

**TOWARDS ACHIEVING THE PURPOSES OF THE UNITED NATIONS
CONVENTION AGAINST CORRUPTION (UNCAC) FOR THE
IMPROVEMENT OF HUMAN RIGHTS PROTECTION IN NIGERIA:
ESSENTIALITY AND NECESSITY OF EFFECTIVE DOMESTIC
ENFORCEMENT INSTITUTIONS**

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ABSTRACT

Corruption violates human rights and manifests in many forms including embezzlement, bribery, and money laundering. It is a crime which includes economic and financial crimes. It exists in every country of the world including Nigeria. The United Nations Convention against Corruption (UNCAC) 2003 was the direct legal response to prevent and combat the menace. The bulk of enforcement of the UNCAC is the duty of the State Parties *via* the domestic system but Nigeria has yet to domesticate same. This paper makes a case for the essentiality and necessity of effective domestic enforcement institutions in Nigeria towards achieving the purpose of the UNCAC.

Keywords: Corruption, Embezzlement, Bribery, Money Laundering, Public Procurement, Fiscal Responsibility, Human Rights

INTRODUCTION

Corruption is an issue in the full enforcement and enjoyment of human rights; and this prompted the United Nations General Assembly (UNGA) in the preamble to Resolution 58/4 of 31 December 2003 to be “Concerned about the seriousness of problems and threats posed by corruption to the stability and security of societies,

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undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law.”³ Prasad and Eeckeloo traced the link between corruption and human rights by stating that:

Corruption is also a major obstacle to the observance and implementation of human rights, both as objective standards and as subjective rights. Corruption undermines the basic values of human dignity, equality, and freedom for all, but in particular those whose rights are already wrongfully curtailed such as people living in poverty and those who are disadvantaged or otherwise marginalized. It also destabilizes democracy, good governance, and the administration of justice.⁴

Prasad and Eeckeloo⁵ affirm that corruption is a threat to the full enjoyment of civil and political rights on the one hand and socio-economic rights on the other.

Corruption is one malady that has infected and adversely affected all aspects of the domestic system that it is now a threat to international peace, security, businesses, welfare, and cohesion.⁶ Corruption has its tap roots in the domestic system but is sustained by the foul waters of the international system. The United Nations Convention against Corruption (UNCAC) 2003⁷ is the signal of the universal acknowledgement that corruption is a global issue and that it is a threat to the peace and stability of the international system. Unfortunately, the Convention does not

³ UNGA Resolution 58/4 of 31 December, 2023, preamble.

⁴ Divya Prasad and Lazarie Eeckeloo, *Corruption and Human Rights*. (Geneva Academy and Center for Civil and Political Rights, 2019), 9.

⁵ *Ibid*, 12-24

⁶ Kofi A. Annan, Foreword to the United Nations Convention Against Corruption (UNCAC) 2003, iii-iv. Available at www.unodc.org/documents/... Accessed on 2 January 2023; Ngozi Okonjo-Iweala, *Fighting Corruption is Dangerous: The Story Behind the Headlines*. (The MIT Press, 2018), 83-105; Maxwell M. Gidado, ‘Anti-Corruption Fight in Nigeria: A Lost Battle or a Work in Progress?’ of 8 December 2023, 7-22, being a paper presented at a one-day Symposium organized by the Bwari Branch of the Nigerian Bar Association (NBA) to mark the 2023 Anti-Corruption Day.

⁷ United Nations Office on Drugs and Crime (UNODC), *United Nations Convention against Corruption (UNCAC) 2003*. Available at www.unodc.org/documents/... Accessed on 2 January 2023.

define corruption. Maybe it is taken for granted that the concept of corruption has attained a universal meaning that cannot be faulted. The UNCAC 2003, however, touches on such issues as bribery in the public and private sectors; bribery of foreign public officials and officials of public international organizations; embezzlement, misappropriation or other diversion of property by a public official; trading in influence; abuse of functions; illicit enrichment; embezzlement of property in the private sector; laundering of proceeds of crime; concealment; obstruction of justice; participation and attempt; etc.⁸ From the foregoing, though the Convention does not explicitly define corruption, the substance of corruption is not in doubt. As a result, the State Parties to the Convention acknowledged and were concerned about:

[t]he seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law;

[t]he links between corruption and other forms of crime, in particular organized crime and economic crime, including money-laundering.⁹

The effects of corruption are so corrosive that international attention was drawn to them *via* the Convention and ways of tackling them, to reduce their effects in society. The Convention is the first global multilateral legal instrument aimed at preventing and combating corruption. Though corruption has global effects, the menace seems to have strong roots in Africa and other developing economies. According to Annan:

Corruption is 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.

⁸ UNCAC 2003, arts. 16-20; 22-25 and 27.

⁹ *Ibid*, paras. 3 and 4 to the preamble.

This evil phenomenon is found in all countries — big and small, rich and poor — but it is in the developing world that its effects are most destructive. Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a Government's ability to provide basic services, feeding inequality and injustice and discouraging foreign aid and investment. Corruption is a key element in economic underperformance and a major obstacle to poverty alleviation and development.¹⁰

Nigeria has had a large share in the menace of corruption as can be affirmed from events during the military era prior to 1999 and more in our democratic experience since 1999. Gidado lists and explains twenty-two high profile cases of corruption, in a document of twenty-three pages, in Nigeria.¹¹

Earlier on 29 September 2003, the United Nations Convention against Transnational Organized Crime (UNCATOC) had already entered into force. Unfortunately, the UNCATOC only focused on financing transnational organized crimes, which is only an aspect of the menace of corruption. Before the UNCAC, there were regional efforts to tackle the menace of corruption *via* legal and institutional frameworks. The regional multilateral instruments for the prevention and combat of corruption include the following:

[t]he Inter-American Convention against Corruption, adopted by the Organization of American States on 29 March 1996; the Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union, adopted by the Council of the European Union on 26 May 1997; the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, adopted by the Organization for Economic Cooperation and Development on 21 November 1997; the Criminal Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on

¹⁰ Annan, Foreword to the UNCAC 2003.

¹¹ Gidado, 'Anti-Corruption Fight in Nigeria: A Lost Battle or a Work in Progress?', 2023, 7-14.

27 January 1999; the Civil Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 4 November 1999; and the African Union Convention on Preventing and Combating Corruption, adopted by the Heads of State and Government of the African Union on 12 July 2003.¹²

The regional efforts at preventing and combating corruption have not been successful, especially in Africa, where the virus seems uncontrollable. According to Ribadu:

Between 1960 and 1999, Nigerian officials had stolen or wasted more than \$440 billion. That is six times the Marshall Plan, the total sum needed to rebuild a devastated Europe in the aftermath of the Second World War. When you look across a nation and a continent riddled with poverty and weak institutions, and you think of what this money could have done – only then can you truly understand the crime of corruption, and the almost inhuman indifference that is required by those who wield it for personal gain.¹³

Ribadu made the above statement fifteen years ago but the menace of corruption is yet to be adequately tamed in Nigeria. The evil and extent of corruption are well known everywhere but the political will to tackle it comprehensively, especially in Africa, seems to be lacking. This is evident in the brazen manner in which perpetrators of this crime still have a field day in Nigeria.

The protection of human rights has been the concern of the international community and at the front burner of international discourse since 1945 with the entry into force of the following international instruments on human rights: Universal Declaration of Human Rights (UDHR) 1948;¹⁴ Charter of the United Nations 1945;¹⁵ the International Covenant on Economic, Social and Cultural

¹² UNCAC 2003, para. 15 to the Preamble.

