

# **The Economic and Financial Crimes Commission and the politics of (in) effective implementation of Nigeria's anti-corruption policy**

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## Acronyms

<b>ACA</b>	Anti-corruption agency
<b>ACJA</b>	Administration of Criminal Jurisdiction Act
<b>AG</b>	Attorney General
<b>APC</b>	All Progressive Congress party
<b>BPP</b>	Bureau of Public Procurement
<b>CBN</b>	Central Bank of Nigeria
<b>CCB</b>	Code of Conduct Bureau
<b>CCT</b>	Code of Conduct Tribunal
<b>CPI</b>	Corruption Perception Index
<b>EFCC</b>	Economic and Financial Crimes Commission
<b>FATF</b>	Financial Action Task Force
<b>FMIU</b>	Financial Malpractices Investigation Unit
<b>ICPC</b>	Independent Corrupt Practices Commission
<b>LEA</b>	Law enforcement agency
<b>N</b>	Naira
<b>NASS</b>	National Assembly
<b>NDIC</b>	National Deposit Insurance Corporation
<b>NEITI</b>	Nigeria Extractive Industry Transparency Initiative
<b>NFIU</b>	Nigerian Financial Intelligence Unit
<b>NPF</b>	Nigerian Police Force
<b>PCC</b>	Public Complaints Commission
<b>PDP</b>	People's Democratic Party
<b>SCUML</b>	Special Control Unit against Money Laundering
<b>TSA</b>	Treasury Single Account

## Executive summary

The Economic and Financial Crimes Commission (EFCC) of Nigeria has been one of the more vocal – and at times controversial – anti-corruption agencies (ACAs) in Africa. It has been instrumental in charging and prosecuting senior political leaders and businessmen with political links, as well as in recovering and repatriating significant stolen resources that belong to the Nigerian state. Yet it is also subject to frequent political interference, which reduces its effectiveness and means that it is often seen as an arm of the incumbent government without an independent mandate. Senior-level functionaries of the EFCC are perceived as being not immune to political pressures, which is one reason why the Commission has not been able to function credibly, while operational inefficiencies caused by insufficient funding and lack of technical capacity and expertise among staff also undermine the effectiveness of the Commission.

This paper seeks to analyse the effectiveness of the EFCC in isolating itself from damaging political influence, and examines the coordinative character of the Nigerian anti-corruption eco-system. Further, the paper seeks to ascertain how well the Commission has fared in the enforcement and prosecution of economic and financial crimes, which is the primary purpose of ACAs such as the EFCC. We have done this by tabulating the numbers of petitions received, rejected and investigated, as well as eventual arrests and prosecutions (and their ratios) against successful convictions. Although comprehensive data on these activities is scarce, our analysis provides an indication of trends for more detailed investigations.

The EFCC investigated a total of 15,124 petitions (41.5% of all petitions received) between 2010 and 2015. In terms of criminal prosecutions filed in court, the EFCC filed a total of 2,460 cases in this period but secured only 568 convictions, representing 3.75% of investigated cases and a conviction rate of 23.09%. Most of these convictions were secured within three years of filing the cases in court, however the vast majority can be categorised as low- or mid-level economic and financial crimes such as advance fee fraud (that is, obtaining by false pretences, criminal conspiracy, criminal breach of trust, forgery and uttering, employment scam, impersonation and currency counterfeiting), rather than higher-level convictions arising from the embezzlement of public funds, illegally dealing in petroleum products and money laundering. Thus, cases involving large sums of public money and particularly prosecutions involving politically exposed persons are rarely concluded within three years.

While procedural and political considerations currently limit the effectiveness of the EFCC, measures could be put in place to nudge the organisation in the right direction. This includes changes to the tenure of executive officers and the Board of the EFCC to straddle the tenures of presidents and senates to restrict political influence over the Commission; efforts to undertake an organisational effectiveness map for the EFCC to identify skill sets that are lacking, followed by the design of targeted and bespoke training programmes; and continued deliberations to understand the overlap between the institutional arrangements and focus of the various ACAs (EFCC and ICPC) with steps taken to streamline processes where needed.

# 1. Introduction

Successive Nigerian governments have tried to tackle corruption through legislation and the creation of anti-corruption agencies (ACAs). The most ambitious efforts occurred during the administration of President Olusegun Obasanjo, with the establishment of the Independent Corrupt Practices Commission (ICPC)<sup>1</sup> and the Economic and Financial Crimes Commission (EFCC). Both ACAs are creations of statutes. The mandates of the two ACAs overlap, although the EFCC also has a preventive mandate and, with its focus on financial crimes, was better funded. In addition, the EFCC Act also vests the Commission with one of the most comprehensive anti-corruption mandates in Nigeria's history and situates the agency at the centre of the Nigerian anti-corruption eco-system with robust law enforcement powers in respect of all laws proscribing economic and financial crimes.

