dealing with corruption generally. Section 8(1) and (2) of the Act prohibits gratification by an official under any guise. The section prescribes seven - year imprisonment upon conviction under the section. It is worthy to note that section 98 of the Criminal Code Act (2020) also criminalised gratification by public officials. While Section 98 of the Criminal Code provided for any public official, section 8 of the Act provides for any persons which excludes the intention of the law-giver to expand the culpability in corruption cases to encompass the receiver and accomplices. Section 9 of the Act covers criminal liability of a giver or promisor of bribe/inducement while section 10 extends to the various fronts through which bribery is perfected.

Section 22 of the Act covers various aspects of corrupt practices in award of government contracts. Contract padding or over-invoicing is punishable with seven years' imprisonment under the section [134]. Contract inflation is one aspect of public officers' corrupt practices that was not adequately and expressly covered in the Criminal Code. By virtue of Sections 23 (1), (2) and (3) and 24 of the ICPC Act (2000) it is mandatory, at the risk of two years imprisonment, for every transaction involving bribery to be reported to ICPC or police officer. This includes the giver and the receiver, the solicitor and solicitee.

One novel and laudable element introduced by the Act is the provision for forfeiture of property upon conviction under Section 47 of the Act (2000). This ensures that illicit enrichment does not inure in favour of any convict. The

ICPC (sections 27-41 of the Act) has very elastic authority to investigate, inspect, search, seize and examine individuals, personal and shared/joint accounts, financial institutions and the content of safe deposit boxes or cupboards. By Section 5 (1) of the ICPC Act (2000), the powers of an officer of the ICPC in investigating or prosecuting a case of corruption are akin to all powers and protections granted a police officer under the Police Act. Okonkwo admits that the Act is a beautiful piece of legislation but leaves much to be desired in the area of enforcement (Okonkwo 2002). Surveys conducted in the years succeeding the enactment of the Act reveal persistent and sustained increase in level of corruption in Nigeria. Nigeria was ranked 90 out of 91 least corrupt countries in the world in 2001, 101 out of 102 in 2002, 132 out of 133 in 2003 and 144 out of 145 in 2004 [112, 63]. The development is attributed to the 'kids' gloves' with which corruption related offences are handled and the selective prosecution approach coloured by political correctness [129]. Ozekhome had on a national television accused the Federal Government of shielding corrupt ruling party members [56]. The Buhari-led administration has not done much to refute the imputation of its romance with alleged party members. The ICPC has not shown temerity and astuteness in the fight against corruption reported in the media on daily basis (vanguard 2013).

In 2002, prior to the 2003 general elections, the ICPC had informed Nigerians of its investigation of some alleged serving governors who were then campaigning for second term. The outcome of such investigations has till date remained in the secret file of the ICPC [95]. Again, in March 2003, the ICPC informed Nigerians that it was investigating the allegations of corruption made against Audu Ogbe, the then chairman of the ruling Peoples' Democratic Party (PDP) by the Senate President of Nigeria on the floor of the senate. Pius Anyim had alleged that the party chairman had corruptly demanded the sum of N120 million from him for the purpose of organising party retreat [89, 135, 59, 115]. The report on the investigation has never been made public till date.

ICPC is not a totally failed project. It has recorded marginal successes on its mandate. ICPC swiftly charged Husaini Akwanga and others allegedly involved in the National Identity Card Scheme scam [99, 8]. It also arraigned two Senior Advocates of Nigeria and two others on allegation of bribing officials of the Independent National Electoral Commission [87]. The Commission is reported to have secured 180 convictions in 20 years and has posted billions of naira in recovered proceeds of corruption in 2020 and 2021 [105, 18].

It has also, through its commitment to monitoring budget implementation, reduced incidences of corruption to the barest minimum (ICPC Nigeria 2021).

### 2) THE ECONOMIC AND FINANCIAL CRIMES COMMISSION (EFCC)

The EFCC was created in 2002 by the National Assembly (EFCC ACT 2004). By Section 6(c) and (m) of the EFCC Act (2004), the EFCC is the coordinating agency for the enforcement of all federal economic and financial crimes



(laws) in Nigeria. These laws include: the relevant sections of the Criminal and Penal Codes, Money Laundering Act 2004, Banks and Other Financial Institutions Act 2004, Advance Fee Fraud and Other Related Offences Act 2004 and the Cybercrimes Act 2015 [112, 39].