¹³ Nuhu Ribadu, 'Capital Loss and Corruption: The Example of Nigeria,' Testimony before the House Financial Services Committee, Centre for Global Development, 19 May 2009, 9. Available at [www.cgdev.org/publications/...](http://www.cgdev.org/publications/) Accessed on 2 January 2023.

¹⁴ UN General Assembly Res. 217A (III), UN Doc - A/810 at 71 of 10 December 1948.

¹⁵ Treaty Series (TS) 993 of 26 June 1945, art. 1 (3).

Rights (ICESCR) 1966;¹⁶ and the International Covenant on Civil and Political Rights (ICCPR) 1966.¹⁷ In Nigeria, starting from the independence constitution in 1960 to the current Constitution of the Federal Republic of Nigeria (CFRN) 1999, human rights have been recognized as fundamental and enshrined since then in the constitution for the benefit of her citizens and all within her territory.¹⁸ The examination of the subject of the protection of human rights within the context of corruption has, however, evaded the radar of academic discourse until the manifestation of recent realities of the effect of corruption on the protection of human rights.¹⁹ This paper seeks to examine the purposes of the Convention and make a case for the imperativeness of effective domestic enforcement institutions in achieving the purposes of the Convention in Nigeria, bearing in mind that effective legal and institutional frameworks are the foundations for effective enforcement.

This paper adopts the doctrinal research method in the examination of the purposes of the United Nations CAC 2003 by emphasizing the essentiality and necessity of strong, independent, creative, and result-oriented democratic and enforcement institutions for the prevention and combat of corruption aimed at the protection of human rights in Nigeria. This method examines primary sources²⁰ like treaties, domestic legislations, statutes and case law on the subject of corruption *vis-à-vis* the protection of human rights in Nigeria. It also examines secondary sources like legal texts and articles on the subject. This paper is limited to a narrative within the ambit of the law. We agree with Almog that the interpretation of the law is immersed in the narrative and that narrative, as a legal genre, is a unique genre.²¹ Almog has, however, warned that narrative in law is constrained by the rules of

¹⁶ 993 UNTS 3 of 16 December 1966. It entered into force on 3 January 1976.

¹⁷ 993 UNTS 171 of 16 December 1966. It entered into force on 23 March 1976.

¹⁸ Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended), ss. 33-46.

¹⁹ Chinua Achebe, *There was a Country: A Personal History of Biafra*. (Allen Lane, 2012); Gidado, 'Anti-Corruption Fight in Nigeria: A Lost Battle or a Work in Progress?', 2023.

²⁰ Catherine Dawson, *Introduction to Research Methods: A Practical Guide for Anyone Undertaking a Research Project* (4th edn. How to Content, 2009), 1-158; Khadijah Mohamed, 'Combining Methods in Legal Research,' [2016] 11 (21) *The Social Sciences Journal*, 5191-5194.

²¹ Shulamit Almog, 'As I Read, I Weep: In Praise of Judicial Narrative,' [2001] 26 (2) *Oklahoma City University Law Review*, 471-501.

law and procedure.²² We have limited ourselves, in our narrative in this paper, to decided cases in court and the law establishing the anti-corruption institutions in Nigeria. We also adopt Murray's explanatory synthesis and the TREAT paradigm²³ in our assessment of statutes and case law in relation to the effectiveness of the anti-corruption institutions in Nigeria. Nigeria is a constitutional democracy where the constitution is the supreme law of the country.²⁴ The domestic enforcement institutions against corruption are all creations of the constitution and derive their powers therefrom.

This paper is divided into eight sections. Section one is the introduction which lays the groundwork and introduces the subject of discussion. Section two introduces the concept of human rights though in a very limited way, especially for beginners. Section three takes on the UNCAC 2003 as it relates to the prevention and combat of corruption. Section four discusses the effects of corruption on human rights in Nigeria. Section five deals with the domestic legal framework creating enforcement institutions in Nigeria. Section six discusses the challenges of the enforcement institutions in preventing and combating corruption in Nigeria. Sections seven and eight take care of the recommendations and conclusion respectively.

THE CONCEPT OF HUMAN RIGHTS

Human rights are rights that inure in favour of the human being only because he or she is a human being and they are fundamental to civilized living by human beings. Human rights are not the creation of the law by way of treaties or domestic legislation. In *Saude v. Abdullahi*,²⁵ the Supreme Court of Nigeria (SCN) held that: "Fundamental human rights are important and they are not just mere rights. They are fundamental. They belong to the citizen. These rights have always existed even before orderliness prescribed rules for the manner they are to be sought." The

²² Ibid, 472-473.

²³ Michael D. Murray, 'Classical Rhetoric, Explanatory Synthesis, and the TREAT Paradigm,' [2007] *University of Illinois College of Law (Law and Economics Working Paper No. 75)*, 1-69.

²⁴ CFRN 1999 (as amended), s. 1; *Marwa & Ors. v. Nyako & Ors.* (2012) LPELR 7837.

²⁵ (1989) 4 NWLR (Pt. 116) 387 at 419.

nature of human rights was explained by the SCN in *Ransome-Kuti v. Attorney-General of the Federation* ²⁶ thus:

But what is the nature of a fundamental human right? It is a right which stands above the ordinary laws of the land and which in fact is antecedent to the political society itself. It is primary condition to a civilized existence and what has been done by our Constitutions since independence, starting with the independence Constitution, that is, the Nigeria (Constitution) Order in Council 1960, up to the present Constitution, that is, the Constitution of the Federal Republic of Nigeria, 1979 ... is to have these rights enshrined in the Constitution so that the rights should be 'immutable' to the extent of the 'non-immutability' of the Constitution itself.²⁷

In conventional terms, human rights have been segregated into three generations, reflecting the grouping of human rights into clusters: civil and political rights; socio-cultural rights; and group rights which include the right to environment.²⁸

The protection of human rights, as a primary condition for civilized existence, cannot be fully realized in Nigeria with the prevalence of corruption. That becomes more challenging especially where the institutions established to prevent and combat corruption are not effective.²⁹

UNITED NATIONS CONVENTION AGAINST CORRUPTION (UNCAC) 2003

As stated earlier, the UNCAC 2003 is the first global multilateral legal instrument aimed at preventing and combating corruption at the level of the United Nations.

²⁶ (1985) 2 NWLR (Pt. 6) 211.

²⁷ Ibid, at 229-230.

²⁸ Malcolm N. Shaw, *international Law* (6th edn., Cambridge University Press, 2008); Prasad and Eeckeloo, *Corruption and Human Rights*, 2019; UNODC, *Knowledge Tools for Academics and Professionals*.

²⁹ Fola Arthur-Worrey, *The Prosecutor in Public Prosecutions*. (Lagos State Ministry of Justice Law Review Series, 2000), 5; Lawrence Asekome Atsegbua, Violet Omon Okosun Aigbokhaevbo and Sunday Omokhudu Daudu, *Criminal Law in Nigeria: A Modern Approach* (Justice Jeco Printing & Publishing Global, 2012), 8.

The Convention was adopted by the General Assembly of the United Nations on 31 October 2003 at United Nations Headquarters in New York. It was open to all States for signature from 9 to 11 December 2003 in Merida, Mexico, and thereafter at United Nations Headquarters in New York until 9 December 2005, in accordance with article 67 (1) of the Convention. The Convention was also open for signature by regional economic integration organizations provided that at least one member State of such organization had signed the Convention³⁰ in accordance with its provisions. The Convention entered into force on 14 December 2005.³¹

Nigeria signed the Convention on the 9 December 2003 and ratified same on the 14 December 2004.³² Nigeria has, however, not yet domesticated the Convention in accordance with the provisions of the Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended).³³

The Convention has seventy-one articles and grouped into eight chapters. Chapter I contains the general provisions; Chapter II contains the preventive measures; chapter III takes care of criminalization and law enforcement. Chapter IV is concerned with international cooperation while chapter V deals with asset recovery. Chapter VI is the technical assistance and information exchange; chapter VII is concerned with mechanisms for implementation; and the last chapter takes care of the final provisions.