We note at the outset that the EFCC has been instrumental in the prosecution of some senior politicians and businessmen with political links, and in the recovery and repatriation of significant sums belonging to the Nigerian state and foreigners. The EFCC has also established itself as an agency with high levels of forensic capacity to lead investigations. However, despite these successes, the Commission is often seen by the Nigerian public as an arm or stooge of the incumbent government and without having an independent mandate (Babatunde and Filani, 2016). Indeed, there is some evidence that appears to suggest that EFCC senior officers do not seem to be immune from political pressures, with some observers having linked the falling rates in prosecution to such interests and selective prosecution (Mordi, 2016). These linkages evidently have a negative impact on the public perception of the Commission.

As damaging rent capture is common in Nigeria for structural reasons, the EFCC's role in tackling some of the more severe instances of corruption is critical. A recent report by PricewaterhouseCoopers (PwC, 2017) estimates that corruption could cost the Nigerian economy 37% of its gross domestic product (GDP) by 2030, therefore the EFCC plays an important role in reversing this trend.

This Working Paper forms part of a wider analysis of the effectiveness of the EFCC in protecting itself from damaging political influence and provides a comprehensive outline of possible solutions. It appraises the coordinative and/or collaborative character of the anti-corruption eco-system in Nigeria, and examines the EFCC's role within this. Premised on the fact that the primary tools of the EFCC are investigation and successful prosecution of economic and financial crimes, the paper also seeks to ascertain how well the Commission has fared in the enforcement and prosecution of such crimes and to identify the factors that inhibit the effectiveness of the EFCC as a tool for deterrence.

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<sup>1</sup> Established pursuant to the Corrupt Practices and Related Offences Act 2000 which was repealed and replaced with the Corrupt Practices and Related Offences Act Cap C Laws of the Federation of Nigeria 2004. The Economic and Financial Crimes Commission Act Cap E1 Laws of the Federation of Nigeria 2004. See *Yakubu v F.R.N.* (2009) 14 NWLR (Pt 1160), *Auwalu v F.R.N* (2018) 8NWLR (Pt 1620) 1.

Section 2 provides a brief overview of corruption in Nigeria and how the EFCC is positioned within that context. Section 3 describes the eco-system of ACAs in Nigeria, analyses the overlaps within them, and explores why the EFCC stands out among agencies. In section 4 we analyse the effectiveness of the EFCC as a prosecuting agency by comparing the number of investigations conducted with the number of prosecutions and also convictions it has secured. Section 5 considers the factors that affect the function of the EFCC, with a particular focus on political corruption. The paper concludes with some preliminary recommendations for the EFCC, the Federal Government of Nigeria and the relevant stakeholders to consider.

## 2. Context: corruption in Nigeria and the role of the EFCC

As outlined in Khan et al. (2017), corruption is a structural feature of governance in developing countries where strikingly high levels of informality make it difficult for formal rules to be enforced. Nigeria is no exception (Roy, 2017), and has acquired a reputation as one of the most corrupt countries in the world (Amaechi Onuigbo et al., 2015). Indeed, in 1996 it was ranked by Transparency International's Corruption Perception Index (CPI) as the most corrupt country in the world (ibid.).

Anti-corruption strategies in developing countries have typically been based on vertical enforcement using prosecutions, legal requirements for transparency and accountability, and impartiality for rule of law. While there have been some successes in these types of anti-corruption efforts in some countries, sustainable progress has been difficult due to the weakness of horizontal enforcement at a societal level: developing and emerging countries have a high level of 'informality', which suggests that large parts of society do not follow formal rules. The problems are unfortunately compounded in Nigeria due to the presence of a significant number of oil reserves. With enormous oil reserves, the culture of rent seeking has been entrenched in the extractive sectors, particularly the oil sector which accounts for majority of Nigeria's revenue. Political corruption is a feature of this informality and is most clearly observed in how rents (described as incremental incomes arising from policy decisions) are allocated.