The power of the EFCC is immense. It has been contended that a strict application of the coordinating powers provision' of the EFCC Act would create power tussle between the EFCC and the Nigerian Communication Commission, an agency created for the enforcement of the Cybercrimes Act. She, however, admits that the elaborate powers of the EFCC which extended towards cyber security have been helpful in the successful fight against high profile cyber - rooted corruption cases [39, 38]. Section 46 of the EFCC Act defined economic and financial crimes to mean nonviolent criminal and illicit activities committed with the objective of illegally earning wealth individually, in a group, or in an organised manner thereby violating existing legislation governing the economic activities of government and its administration.

According to Section 46 of the EFCC Act, Financial crimes include any form of fraud, narcotic drug trafficking, money laundering, embezzlement, bribery, looting and any form of corrupt malpractices, illegal arms deal smuggling, human trafficking and child labour, illegal oil bunkering and illegal mining, tax evasion, foreign exchange malpractices including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic waste and prohibited goods.

The EFCC has brought tact and finesse to bear on the fight against corruption in Nigeria [70]. Sagay argues that the agency has secured 3000 convictions in the last seven years [111]. By the year 2020, after eighteen years of its establishment, the EFCC has secured 3,802 convictions [32]. The Nigerian public welcomed the prosecution of 'some big fish' by the EFCC [75]. The EFCC prosecuted the former Senate President, Adolphus Wabara (*Federal Republic of Nigeria v Senator Adolphus N Wabara and Others* 2013), former Education Minister, Fabian Osuji and Tafa Balogun who was former Inspector General of Police (*Balogun v Federal Republic of Nigeria* 2005)[88]. From inception till date, the EFCC has, through its investigations and prosecutions of persons suspected of corrupt enrichment, made financial crimes less attractive. The EFCC has also shown dexterity in ensuring cyber security and combating cybercrimes and internet fraud.

In *Federal Republic of Nigeria v. Chief Emmanuel Nwude and Others* (2016), the defendants were prosecuted on a 57 count charge in which they were alleged to have defrauded some Brazilian bank to the tune of US \$181.6 million. The EFCC secured conviction against the defendant on all the count charge. The property of the defendants was forfeited to the Federal Government while the monies defrauded were recovered and returned to the victims [39]. Despite the manifest zeal of the EFCC to combat financial crimes in Nigeria, Ibe-Ojiludu argues that the EFCC Act has principally failed to check corruption and to impact fiscal

development in Nigeria as the Act was not drafted and implemented for development [128].

EFCC's reputation has been dented by allegations of corruption and incompetence (Human Right Watch 2011). The public confidence in the EFCC continues to be eroded even as the commission has been unable to render comprehensive accounts of its dealings with monies and properties recovered as proceeds of crime (Salami Panel 2022). It is worrisome that no officer of the EFCC has been charged for complicity in the several corruption allegations leveled against EFCC. Apart from corruption and compromises inherent in the activities of the EFCC, the commission is inhibited in its duties by political interferences [29]. It was alleged that former Attorney-General of the Federation, Michael Aondokaa (SAN) had an over-bearing interference on matters before the EFCC [4].

The office of the Attorney-General of the Federation supervises the affairs of the EFCC and so political interests of the Attorney-General has always been an issue with EFCC's independence and a strong reason for concern on the war against graft in Nigeria [109]. The powers of the Attorney-General to take over prosecution of any matter in Nigeria is sacrosanct [49]. In *State v. Ilori* (1983), the Supreme Court held that the exercise of powers and discretion vested in the Attorney-General cannot be challenged in court even if the Attorney-General functioned in abuse of office [119]. KanuAgabi aborted the prosecution of Julius Makajuola alleged of embezzling the sum of N420 million (defence budget) by entering a *nolleprosequi* without notice to the President (THIS DAY Editorial 2002).

## 9. Conclusion

Corruption retards development. It debases morality. It is an age-long duty of the law to enforce morality. To this end, the Nigeria State has well established constitutional safeguards to combat the menace of corruption. This is to ensure that the rule of law is not sacrificed on the altar of the fight against corruption or law enforcers turn into law violators.

These constitutional safeguards include the doctrine of separation of powers, the establishment of the National Judicial Council, and the establishment of the Office of the Auditor-General, the Code of Conduct for public officers, Fundamental Human Rights and legislative interventions such as the ICPC, EFCC among others are all geared towards combating corruption. This paper has examined the relevant provisions in all these enactments highlighting their strengths and weaknesses. It is imperative that the identified gaps in the relevant laws be remedied to ensure more purposeful fight against corruption.

Without doubt, the constitutional safeguards and framework for anti-corruption in Nigeria is extensive. However, these safeguards without more cannot win the fight against corruption in Nigeria. The war against corruption in Nigeria can only be won with the right attitude, strong and independent institutions and unflinching political will against

all manifestation of corruption without fear or favour.

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