The purposes of the Convention are the following: a. To promote and strengthen measures to prevent and combat corruption more efficiently and effectively; b. To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery; and c. To promote integrity, accountability and proper management of public affairs and public property.³⁴

³⁰ UNCAC 2003, art. 67 (2).

³¹ Ibid, art. 68 (1); United Nations Office on Drugs and Crime (UNODC), 'Ratification Status of the UNCAC 2003,' 2003. Available at www.unodc.org/unodc/en/corruption/ratification-status. Accessed on 2 January 2023.

³² UNODC, 'Ratification Status.'

³³ CFRN 1999 (as amended), s. 12 (1).

³⁴ UNCAC 2003, art. 1.

The Convention (2003, art. 3), however, has an expanded scope of application thus:

This Convention shall apply, in accordance with its terms, to the prevention, investigation and prosecution of corruption and to the freezing, seizure, confiscation and return of the proceeds of offences established in accordance with this Convention.

For the purposes of implementing this Convention, it shall not be necessary, except as otherwise stated herein, for the offences set forth in it to result in damage or harm to state property.³⁵

The enforcement of the Convention is the duty of the States Parties. Therefore, each State Party is to enforce the Convention at the domestic level with the mutual assistance and cooperation of other States Parties. That is even one of the rationales for addressing each article of the Convention to either the State Party individually as “Each State Party shall, in accordance with the fundamental principles of its legal system, ...” or States Parties collectively as “States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system,”³⁶ It is the function of the criminal law to prevent crime by means of appropriate punishment of the guilty, or the prevention of the commission of a crime;³⁷ and the domestic criminal justice system is the best in such endeavours.

In accordance with the purposes and scope of application of the Convention, Nigeria has put in place measures to curb the menace of corruption in the country.

EFFECTS OF CORRUPTION ON THE PROTECTION OF HUMAN RIGHTS IN NIGERIA

Many authors have undertaken studies, within the context of the law, on the above issue³⁸ while others have carried out their studies outside the context of the law but

³⁵ Ibid, art. 3 (1)-(2).

³⁶ Ibid, art. 5 (1-3 and 5) respectively.

³⁷ Timothy Akinola Aguda and Isabella Okagbue, *Principles of Criminal Liability in Nigerian Law* (2nd edn. Heinmann Educational Books Nigeria PLC, 1990), 5.

³⁸ F. Dimowo and S. O. Daudu, ‘Corruption and its Challenges to the Nigerian Economy: A Discuss,’ [2010-2012] 13 (1) *University of Benin Law Journal*, 250-265; Femi Odeahan, ‘An Appraisal of the Decision in *Alhaji Tajudeen Adewale Adelekan & 23 Ors. v. Central Bank of*

with relevance to the general socio-economic implications of the effects of corruption.³⁹ The CFRN 1999 provides that the security and welfare of the people shall be the primary purpose of government.⁴⁰ It further provides for the human rights and the procedures for the enforcement of those rights when there is a violation.⁴¹ The first effect of corruption on human rights is manifested in the right to life which is the most fundamental of all human rights. All other human rights depend on the right to life because it is the living that can claim those other human rights. Where a country, like Nigeria, cannot provide the three basic needs of food, shelter and clothing for her citizens, it calls to question the operational viability of enforcing the primary purpose of government mentioned above. This is even more devastating where there is evidence of international cooperation in committing acts of corruption in Nigeria.⁴²

Corruption has effects on every aspect of life in Nigeria including life expectancy, quality health, critical infrastructure, elections, public administration, etc. Corruption affects both procedural and substantive human rights in Nigeria. The enforcement institutions have a bigger role to play in preventing and combating corruption so as to effectively protect human rights in Nigeria.

Nigeria (2017 11 NWLR (Pt. 1575) page 1 and its Legal Implications on Unilateral and/or Organized Acts of Economic Sabotage in Nigeria's Public Sector,' [2023] (3) *Capital Bar Law Journal*, 27-44; Gidado, 'Anti-Corruption Fight in Nigeria: A Lost Battle or a Work in Progress?,' 2023.

³⁹ Achebe, *There was a Country*, 149-253; Gabriel O. Arishe, *Developing Effective Legislature: The Country Specific Approach to Assessing Legislative Power* (Paclerd Press Ltd., 2017), 417-419; Okonjo-Iweala, *Fighting Corruption is Dangerous*, 27-139.

⁴⁰ CFRN 1999, s. 14 (2) (b).

⁴¹ *Ibid*, ss. 33-46.

⁴² (*Alh. Tajudeen Adewale Adelekan & 23 Ors. v. Central Bank of Nigeria* [2017] 11 NWLR (Pt. 1575) 1; *Federal Republic of Nigeria v. Process & Industrial Development Ltd* [2020] EWHC 2379 at 226.

DOMESTIC LEGAL AND INSTITUTIONAL FRAMEWORKS TO PREVENT AND COMBAT CORRUPTION IN NIGERIA

Apart from the traditional Criminal Code Act⁴³ and the Penal Code Act,⁴⁴ there is a plethora of domestic and institutional legislations in Nigeria that seek to prevent and combat corruption. The Criminal Code Act, which is generally applied in the southern part of the country, criminalizes corruption by public officers employed in the public service.⁴⁵ Any such public officer who engages in those prohibited corrupt acts or omissions commits a felony and is liable to imprisonment for between three to seven years. In addition, the Act criminalizes obtaining by false pretence, which is also a felony, and carries a penalty of three years imprisonment on conviction.⁴⁶ This offence is generally known as ‘419’ and which, incidentally, tallies with the section of the Act. The Penal Code Act, which is generally applied in the northern part of the country, also criminalizes fraudulent or dishonest inducement, which is also known as cheating.⁴⁷

Some preventive and combat legislation are:

Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended) (Cap. C23 LFN 2004)

The Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended) has many provisions that aim at preventing corruption.⁴⁸ For example, the political, economic, social and educational objectives in the Constitution are all aimed at preventing corruption in Nigeria.⁴⁹ The Constitution specifically mandates the States to abolish all corrupt practices and abuse of power.⁵⁰ Again, on the government and the people, the Constitution declares that:

⁴³ Cap. C38, Laws of the Federation of Nigeria (LFN) 2004.

⁴⁴ Cap. P1, LFN 2004.

⁴⁵ Criminal Code Act (CCA), s. 98. The whole of chapter 12 of the CCA is titled ‘Corruption and Abuse of Office. That chapter runs from sections 98 through 111.

⁴⁶ Criminal Code Act (CCA), s. 419.

⁴⁷ PCA, s. 321.

⁴⁸ CFRN 1999 (as amended), ss. 15-18.

⁴⁹ Ibid.

⁵⁰ Ibid, s. 15 (5).