One example of the significant instances of political corruption in Nigeria is the Halliburton scandal involving a conglomerate company Siemens AG and Halliburton, where its former subsidiary, Kellogg Brown & Root (KBR) entered a guilty plea and agreed to pay a US\$579 million fine for payment of bribes to secure contracts in Nigeria and other countries.<sup>2</sup> The employees of the foreign conglomerate were prosecuted expeditiously, while the investigation of the senior government officials who allegedly received over US\$180 million in bribes fell silent and has possibly been abandoned (Albert and Okoli, 2016). Other examples include the former World Bank Vice President, Dr Obiageli Ezekwesili, announcing that an estimated US\$400 billion of Nigeria's oil revenues had been 'stolen' or misspent since Nigerian independence, and Minister of Information Mr Lai Mohammed stating in 2016 that some government ministers and other officials had looted a sum of around 1.34 trillion naira (N) (about US\$6.8 billion) (Hope, 2017). In the over 400 convictions the EFCC has

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<sup>2</sup> United States of America v. Kellogg Brown & Root LLC, <https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2011/02/16/02-11-09kbr-plea-agree.pdf>

secured in the ten years of its existence, only about four members of the political class have been successfully prosecuted through dubious plea bargain deals<sup>3</sup> (Falana, 2013).

The seeming immunity of high-ranking public officials leads to the perception by the Nigerian public that the crusade against corruption is nothing more than a façade. This view is further reinforced by the inability of the ACAs to secure the convictions of high-profile persons. Almost all former state governors are currently under investigation and/or facing prosecution for gross misappropriation of public funds by the ACAs.<sup>4</sup> Research reveals that most of the prosecution against the former governors are pending at interlocutory stages with little or no progress with respect to the conclusion of substantive corruption charges (Isuwa and Olasanmi, 2018).<sup>5</sup> Such interlocutory appeals in some of the cases have been heard by the Supreme Court and are now back at the High Court level for the trial of the substantive criminal charges.

Anecdotal evidence suggests an emerging trend of high-ranking and strategically important politicians joining the ruling party, in order to assure some reduction in the rigour of criminal investigation. For example, there has been limited reports with respect to the investigation of Mr Musiliu Obanikoro (former minister under the People's Democratic Party (PDP)), Mr Godswill Akpabio (former Governor of Akwa Ibom) (Ejekwonyilo, 2015) and Mr Martins Elechi (former Governor of Ebonyi State). However, another observable trend is where, in spite of moving to the ruling party, a politician considered a threat to the ruling coalition can be investigated with force; for example, despite crossing from the hitherto ruling PDP to the current ruling All Progressive Congress (**APC**) party, there was vigorous anti-corruption prosecution against the present President of the Senate, Bukola Saraki. In the recent cases of *FRN v Jolly Tevor Nyame* and *FRN v Joshua Dariye*, the EFCC secured high-profile convictions with penalties against both former two-term governors of Taraba and Plateau states respectively in charges number FCT/HC/CR/82/2007 (Adesemoju, 2018) and FCT/HC/CR/81/07 (Leke, 2018). The prosecution of these two politicians took 11 years, and towards the end of the proceedings Nyame and Dariye both joined the ruling APC from the opposition PDP. Senator Dariye, who was elected to the senate on the platform of the PDP, defected to the ruling party APC at a very critical and advanced stage of his prosecution, when conviction appeared inevitable. Mr Nyame also defected at a critical stage of his prosecution, when conviction appeared imminent. Both Dariye and Nyame were convicted and sentenced to 14 years in prison on corruption charges (Alli, 2018).

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<sup>3</sup> Former Governor Lucky Igbinedion (Edo state) and James Ngilari (Adamawa state) were convicted with the option of paltry penalties. In December 2008 a Federal High Court in Enugu fined Igbinedion N3.5 million in a N2 5billion financial fraud case. The former governor pleaded guilty, paid the fine in court and walked out a free man. In March 2017, Ngilari was convicted of contract fraud with a mild sentence. The appeal court afterwards invalidated his conviction.

<sup>4</sup> For example, the present Senate President Bukola Saraki (former governor of Kwara State) and a former governor of Borno State, Ali Modu, are presently under investigation by anti-graft agencies. Former governors Orji Uzor Kalu (Abia State), Boni Haruna (Adamawa State), Lucky Igbenedion (Edo State), Chimaroke Nnamani (Enugu), Saminu Turaki (Jigawa), Sule Lamido (Jigawa), Rasheed Ladoja (Oyo State), Ahmed Yerima (Zamfara), Gabriel Suswam (Benue), James Ibori (Delta), Martin Elechi (Ebonyi), Danjuma Goje (Gombe), Attahiru Bafarawa (Sokoto State), Murtala Nyako (Adamawa), Ikedi Ohakim (Imo) and Peter Odili (Rivers) are some of the names of the former governors under investigation or facing corruption charges in Nigerian courts.

<sup>5</sup> See also the list of high-profile cases on the official EFCC website <https://efccnigeria.org/efcc/>



In these cases where convictions have taken place, the public perception has generally been that these were either 'dispensable' players or had been unable to 'work the system' adequately. This is particularly so in the above cases, as it is evidenced that both Nyame and Dariye moved to the ruling party when their prosecution was at an advanced stage with a very high possibility of imminent conviction. It is plausible that if both governors had changed political allegiances at the early stages of their prosecution, they may not have been convicted.

Where the political stakes haven't been so high, there has been some movement in the right direction in terms of government action against cases of corruption. One such example is from 2014 when the Government of Nigeria discovered around 60,000 'ghost workers' on its payroll following the implementation of the Integrated Personnel and Payroll Information System, with further ghost workers discovered through the new system since this time. This discovery saved the government about N170 billion (approx. US\$9 billion) (Anthony-Uko, 2014), but is evidence of how corruption has permeated deep into the fabric of the nation (Hope, 2017). Another example is the introduction of the Treasury Single Account (TSA) maintained by the Central Bank of Nigeria and into which all revenue and income of the government are remitted so as to enable transparency and monitoring of government revenue and expenses (Adetula et al., 2017). The TSA also plugs leakages attributable to the corrupt practices of civil servants. Furthermore, the Central Bank of Nigeria introduced the Bank Verification Number (BVN), which is a unique bank identification number linking an individual to his various bank accounts. The introduction of the BVN has enabled the gathering of financial intelligence data and has helped to curb private-sector fraud (*Vanguard*, 2015).

The EFCC is a statutory body with an ambitious mandate, yet it is also subject to frequent political interference which reduces its effectiveness. This makes it a unique organisation in the Nigerian political settlement space – described by Khan (2010) as a reproducible combination of distribution of power and distribution of benefits. Seen in this light, the effectiveness of the EFCC or the outcome of the EFCC's enforcement in terms of successful prosecutions and lower levels of corruption is an interaction of, or contestation between, powerful organisations that have the ability to influence outcomes, and usually not in rule-following ways. These organisations are able to use their influence over enforcement in a manner that aids their political interests; and when rules can be thus distorted or infringed, enforcement is usually weak, as is the case in many developing countries including Nigeria.

It is equally important to note that these powerful organisations are not coalitions with consistent memberships. Political affiliations are fluid in Nigeria and ruling coalitions can have varying memberships over periods of time, resulting in differential outcomes for the EFCC. While it is safe to say that these outcomes rarely differ in terms of the general levels of corruption and enforcement, they do however differ in terms of the groups of people who are affected.

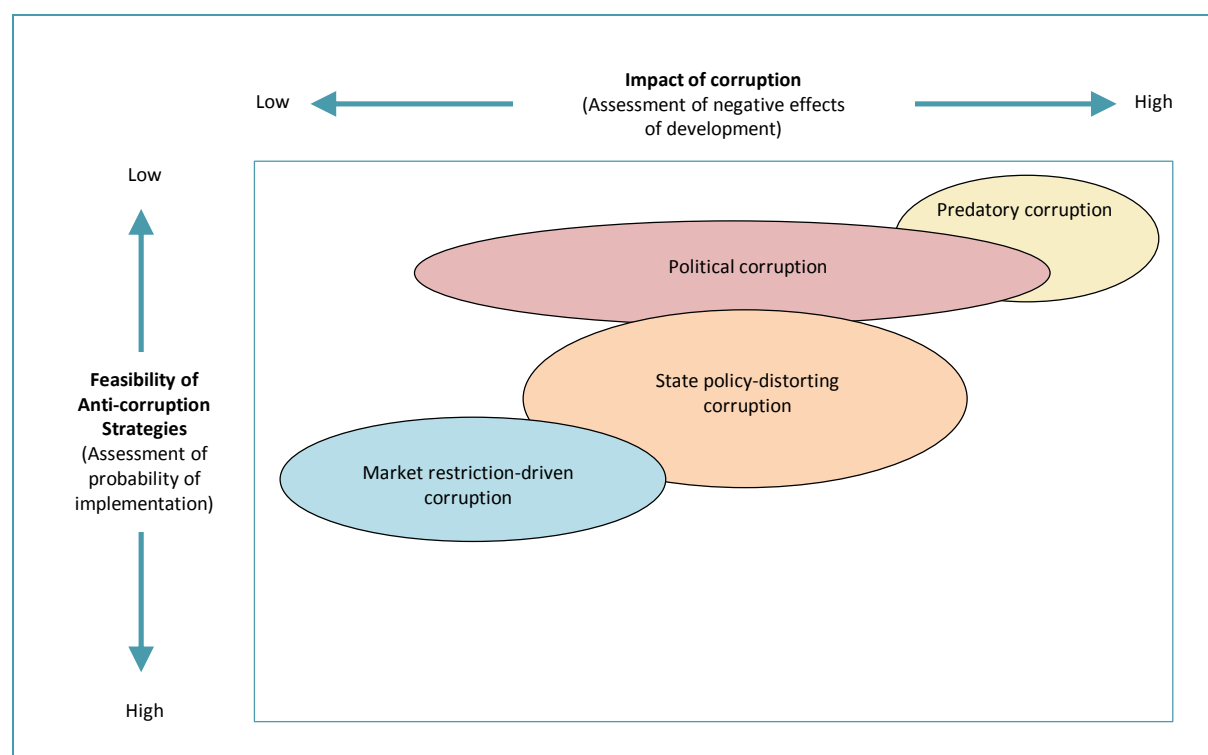
In our analysis, the EFCC is subject to policies relevant to its functioning, it being captured or distorted by political interests (policy-distorting corruption), as well as to outright political corruption. In the first case, a certain set of policies could be devised in a manner that