The composition of the Government of the Federation or of any of its agencies and the conduct of its affairs shall be carried out in such a manner as to reflect the federal character of Nigeria and the need to promote national unity, and also to command national loyalty, thereby ensuring that there shall be no predominance of persons from a few States or from a few ethnic or other sectional groups in that Government or in any of its agencies.⁵¹

There is equivalent provision above for the States and their agencies; and for the local government councils and their agencies.⁵²

The Constitution also established certain Federal Executive Bodies⁵³ to enhance transparency and accountability in governance. Some of the Federal Executive Bodies are relevant in the prevention and combat of corruption in Nigeria, which include: Code of Conduct Bureau; Council of State; Federal Character Commission; Federal Civil Service Commission; Federal Judicial Service Commission; Independent National Electoral Commission; National Judicial Council; Nigeria Police Council; Police Service Commission; and Revenue Mobilization, Allocation and Fiscal Commission. The Constitution equally established Certain State Executive Bodies⁵⁴ in the each of the States of the Federation and specifically provides that:

In appointing Chairmen and members of boards and governing bodies of statutory corporations and companies in which the Government of the State has controlling shares or interests and councils of Universities, Colleges and other institutions of higher learning, the Governor shall conform with the provisions of section 14 (4) of the Constitution.⁵⁵

⁵¹ Ibid, s. 14 (3).

⁵² Ibid, s. 14 (4).

⁵³ Ibid, s. 153.

⁵⁴ Ibid, s. 197 (1).

⁵⁵ Ibid, s. 197 (3).

The sections of the constitution referred to above grants active and inclusive participation for all citizens of the State in the political and administrative affairs of their respective States so as to foster a sense of belonging and loyalty among all the peoples of the Federation. The appointment of chairmen and members of the above Federal Executive Bodies is done by the President and the appointments, in some of the bodies, are subject to confirmation by the Senate,⁵⁶ which is the Upper Legislative Chamber of the National Assembly in Nigeria. Furthermore, the removal of members of the Code of Conduct Bureau, the Federal Civil Service Commission, the Independent National Electoral Commission, the National Judicial Council, the Federal Civil Service Commission, the Federal Character Commission, the Nigeria Police Council, the National Population Commission, Revenue Mobilization, Allocation and Fiscal Commission, and the Police Service Commission is subject to an address by the President, supported by two-thirds majority of the Senate, praying that such a member be so removed for inability to discharge the functions of the office or for misconduct.⁵⁷ In addition, the independence of these bodies, in the exercise of their power to make appointments or to exercise disciplinary control over persons, is guaranteed under the Constitution.⁵⁸

Some of the above statutory bodies have the capacity to prevent corruption and combat same in an administrative manner. For example, the Code of Conduct Bureau is crucial in the prevention and combat of corruption in the public service of the country because every person in the public service of the federation and of each of the States is under obligation to observe and conform to the Code of Conduct.⁵⁹ The Code of Conduct, by way of Declaration of Assets before assuming office, also applies to elected and appointed public office holders and politicians to any office in the federation and the States.⁶⁰ Though a creation of the Constitution, the functions and powers of the Bureau are further explained *via* the

⁵⁶ Ibid, s. 154 (1).

⁵⁷ Ibid, s. 157 (1) - (2).

⁵⁸ Ibid, s. 158 (1)).

⁵⁹ Ibid, ss. 172 and 209 respectively.

⁶⁰ Ibid, ss. 52, 94, 149 and 185.

Code of Conduct Bureau and Tribunal (CCBT) Act 1991.⁶¹ The aims and objectives of the Bureau are to establish and maintain a high standard of morality in the conduct of government business and to ensure that the actions and behaviour of public officers conform to the highest standards of public morality and accountability.⁶² The CCBT Act prohibits certain acts by public officers which include: conflict of interest with duty; prohibition of foreign accounts; gifts or benefits of any kind; restriction on loans, gifts or benefits to certain public officers; bribery of public officers; abuse of powers; membership of societies that is incompatible with functions or dignity of office;⁶³ etc.

On the declaration of assets, the Act provides that every public officer shall submit to the Bureau a written declaration in a prescribed form of all his properties, assets and liabilities and those of his spouse or unmarried children under the age of twenty-one years.⁶⁴

Any false statement in the declaration is a breach of the Act and any property or asset which is not fairly attributable to income, gifts or loan approved by the Act, is deemed to have been acquired in breach of the Act unless the contrary is proved.⁶⁵

The functions of the Bureau are: to receive assets declarations by public officers; examine the assets declarations and ensure that they comply with the requirements of the Act and of any other law; take and retain custody of such declarations; and receive complaints about non-compliance with or breach of the Act and where the Bureau considers it necessary to do so, refer such complaints to the Code of Conduct Tribunal.⁶⁶ Accordingly, Act provides that:

Where the Tribunal finds a public officer guilty of contravening any of the provisions of the Act, it shall impose upon that officer any of the punishments specified under subsection (2) of this section.

⁶¹ Cap. C15, LFN, 2004.

⁶² Ibid, s. 2.

⁶³ Ibid, ss. 5, 7, 10-14 respectively.

⁶⁴ Ibid, s. 15 (1).

⁶⁵ Ibid, s. 15 (2) - (3).

⁶⁶ Ibid, s. 3.

The punishment which the Tribunal may impose shall include any of the following:

- (a) vacation of office or any elective or nominated office, as the case may be;
- (b) disqualification from holding any public office (whether elective or not) for a period not exceeding ten years; and
- (c) seizure and forfeiture to the State of any property acquired in abuse or corruption of office.⁶⁷

The Bureau has done well but can do better if it effectively implements the provisions of the law that created it. There is so much hype in Nigeria over the issue of declaration of assets and liabilities by public officers but this is only one of the functions of the Bureau. The Bureau seems to have abandoned its other functions as enumerated above. From the above, the Code of Conduct Bureau has the capacity to prevent and combat corruption, especially in the public service in the country. This can only be achieved where the Bureau and the Tribunal apply the provisions of the Act in full and in a consistent and transparent manner.

Another institution that can prevent and combat corruption in Nigeria is the Federal Character Commission.⁶⁸ The purpose of the Commission is to give effect to the equal rights of all citizens and all sections to actively participate in the governance structure of the Federation and the States.⁶⁹ The provision is aimed at checking nepotism, ethnicity, tribalism and the like in the governance structure of the Federation and the States or in any corporation where the government has controlling interests and shares. The Commission is made up of a chairman and one person representing each of the States of the Federation and the Federal Capital Territory, Abuja, as members.⁷⁰ That, in essence, means that every part of the Federation is represented in the Commission. The focus of the Commission is stated thus:

⁶⁷ Ibid, s. 23 (1) - (2).

⁶⁸ CFRN 1999 (as amended), s. 153 (1) (c).

⁶⁹ Ibid, s. 14 (3) - (4).

⁷⁰ Ibid, Third Schedule, para. 7 (1).

In giving effect to the provisions of 14 (3) and (4) of this Constitution, the Commission shall have the power to:

- (a) work out an equitable formula subject to the approval of the National Assembly for the distribution of all cadres of posts in the public service of the Federation and of the States, the armed forces of the Federation, the Nigeria Police Force and other government security agencies, government owned companies and parastatals of the States;
- (b) promote, monitor and enforce compliance with the principles of proportional sharing of all bureaucratic, economic, media and political posts at all levels of government;
- (c) take such legal measures, including the prosecution of the head or staff of any Ministry or government body or agency which fails to comply with any federal character principle or formula prescribed or adopted by the Commission; and
- (d) carry out such other functions as may be conferred upon it by an Act of the National Assembly.⁷¹

The public officers in (a) and (b) above include the permanent secretaries, Directors-General in Extra-Ministerial Departments and parastatals, Directors in Ministries and Extra-Ministerial Departments, senior military officers, senior diplomatic posts and managerial cadres in the Federal and State parastatals, bodies, agencies and institutions.⁷² The Commission is mandated to make sure that federal character is reflected in the appointments of directors and senior management staff of every public company or corporation.⁷³ It is also the duty of the Board of Directors of every State owned enterprise to recognize and promote the principle of federal character in the ownership and management structure of the company.⁷⁴ More elaborate provisions are made in the Federal Character Commission (Establishment, etc.) Act.⁷⁵ The Federal Character Commission has the potential

⁷¹ Ibid, Third Schedule, para. 8 (1) (a) – (d).