actually hinders its impartial operation. In the second case the interference is far more brazen – for instance, where appointments are interfered with. Given the systemic importance of the EFCC and its frequent use as a political medium (e.g. politically influenced appointments, or investigating certain officials/politicians and leaving others), the challenges of devising policy solutions for the EFCC are significant. This is because they must have enough ‘teeth’ to have influence at a systemic level, and be robust enough to not fall foul of political influence.

The yardstick for measuring the effectiveness of the EFCC cannot be in terms of its ability to completely eradicate corruption as this may be impossible to do given the realities of political corruption in developing countries. A more realistic measurement should be of how well the EFCC has *reduced* corruption, with the caveat that corruption is a structural feature of developing countries and changing the incentive structure behind corrupt practices is beyond more conventional top-down anti-corruption strategies (Khan et al., 2017). The ubiquity of oil rents in Nigeria ensures significant distortions in the economy, yet the contradiction is that these rents – or their redistribution – are also necessary for stability in the country (Roy, 2017).

The Anti-Corruption Evidence (ACE) framework (Figure 1) provides a unique matrix with which to test how potentially successful anti-corruption policies are likely to be.

**Figure 1: ACE framework**



Source: Khan et al. (2017).

For the purposes of our research on the EFCC for ACE, however, we have decided to measure the effectiveness of the EFCC in terms of successful prosecutions and, to a lesser extent, public education and its efforts to sensitise citizens on the effect of corruption in

Nigeria. Most studies of ACAs tend to rely on statistics on investigations or responses to complaints (Johnson et al., 2012); however, an analysis of the proportions of investigations to prosecutions and the prosecutions to convictions, as well as the nature of the prosecutions, can provide important insights into the effectiveness of an ACA that only focusing on investigations cannot provide. This study relies on available indicators to determine the effectiveness of the EFCC in terms of the number of petitions received, investigations and successful prosecutions. We also consider internationally recognised indicators on perceptions of corruption, such as the CPI,<sup>6</sup> those from the Political and Economic Risk Consultancy (PERC)<sup>7</sup> and the World Bank Control of Corruption governance indicators.<sup>8</sup>

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<sup>6</sup> [https://www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_2017](https://www.transparency.org/news/feature/corruption_perceptions_index_2017)

<sup>7</sup> <https://www.cpib.gov.sg/research-room/political-economic-risk-consultancy>

<sup>8</sup> <http://databank.worldbank.org/data/databases/control-of-corruption>

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### 3. The ACA eco-system in Nigeria

Prior to the establishment of the EFCC, the architecture of the Nigerian anti-corruption ecosystem could be described as incremental due to the establishment of successive anti-corruption agencies with overlapping jurisdictions. However, the EFCC is vested with a modest mandate for inter-agency coordination and collaboration, and sits at the core of the Nigerian anti-corruption ecosystem as the central coordinating ACA in Nigeria.

The collaborative anti-corruption effort has been buttressed by the creation of the Special Control Unit against Money Laundering (SCUML) and the Nigerian Financial Intelligence Unit (NFIU), which was hitherto a unit within the EFCC but was made an independent ACA in 2018 and became autonomous to the EFCC. The core mandates of the SCUML and EFCC include the receipt, analysis and dissemination of financial intelligence (such as reports of suspicious transactions and currency transactions) to ACAs and other law enforcement agencies (LEAs).<sup>9</sup>

The EFCC was established pursuant to the Economic and Financial Crimes Commission (Establishment) Act, which repealed the Economic and Financial Crimes Commission Act 2002.<sup>10</sup> The catalyst for the establishment of the EFCC is both domestic and international, namely:

- 1 The need to combat corruption and to mark a paradigm shift from the earlier, weaker anti-corruption rhetoric by creating a robust and exhaustive legislative and/or institutional anti-corruption approach; and
- 2 Increased pressure from developed countries on developing countries such as Nigeria to put in place effective and efficient mechanisms to combat corruption. The Group 7 (G7) countries' summit in 1989 established the Financial Action Task Force (FATF) on money laundering, which by 2001 had blacklisted Nigeria as a non-cooperative country. One of the recommendations of the FATF was the establishment of an ACA to function as a financial intelligence unit that possessed sufficient statutory enforcement powers (Obuah, 2010). Furthermore, the emergence of the EFCC came in the wake of the new era of terrorism that dawned on 9 September 2001, which resulted in increased pressure by the United States (US) and the United Nations UN) on countries (particularly developing countries) to put in place measures to combat financing of terrorism.<sup>11</sup>
- 3 It was against this backdrop that the administration of President Olusegun Obasanjo adopted its multi-pronged anti-corruption campaign with the creation of the EFCC, the Due Process Office in the Presidency and the ICPC (Hope, 2017). The EFCC Act vests the EFCC with exhaustive and sweeping anti-corruption functions, which include

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<sup>9</sup> The Nigerian Financial Intelligence Unit Act 2018 (**NFIU Act**). See sections 2 of the NFIU Act and the Federal Ministry of Industry, Trade and Investment (Designation of Non-Financial Institutions and Other Related Matters) Regulation 2013.

<sup>10</sup> EFCC v Yanaty Petrochemical Ltd (2017) 3 NWLR (Pt 1552)

<sup>11</sup> It should be noted that UN Secretary General Antonio Guterres very recently commended as satisfactory Nigeria's anti-money laundering efforts in his remarks to the Security Council of the United Nations (*Vanguard News*, 2018a).

investigating financial crimes and adopting measures for the identification, tracing, freezing, seizure and confiscation of the proceeds of terrorist activities and economic and financial crimes.<sup>12</sup> The EFCC Act also ascribes a wide and open-ended definition to the term 'economic and financial crimes',<sup>13</sup> which necessitates it to liaise with several other LEAs.

A review of Tables 1 and 2 below indicate that from its composition, prosecutorial powers and enforcement jurisdiction, the EFCC has the most exhaustive anti-corruption mandate of all ACAs and is supposed to serve as the nucleus of Nigeria's anti-corruption efforts. However, the fact that the appointment and removal of the EFCC's chairman is subject to the consent of the President of the Federal Republic of Nigeria and/or the Senate, makes the EFCC susceptible to capture by the Nigerian political structure.

An appraisal of the EFCC's coordinative and collaborative role within the Nigerian anti-corruption eco-system requires that we identify and highlight the powers of the relevant ACAs and LEAs with which the EFCC interfaces or is supposed to interface. For the purpose of this section, the ACAs under consideration are:

- 1 The Nigerian Police Force (NPF)<sup>14</sup>
- 2 The Code of Conduct Bureau (CCB) and the Code of Conduct Tribunal (CCT)<sup>15</sup>
- 3 The Public Complaints Commission (PCC)<sup>16</sup>

<sup>12</sup> Section 6 of the EFCC Act.

<sup>13</sup> The EFCC Act defines the term 'economic and financial crimes' to mean the "non-violent criminal and illicit activity committed with the objectives of earning wealth illegally either individually or in a group or organized manner thereby violating existing legislation governing economic activities of the government and its administration and includes 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, foreign exchange malpractices including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic wastes and prohibited goods etc" (Section 46 of the EFCC Act).

<sup>14</sup> Established Pursuant to Section 214 of the Constitution of the Federal Republic of Nigeria 1999 (As Amended) ('the Constitution') and the Police Act Cap P Laws of the Federation 2004. The NPF was created with the overarching function of preventing and detecting crimes, apprehension of offenders, preservation of law and order, protection of life and property and the due enforcement of all laws and regulations with which the NPF is directly charged. Anti-Corruption Legislations such as the Criminal Code Act, Counterfeit Currency (Special Provisions) Act, Miscellaneous Offences Act, Advance Fee Fraud Act confer the NPF with jurisdiction over offences such as public office corruption, corruption by employees and agents in the course of their employment or agency, currency related corruption, stealing and obtaining by false pretence (in local parlance '419' under section 419 of the Criminal Code), forgery and fraud committed by trustees, directors and officers of companies. It is noteworthy that within the NPF are financial and fraud-related enforcement units, namely, the Special Fraud Unit (SFU) and the Financial Malpractices Investigation Unit (FMIU). The notoriety of pervasive corruption within the NPF is such that commentators have opined that public confidence in the organisation has been eroded and this has warranted the creation of other ACAs, particularly the EFCC and the ICPC.