⁷² Ibid, Third Schedule, para. 8 (2).

⁷³ Ibid, Third Schedule para. 8 (3).

⁷⁴ Ibid, Third Schedule para. 9.

⁷⁵ Cap. F7, LFN, 2004.

to prevent and combat corruption in the allocation of posts and public offices in the management of the affairs of the Federation and the States.

Furthermore, the Federal Civil Service Commission and the Federal Judicial Service Commission play crucial roles in the appointment and discipline of persons to those offices that these Commissions have power to oversee. If their powers are exercised in a transparent and consistent manner, they prevent and combat corruption in the federal civil service and the federal judiciary in Nigeria.

From all the above analyses, the Constitution of the Federal Republic of Nigeria 1999 has, therefore, made copious provisions aimed at preventing and combating corruption in the country.

Public Procurement Act 2007 (Cap. P44, LFN, 2004)

In addition to the Constitutional safeguards against corruption, public procurement is another area where corruption reigns supreme.⁷⁶ In response, the National Assembly responded with a number of legislations not only for public procurement but for the whole system of transparent management of the national resources. These legislations are collectively referred to as the ‘Due Process Legislations.’ These legislations include: Public Procurement Act;⁷⁷ Fiscal Responsibility Act;⁷⁸ Allocation of Revenue (Federation Account, etc) Act;⁷⁹ and Finance (Control and Management) Act.⁸⁰

The Public Procurement Act (PPA) 2007 is an Act of the National Assembly that established the National Council on Public Procurement (the Council) and the Bureau of Public Procurement (the Bureau) as the regulatory authorities responsible for the monitoring and oversight of public procurement, harmonizing the existing government policies and practices by regulating, setting standards and developing the legal framework and professional capacity for public procurement

⁷⁶ Okonjo-Iweala, *Fighting Corruption is Dangerous*, 83-89; Gidado, ‘Anti-Corruption Fight in Nigeria: A Lost Battle or a Work in Progress?’, 1-23.

⁷⁷ Cap. P44, LFN, 2004.

⁷⁸ Cap. F40, LFN, 2004.

⁷⁹ Cap. A15, LFN, 2004.

⁸⁰ Cap. F26, LFN, 2004.

in Nigeria, and for related matters.⁸¹ The Act has thirteen parts divided into sixty-one sections).

The Council is made up of the following persons and office holders as members:

- (a) the Minister of Finance as Chairman;
- (b) the Attorney-General and Minister of Justice of the Federation;
- (c) the Secretary to the Government of the Federation;
- (d) the Head of Service of the Federation;
- (e) Economic Adviser to the President;
- (f) Six part-time members to represent:
 - (i) Nigerian Institute of Purchasing and Supply Management;
 - (ii) Nigerian Bar Association;
 - (iii) Nigerian Association of Chambers of Commerce, Industry, Mines and Agriculture;
 - (iv) Nigerian Society of Engineers;
 - (v) Civil Society;
 - (vi) the Media; and
- (g) the Director-General of the Bureau who shall be the Secretary of the Council.⁸²

It can be concluded that the Council is made of the cream of public sector administrators, carefully chosen, based on their strategic relevance and capability to drive the aim of probity, accountability and transparency in public procurement so as to prevent and combat corruption in public procurement in Nigeria. The functions of the Council are in line with greater transparency and accountability in public procurement and are as follows:

- (a) consider, approve and amend the monetary and prior review thresholds for the application of the provisions of this Act by procuring entities;
- (b) consider and approve policies on public procurement;
- (c) approve the appointment of the Directors of the Bureau;

⁸¹ This is the Long Title of the Public Procurement Act, 2007.

⁸² Public Procurement Act (PPA) 2007, s. 1 (2).

- (d) receive and consider, for approval, the audited accounts of the Bureau of Public Procurement;
- (e) approve changes in the procurement process to adapt to improvements in modern technology; and
- (f) give such other directives and perform such other functions as may be necessary to achieve the objectives of this Act.⁸³

The Bureau, on the other hand, is the day-to-day implementing regulatory authority of the Act. The Council depends largely on the expertise and creativity of the Bureau for success. The overall objectives of the Bureau, in this regard, are:

- (a) the harmonization of the existing government policies and practices on public procurement and ensuring probity, accountability and transparency in the procurement process;
- (b) the establishment of pricing standards and benchmarks;
- (c) ensuring the application of fair, competitive, transparent and value-for-money standards and practices for the procurement and disposal of public assets and services; and
- (d) the attainment of transparency, competitiveness and professionalism in the public sector procurement system.⁸⁴

The functions and powers of the Bureau, as spelt out in the Act, are very comprehensive and exhaustive.⁸⁵ For example, the Bureau has the power, where a reason exists, to inspect or review any procurement transaction to ensure compliance with the Act; debar any supplier, contractor or service provider that contravenes any provisions of the Act; maintain a list of firms and persons that have been debarred from participating in public procurement activity and publish same in the procurement journal; and nullify the whole or any part of any procurement proceeding or award which is in contravention of the Act.⁸⁶ The

⁸³ Ibid, s. 2.

⁸⁴ Ibid, s. 4.

⁸⁵ Ibid, ss. 5 and 6.

⁸⁶ Ibid, s. 6.

Bureau also has the power to recommend to the Council, where there are persistent breaches of the Act or regulations made under it, for:

- (h) the suspension of officers concerned with the procurement or disposal proceeding in issue;
- (i) the replacement of the head or any of the members of the procuring or disposal unit of any entity or the chairperson of the Tenders Board as the case may be;
- (j) the discipline of the Accounting Officer of any procuring entity;
- (k) the temporary transfer of the procuring or disposal function of a procuring and disposing entity to a third party procurement agency or consultant; and
- (l) any other sanction that the Bureau may consider appropriate.⁸⁷

As stated earlier, the Bureau has a lot of powers that are exercisable for the overall aim of preventing and combating corruption in public procurement in Nigeria.

The scope of application of the Act covers all procurement of goods, works and services carried out by the Federal Government of Nigeria and all its procurement entities. It also applies to all entities which derive at least 35% of the fund appropriated for any type of procurement described in the Act from the Federation share of the Consolidated Revenue Fund.⁸⁸ The Act does not, however, apply to the procurement of special goods, works and services involving national defence or national security unless the express approval of the President has been first sought and obtained.

The Act further makes provisions for fundamental principles for procurements to the effect that all public procurements are to be concluded subject to the prior review thresholds as may be set by the Bureau from time to time.⁸⁹ Other fundamental principles for public procurement are to be concluded:

- (b) based only on procurement plans supported by prior budgetary appropriations and no procurement proceedings shall be formalized

⁸⁷ Ibid.

⁸⁸ Ibid, s. 15 (1).