<sup>15</sup> Established pursuant to the 3<sup>rd</sup> and 5<sup>th</sup> Schedule of the Constitution and the Code of Conduct Bureau and Tribunal Cap C Laws of the Federation of Nigeria 2010. The CCB was established to maintain a high standard of morality in the conduct of government business and ensure that public officers conform to the highest standards of public morality and accountability, and carries out the functions of receiving, examining and retaining copies of asset declarations by public officers and the receipt of complaints of non-compliance with the CCB Act. The purpose of the asset declaration is to ascertain the assets held by public officers upon assumption of office and cessation of public office. The remit of the CCB's jurisdiction is largely public office corruption. The CCT is granted exclusive jurisdiction over offences committed under the CCB Act (see *Okoye v Santili* (1994) 4 NWLR (Pt 338) 256).

- 4 The Office of Due Process
- 5 The Independent Corrupt Practices Commission (ICPC)<sup>17</sup>
- 6 The Bureau of Public Procurement (BPP)<sup>18</sup>
- 7 The Nigeria Extractive Industry Transparency Initiative (NEITI)<sup>19</sup>
- 8 The NFIU<sup>20</sup>

<sup>16</sup> Established pursuant to the Public Procurement Act Cap P14 Laws of the Federation of Nigeria 2010 ('the PCC Act'). The PCC Act vests the commissioners with the power to investigate any complaints lodged by any person or against any administrative action taken by any department or ministry of the Federal or State Government, any department of any local government authority, any statutory corporation or public institution set up by any government in Nigeria or any private or public company incorporated in Nigeria whether Government owned or otherwise. The PCC is expected to act as the government ombudsman in respect of bureaucratic and administrative injustice perpetrated in the course of public and private functions.

<sup>17</sup> Established pursuant to the Corrupt Practices and Related Offences Act 2000, which was repealed and replaced with the Corrupt Practices and Related Offences Act Cap C Laws of the Federation of Nigeria 2004. See *Yakubu v F.R.N.* (2009) 14 NWLR (Pt 1160) and *Auwalu v F.R.N.* (2018) 8NWLR (Pt 1620). The Corrupt Practices and Related Offences Act contains more extensive and comprehensive provisions in respect of public office corruption compared to that contained in the CCB Act, the Penal Code Act and the Criminal Code Act. The legislation also vests the ICPC with an exhaustive anti-corruption mandate within the spheres of public service including, but not limited to, receiving and investigating conspiracy or attempt to commit corrupt crimes and making requisite prosecutorial recommendation to the Attorney General of the Federation or State; examination of practices, systems and procedures of public bodies and to proffer opinion and review where such internal practices, system and procedures facilitate fraud and assist public institutions on the procedure, mechanism and strategy for fraud and corruption minimisation and elimination; educate the public on and against bribery, corruption and related offences and to foster public support in the campaign against corruption: *Yakubu v F.R.N.* (2009) 14 NWLR (Pt 1160) and *Auwalu v F.R.N.* (2018) 8NWLR (Pt 1620) 1.

<sup>18</sup> Established pursuant to the Public Procurement Act No. 14 of 2007 to inter alia prevent fraudulent and unfair procurement and where necessary apply administrative sanction. The BPP shall be responsible for monitoring the public procurement process, set standards for public procurement and harmonise existing government policies and practices in public procurement and developing the legal framework and capacity for public procurement in Nigeria. The Supreme Court in the case of *Alao v. FRN* (2018) 10 NWLR (Pt 1627) 284 gave a communal interpretation of Section 5 of the EFCC Act and Sections 53(1) and 58(3) of the Public Procurement Act to affirm the power of the EFCC to investigate and prosecute (independently of the Attorney General) offences committed under the Public Procurement Act.

<sup>19</sup> Established under the Nigeria Extractive Industry Transparency Initiative Act ('the NEITI Act') to promote and ensure transparency and accountability and eliminate corrupt practices in payments and receipts within the extractive sector. The objectives of NEITI include ensuring due process and transparency in the payment made by all extractive industry company to the Federal Government and statutory recipients; to monitor and ensure accountability in the revenue receipts of the Federal Government from the extractive industry companies; to eliminate all forms of corrupt practices in the determination, payments, receipts and posting of revenue accruing to the Federal Government from extractive industry companies; to ensure transparency and accountability by the Government in the application of resources from payments received from extractive industry companies; and to ensure conformity with the principles of the Extractive Transparency Initiative. See section 2 of the NEITI Act.