⁸⁹ Ibid, s. 16 (1) (a).

until the procuring entity has ensured that funds are available to meet the obligations and subject to the threshold in the regulations made by the Bureau, has obtained a 'Certificate of 'No Objection' to Contract Award,' from the Bureau;

(c) by open competitive bidding;

(d) in a manner which is transparent, timely, equitable for ensuring accountability and conformity with this Act and regulations deriving therefrom;

(e) with the aim of achieving value for money and fitness for purpose;

(f) in a manner which promotes competition, economy and efficiency; and

(g) in accordance with the procedures and timeline laid down in this Act and as may be specified by the Bureau from time to time.⁹⁰

The fundamental principles for public procurement are many and cover twenty-eight subsections of the section 16 of the Act. The above few fundamental principles are cited to drive home the fact that the Act is very comprehensive, exhaustive and innovative in its provisions towards preventing and combating corruption in public procurement in Nigeria. In addition to the above, the Act also provides for the manner in which public procurement should be organized;⁹¹ methods of public procurement for goods and services;⁹² special and restricted methods of public procurement;⁹³ and procurement of consultant services.⁹⁴ The Act also provides for public procurement surveillance and review by the Bureau. By this provision:

The Bureau may review and recommend for investigation by any relevant authority any matter related to the conduct of procurement proceedings by a procurement entity, or the conclusion or operation of a procurement contract if it considers that a criminal

⁹⁰ Ibid, s. 16 (1) (b) – (g).

⁹¹ Ibid, Part V.

⁹² Ibid, Part VI.

⁹³ Ibid, Part VII.

⁹⁴ Ibid, Part VIII.

investigation is necessary or desirable to prevent or detect a contravention of this Act.⁹⁵

Where the Bureau is satisfied that there is a contravention of any provisions of the Act, it has the authority to take action to rectify such contravention, which action includes:

- (a) nullification of the procurement proceedings;
- (b) cancellation of the procurement contract;
- (c) ratification of anything done in relation to the proceedings; or
- (d) a declaration consistent with any relevant provisions of this Act.⁹⁶

The proposed actions above by the Bureau are not a bar to other criminal proceedings which are to be taken against the offending procuring entity.⁹⁷ A bidder, on the other hand, also has the right to seek administrative review for any omission or breach by a procuring or disposing entity under the provisions of the Act.⁹⁸

The Act also applies to disposal of public property though subject to the Public Enterprises (Privatization and Commercialization) Act 1999.⁹⁹ The Act finally provides for the Code of Conduct for Public Procurement.¹⁰⁰ It further provides for offences and penalties relating to public procurement.¹⁰¹ In each of the State of the Federation, there is an equivalent procurement regulator, generally referred to as State Procurement Bureau.

Fiscal Responsibility Act (FRA) 2007¹⁰²

The Fiscal Responsibility Act (FRA) 2007 is an enactment of the National Assembly for the prudent management of the nation's resources, ensure long-term macro-economic stability of the national economy, secure greater accountability

⁹⁵ Ibid, s. 53 (1).

⁹⁶ Ibid, s. 53 (4).

⁹⁷ Ibid, s. 53 (5).

⁹⁸ Ibid, s. 54 (1).

⁹⁹ Ibid, s. 55

¹⁰⁰ Ibid, s. 57.

¹⁰¹ Ibid, s. 58.

¹⁰² Fiscal Responsibility Act (FRA) 2007, Cap. F40, LFN, 2004.

and transparency in fiscal operations within a medium-term fiscal policy framework, and establish the Fiscal Responsibility Commission (the Commission) to ensure the promotion and enforcement of the nation's economic objectives; and for related matters.¹⁰³

The Act established the Commission, which is responsible for the enforcement of the provisions of the Act, with the power to:

- (a) compel any person or government institution to disclose information relating to public revenues and expenditure; and
- (b) cause an investigation into whether any person has violated the provisions of this Act.¹⁰⁴

The Commission is mandated to forward a report of the investigation of any violation of the provisions of the Act to the Attorney-General for possible prosecution.¹⁰⁵ The whole Act is about transparency and accountability in the management of the nation's resources *via* the Medium-Term Expenditure Framework¹⁰⁶ which is the basis for the annual budget.¹⁰⁷ For the purpose of attaining transparency and accountability in fiscal and financial affairs, the Federal Government is mandated to ensure full, timely disclosure and wide publication of all transactions and decisions involving public revenues and expenditures and their implications for its finances.¹⁰⁸ The National Assembly also has a role to play to ensure transparency in the preparation and discussion of the Medium-Term Expenditure Framework, Annual Budget and the Appropriation Bill.¹⁰⁹ The enforcement of the Act is stated thus: 'Any person shall have legal capacity to enforce the provisions of this Act by obtaining prerogative orders or other remedies

¹⁰³ That is the Long Title to the Act.

¹⁰⁴ FRA 2007, s. 2 (1).

¹⁰⁵ *Ibid*, s. 2 (2).

¹⁰⁶ *Ibid*, s. 11.

¹⁰⁷ *Ibid*, s. 18.

¹⁰⁸ *Ibid*, s. 48 (1).

¹⁰⁹ *Ibid*, s. 48 (2).

at the Federal High Court, without having to show any special or particular interest.’¹¹⁰

If the Fiscal Responsibility Act were effectively implemented by the Commission, the recurrent issues of budget padding and juggling of figures would be things of the past.¹¹¹ On the whole, the Act has the potential to prevent and combat corruption in the management of the nation’s resources through transparency and accountability.

Apart from the legal frameworks discussed above, the other three modern prominent and traditional legal and institutional frameworks for the prevention and combat of corruption in Nigeria are: Corrupt Practices and other Related Offences (ICPC) Act 2003;¹¹² Economic and Financial Crimes Commission (Establishment) (EFCC) Act 2004;¹¹³ and Police Act 2020.¹¹⁴

The above three National Assembly legislations tend more towards combating than preventing corruption in Nigeria. For example, the ICPC Act is an Act to prohibit and prescribe punishment for corrupt practices and other related offences.¹¹⁵ The Act criminalizes corrupt acts such as gratification;¹¹⁶ corrupt offers to public officers;¹¹⁷ corrupt demand by persons;¹¹⁸ fraudulent acquisition and receipt of property;¹¹⁹ gratification by and through agents;¹²⁰ bribery of public officer;¹²¹ etc. The Act established the Anti-Corruption Commission as its enforcement institution in collaboration with the Office of the Attorney-General.¹²² Part of the

¹¹⁰ Ibid, s. 51.

¹¹¹ Okonjo-Iweala, *Fighting Corruption is Dangerous*, 55-82; Arishe, *Developing Effective Legislature*, 417-419.

¹¹² Cap. C31, LFN, 2004.

¹¹³ Cap. E1, LFN, 2004.

¹¹⁴ Cap. P19, LFN, 2004.

¹¹⁵ Corrupt Practices and other Related Offences (ICPC) Act 2003, the Long Title to the Act.

¹¹⁶ Ibid, s. 12.

¹¹⁷ Ibid, s. 13.

¹¹⁸ Ibid, s. 14.

¹¹⁹ Ibid, ss. 15 and 16.

¹²⁰ Ibid, s. 20.

¹²¹ Ibid, s. 21.

¹²² Ibid, s. 10 (a).

general duties of the Commission, however, includes the prevention of corrupt practices in Nigeria.¹²³

On the other hand, the Economic and Financial Crimes Commission (EFCC) functions as the institution for the enforcement and the due administration of all economic and financial crimes in Nigeria¹²⁴ and is also the designated the Financial Intelligence Unit (FIU) in Nigeria.¹²⁵ The special powers of the Commission includes acting as the coordinating agency for the enforcement of the provisions of the Money Laundering Act, the Advance Fee Fraud and other Related Offences Act, the Failed Banks (Recovery of Debt and Financial Malpractices in Banks) Act, the Miscellaneous Offences Act, and any other law or regulation relating to economic and financial crimes, including the Criminal Code and the Penal Code.¹²⁶ The Act is a corruption combat legislation and the Commission is a corruption combat institution.

Finally, the police have the foremost duty to prevent and combat corruption as a crime in Nigeria.¹²⁷ This is because, as the primary law enforcement agency in Nigeria, the police have the powers to arrest and prosecute any person who is reasonably suspected of having committed an offence,¹²⁸ including corruption offences, in Nigeria.

In summary, and in line with the multiple domestic legislative frameworks to combat corruption, the institutions for combating the menace of corruption are also many in Nigeria. They include: the Attorney-General of the Federation and those of the States; the Corrupt Practices and other Related Offences Commission (ICPC); the Economic and Financial Corruption Commission (EFCC); the Nigeria Police Force; Code of Conduct Bureau; Code of Conduct Tribunal; the Bureau of Public Procurement; the Fiscal Responsibility Commission; Federal Civil Service

¹²³ Ibid, s. 10 (b) – (f).

¹²⁴ EFCC Act 2004, s. 6.

¹²⁵ Ibid, s. 1 (2) (c).

¹²⁶ Ibid, s. 7.

¹²⁷ Police Act 2020.

¹²⁸ Ibid, s. 4.

Commission; Independent National Electoral Commission (INEC);¹²⁹ the National Assembly¹³⁰; the Judiciary;¹³¹ etc.

CHALLENGES OF DOMESTIC ENFORCEMENT INSTITUTIONS IN NIGERIA

The UNCAC has two main purposes: prevention and combat of corruption. The domestic institutional frameworks in Nigeria, however, do not seem to take prevention as the priority. The combat of corruption, which is the main focus of the Nigerian legal and institutional frameworks, does not seem easy to achieve as they are inundated with many challenges such as:

Preventive enforcement institutions have greater roles to play in curbing corruption in Nigeria: Agencies like the Federal Civil Service Commission, the Bureau of Public Procurement, the Fiscal Responsibility Commission and the Code of Conduct Bureau. These agencies are, however, inundated with lots of challenges like lack of political will, lack of the requisite personnel, lack of modern technological infrastructure for tracking, etc. the failure of preventive measures makes the combat of corruption very herculean. If the preventive agencies had been up to their duties, cases like inflation of contract sums, contract splitting and general corruption in the award of contracts for supply of goods and services would not arise. The case of *FRN v. George & Ors.*,¹³² readily comes to mind where inflation of contract sums, contract splitting and violation of the Public Procurement Act were the gravamen for the prosecution.

Prosecution is always in a hurry thereby violating some of the crucial provisions of the law such as due process: Denning reports an incident in 1984 which involved a rich Nigerian in London over issues of corruption back home in Nigeria. According to Denning:

On Thursday 5 July 1984, about midday, a rich Nigerian Mr Umaru Dikko was receiving guests at his expensive London house. He was

¹²⁹ CFRN 1999 (as amended), s. 153.

¹³⁰ Ibid, s. 4.

¹³¹ Ibid, s. 6.

¹³² Suit No: ID/7/C/2008 which judgement was delivered on the 26 October, 2009 per Oyewole, J.

surrounded and overpowered. Drugs were pumped into him. He was made unconscious and bundled off in a van. He was taken to a place where two large wooden crates were awaiting his arrival. ... Our police opened the crates and found the contents. They took the unconscious Mr Dikko to hospital. They arrested the others. The truth then came out. The Nigerian authorities regard Mr Dikko as a conspirator who had robbed Nigeria of vast sums of money and hoarded them in this country and elsewhere. They felt that extradition proceedings would mean long delay and much uncertainty. So they took this extraordinary means of getting him back to Nigeria.¹³³

Due process is crucial for success in preventing and combating corruption. Violation of due process may have great adverse effects on the fight against corruption. The rule of law is an integral part of due process and the Court of Appeal has also harped on the supremacy of the rule of law in *Bello v. Governor of Gombe State*.¹³⁴ For example, Denning discussed Mr Umari Dikko's case under 'international terrorism' in his book because the rule of law was violated in the process of extraditing the suspect from the UK to Nigeria for trial.

The shoddy investigation by enforcement agencies: Where there is a shoddy investigation, there is no way the evidence will be credible and admissible to secure conviction. Careful and painstaking investigations are necessary for the cause of justice in preventing and combating corruption in Nigeria. In *Osuagwu v. State*,¹³⁵ the SCN allowed the appeal because the police had carried out an improper investigation of the case. Justice Akaahs stated thus in that case:

I wish to observe that the police must be meticulous with their investigation and not engage in sloppiness which will lead to

¹³³ Alfred Thompson Denning, *Landmarks in the Law* (Butterworths, 1984), 255.

¹³⁴[2016] 8 NWLR (Pt. 1514) 219.

¹³⁵ [2016] 16 NWLR (Pt. 1537) 31.

criminals getting off the hook because of tardiness in carrying out their primary function of investigation and prevention of crime.¹³⁶

In *Nwude v. FRN*¹³⁷ the Court of Appeal harped on the duty of the court not to allow criminals enjoy the proceeds of crime. The courts can only convict where there is proper prior investigation by the anti-corruption agencies.

Inability to prove the case beyond reasonable doubt: This challenge, sometimes, is the direct result of shoddy investigation of crimes involving corruption. It is not about establishing a plethora of anti-corruption agencies but the effectiveness of the agencies thus established. That is the argument and our concern in this paper. Proving a criminal case beyond reasonable doubt is the only sure way justice can be achieved in corruption cases. Therefore, the prosecution must discharge the burden of proof and attain the acceptable standard of such proof in corruption cases in accordance with the provisions of the law.¹³⁸

Actions in violation of the legislative powers of the agencies: Some of the enforcement agencies violate the powers granted them by the Act that created them. This is a big challenge in curbing corruption in Nigeria because this, in itself, is corruption. The case of *EFCC v. Diamond Bank PLC & Ors.*¹³⁹ is a case in point where the Supreme Court of Nigeria had the opportunity to make pronouncements on this issue thus:

It is important for me to pause and say here that the powers conferred on the appellant, ie the EFCC to receive complaints and prevent/or fight the commission of financial crimes in Nigeria pursuant to section 6 (b) of the EFCC Act (supra) does not extend to investigation and/or resolution of disputes arising or resulting from simple contracts or civil contracts as in this case. The EFCC has an inherent duty to scrutinize all complaints that it receives carefully, no matter how carefully crafted by the complaining party,

¹³⁶ Ibid, at 71.

¹³⁷ [2016] 5 NWLR (Pt. 1506) 471 at 515.

¹³⁸ Evidence Act 2011, Cap. E14, LFN, 2004 (as amended), ss. 135 and 139.

¹³⁹ [2018] 274 LRCN 46.

and be bold enough to counsel such complainants to seek appropriate/lawful means to resolve their disputes.

Alas! The EFCC is not a debt recovery agency and should refrain from being used as such.¹⁴⁰

In *Ihenacho v. N.P.F.*,¹⁴¹ the Court of Appeal equally held that it is not the duty of the police to enforce contracts or collect common debt.

Incompetent personnel especially in the draft of charges: An incurably defective charge has no probative value in criminal cases and has the potential to impede the prevention and combat of corruption in Nigeria.

Inadequate investment in anti-corruption campaigns: The lack of modern technology, like forensic infrastructure, is a daunting challenge in preventing and combating corruption in the country.

Ineffective legislature: the two chambers of the National Assembly have not been effective in their oversight functions over the institutions of governance especially as it relates to due process, accountability and transparency in handling the business of government in Nigeria. This is in spite of the fact that the National Assembly has the power to enact laws for the good governance of Nigeria and perform oversight functions over the institutions of government.¹⁴²

The challenges discussed above are by no means exhaustive. They are only aimed at driving home the point that real challenges exist in the prevention and combat of corruption and that the enforcement institutions must be assisted to improve on their dual roles of preventing and combating corruption in Nigeria. It is not enough to dole out the challenges. We must also be ready to proffer solutions to the challenges.

RECOMMENDATIONS

The desire to eradicate or curb corruption starts from the knowledge that corruption is an evil that has adverse ripple effects in all aspects of the life of the citizenry

¹⁴⁰ Ibid, at 66.

¹⁴¹ [2017] 12 NWLR (Pt. 1580) 424.

¹⁴² Arishe, *Developing Effective Legislature*, 1-29.

including the protection of human rights in Nigeria. Therefore, our recommendations are based on the challenges identified in the last section.

Prevention of corruption should be the focus, with all the enforcement agencies involved. Prevention of corruption should be the first option for enforcement institutions. Prevention can solve many of the problems associated with the investigation and prosecution of offenders and it would enhance the success of the mandates of the enforcement institutions in Nigeria. The prevention of corruption can be achieved through capacity building *via* regular training and re-training of personnel for effective service delivery.

Investigation and prosecution of offenders should be meticulously carried out, within the ambit of due process and the rule of law, by the enforcement institutions in Nigeria.

Measurable Key Performance Index (MKPI) should be set for each of the enforcement institutions for assessing their performance over time. Hardworking personnel should be rewarded while lazy personnel should be sanctioned.

Enforcement institutions should not exceed their mandates so as not to violate due process and the rule of law.

The Civil Service is the engine of administration and forms the bedrock upon which government policies are implemented. Therefore, the Federal Civil Service Commission (FCSC) has a bigger role to play in preventing and combating corruption in Nigeria by way of training, effective service delivery, and discipline of erring employees. The Code of Conduct Bureau must be ready to actively engage its staff in the verification of declarations of assets by public servants while the Code of Conduct Tribunal must abide, at all times, with its jurisdictional mandate.

The Bureau of Public Procurement and the Fiscal Responsibility Commission have their functions cut out by the Acts that created them. Their duty in the prevention of corrupt practices can never be overemphasized. They must aim at attaining their mandates through training and re-training, collaboration with other relevant agencies, and be transparently accountable to Nigerians.

Every person in elective or appointive position of authority must ensure the need for proper leadership, good governance in all respects, sincerity and dedication to service as outlined by the Supreme Court of Nigeria (SCN) in *Sheriff v. P.D.P.*¹⁴³ Also in *P.D.P. v. Sheriff*, the SCN admonished that the interests of citizens should be the first and foremost in the minds of politicians.¹⁴⁴ Members of the National Assembly should carry out their oversight functions with dedication and sincerity as well.

The judiciary must see to it that justice is done in all cases of corruption before it. In corruption cases, which are criminal trials, Oputa, JSC, (as he then was) articulated the essence of justice in *Josiah v. State* thus:

And justice is not a one-way traffic. It is not justice for the Appellant only. Justice is not even only a two-way traffic. It is really a three-way traffic. Justice for the Appellant accused of a heinous crime of murder; justice for the victim, the murdered man, the deceased, ‘whose blood is crying to heaven for vengeance,’ and finally justice for the society at large, the society whose social norms and values had been desecrated and broken by the criminal act complained of.¹⁴⁵

Corruption can be regarded as murder if not more than that, because its effect on society is worse than murder itself. Corruption leads to the inability of the government to provide basic healthcare facilities to treat common ailments like malaria which can lead to death. Therefore, justice should be the overall driving force for preventing and combating corruption in the country.

Public education of the Nigerian society, on the dangers of corruption and its effects on the protection of human rights, should be intensified. This can be done in collaboration with the National Orientation Agency (NOA), the Ministry of Education, faith-based organizations, and the Traditional Rulers Council. The Bwari Branch of the Nigerian Bar Association (NBA) had a one-day symposium

¹⁴³ [2017] 14 NWLR (Pt. 1585) 212.

¹⁴⁴ [2017] 15 NWLR (Pt. 1588) 219.

¹⁴⁵ [1985] 1 NWLR (Pt. 1) 125 at 141.

on corruption on 8 December 2023 with the theme: ‘Anti-Corruption Fight in Nigeria: A Lost Battle or a Work in Progress?’ The symposium provided an opportunity for experts, drawn from many government agencies and the private sector, to assess the journey so far and the areas for improvement.

Asset seizures and forfeitures should not be selective. They should be objectively carried out by the enforcement institutions to serve as a deterrent to would-be offenders. Asset seizures and forfeitures are parts of the mandates of the anti-corruption institutions in Nigeria but much is yet to be seen in those areas.

The challenge of the incompetence of the enforcement institutions can be solved by adopting the UNCAC 2003 guidelines on recruitment into the public and civil services in the country. A greater part of recruitment into the public and civil services should be based on merit without undermining the constitutional provisions on the federal character principle.

CONCLUSION

To attain the purposes of the UNCAC 2003 for the improvement of the protection of human rights in Nigeria, there is an urgent need for the necessity and essentiality of effective domestic enforcement institutions in Nigeria. There is corruption in every part of the world including the Federal Republic of Nigeria (FRN). Corruption is manifested in many ways and by various means. Corruption adversely affects the protection and promotion of human rights everywhere including Nigeria. Corruption has affected every aspect of life in Nigeria including life expectancy, quality health, critical infrastructure, elections, public administration, etc. Corruption affects both procedural and substantive human rights in Nigeria. On 31 October 2003, the UN General Assembly declared 9 December of every year as International Anti-Corruption Day, a day set aside to highlight the link between anti-corruption and peace, security and development. The global agreement against corruption manifested itself in the UNCAC 2003 which entered into force on 14 December 2005.

The purposes of the UNCAC 2003 are: the promotion and strengthening of efficient and effective measures to prevent and combat corruption; the promotion, facilitation, and support for international cooperation and technical assistance in

the prevention of and fight against corruption, including asset recovery; and the promotion of integrity, accountability and proper management of public affairs and public property.¹⁴⁶ For the UNCAC 2003 to be attained in Nigeria, there is an imperative need for effective domestic enforcement institutions.

The scope of application of the convention is very specific and applies, by its terms, to the prevention, investigation, and prosecution of corruption and the freezing, seizure, confiscation, and return of the proceeds of offences established by the Convention.¹⁴⁷

State parties are expected to domesticate the convention by establishing ‘specialized authorities’¹⁴⁸ for domestic enforcement and implementation of the convention¹⁴⁹ which is in line with the law of treaties on the implementation of treaties.¹⁵⁰ The Federal Government of Nigeria (FGN) is yet to domesticate the convention in accordance with the provisions of her constitution¹⁵¹ but has created domestic institutions for the prevention and combat of corruption in the country. Despite the creation of the various domestic enforcement institutions in Nigeria, corruption still looms large in the country. The prevention and combat of corruption are not about the multiplicity of domestic enforcement institutions but more about the efficiency and effectiveness of those institutions. Unless the domestic enforcement institutions are efficient and effective, the purposes of the UNCAC 2003 would not be attained and the promotion and protection of human rights would not be achieved in Nigeria.

We have offered recommendations, in this paper, for the efficient and effective domestic anti-corruption enforcement institutions in Nigeria. Transparency and accountability are the foundational watchwords for success in preventing and combating corruption in the country. Every hand must be on deck in order to collectively sing the *nunc dimittis* to corruption in Nigeria.

¹⁴⁶ UNCAC 2003, art. 1.

¹⁴⁷ Ibid, art. 3.

¹⁴⁸ Ibid, art. 36.

¹⁴⁹ Ibid, art. 65.

¹⁵⁰ Vienna Convention on the Law of Treaties (VCLT) 1969, arts. 26 and 27.

¹⁵¹ CFRN 1999 (as amended), s. 12 (1).

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