<sup>20</sup> The NFIU was hitherto the Financial Intelligence Unit within the EFCC Act and was hived from the EFCC pursuant to the Nigerian Financial Intelligence Unit Act 2018 ('the NFIU Act') with a very comprehensive financial intelligence function and powers including, but not limited to, receipt, collection and analysis of currency transaction reports, suspicious transaction reports and information relating to corrupt crimes from financial institutions, designated non-financial institutions, security agencies, anti-corruption agencies and relevant regulatory and administrative authorities; prompt dissemination of information and results of analysis related to money laundering, terrorist financing and predicate or ancillary offences; maintenance of a financial intelligence network with regulatory authorities, law enforcement and security agencies; to avail and respond to requests by investigating security and law enforcement agencies with information collected and analysed so as to facilitate law administration and enforcement; maintenance of a comprehensive, secured financial intelligence database for the storage of information and intelligence to enable exchange of intelligence amongst LEAs; development and implementation of policies and procedures to guide the sharing of financial intelligence in a confidential and secured manner. The NFIU Act necessitated the amendment of the EFCC Act by deleting Section 1(2)(c) and 6(l) of the EFCC Act thereby stripping the EFCC of its status as a financial intelligence unit.

## 9 SCUML<sup>21</sup>

## 10 The Federal Ministry of Justice<sup>22</sup>

## 11 The National Assembly<sup>23</sup>

For the purpose of this part of the paper we restrict our analysis to the NPF, CCB, PCC, ICPC, EFCC, BPP, NEITI, NFIU and SCUML. Table 1 establishes the presence of a legislative mandate for inter-agency collaboration and coordination within these organisations. We do not include agencies such as the Central Bank of Nigeria (CBN), the National Assembly (NASS) and the National Deposit Insurance Corporation (NDIC) because anti-corruption is ancillary to their core statutory mandate.

**Table 1: Legislative mandates for inter-agency collaboration and coordination**

ACA	Creation of the Constitution <sup>a</sup>	Indirect creation of the Constitution <sup>b</sup>	Multidisciplinary composition of the ACA's governing arm	Collaborative mandate <sup>c</sup>	Coordinative mandate in respect of all economic and financial crimes
NPF					
CCB					
PCC					
ICPC					
EFCC					
BPP					
NEITI					
NFIU					
SCUML					

Notes: a) This refers to ACAs that are the direct creation of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and/or an enabling legislation; b) This refers to ACAs established by the NASS pursuant to the powers vested in NASS by virtue of Section 15(5) and the Exclusive Legislative List; c) Implies the mandate of the ACA to collaborate with other ACAs in the fight against corruption.

<sup>21</sup> Responsible for the registration and monitoring of Designated Non-Financial Institutions ('DNFIs'). The DNFI Regulation mandates DNFI inter alia to a) establish a risk-based approach to Anti Money Laundering and Combating Financing or Terrorism ('AML/CFT') policy or programmes; (b) create an AML/CFT Compliance Officer; (c) promptly provide the NFIU with information upon request; (e) file with the NFIU suspicious transaction reports, currency transaction reports and cash-based transaction reports; (f) promptly report to the NFIU any suspicions derived from criminal activities. DNFIs include businesses and professions such as dealers in jewellery, car dealers, dealers in luxury goods, chartered accountants, audit firms, tax consultants, clearing and settlement companies, legal practitioners, hotels, casinos, supermarkets, trusts and company service providers, estate surveyors and valuers, mortgage brokers and non-profit organisations.

<sup>22</sup> Operating under the leadership of the Attorney General of the Federation. The role of the Attorney General in the anti-corruption system is discussed subsequently in this chapter.

<sup>23</sup> See Sections 4 and 88 of the Constitution which establishes the power of the National Assembly to make laws and by virtue of a gazette conduct an investigation into any matter in respect of which it has power to make laws, the conduct of the affairs of any person, authority, ministry or government, department charged or intended to be charged with the duty or responsibility of (a) executing or administering laws enacted by the national assembly and disbursing or administering money appropriated or to be appropriated by the National Assembly. The investigative powers of the National Assembly are exercisable only for the purpose of enabling it to (a) make laws with respect to its legislative competence and correct defects in existing laws and (b) expose corruption, inefficiency or waste in the execution or administration of law within its legislative competence and the in the disbursement or administration of funds appropriated by it. See also the case of *Shell Producing Development Company of Nigeria v Ajuwa* 2015 (NWLR) (Pt 1480).



The following conclusions can be reached from the information presented in Table 1:

- A. Only the NPF, the CCB and the CCT are direct creations of the Constitution of the Federal Republic of Nigeria 1999 (as amended) (Constitution). The other ACAs (except SCUML) are indirect creations of the Constitution vide the powers vested in the NASS by Section 15(5) and Item 60(a), Part I Second Schedule of the Constitution. The constitutionality of an ACA such as the ICPC was confirmed by the Supreme Court in the case of *A.G. Ondo State and Ors v A.G Federation*.<sup>24</sup>
- B. The NPC comprises of the President of the Federal Republic of Nigeria as Chairman, along with the Governors of each State of the Federation, the Chairman of the Police Service Commission and the Inspector General of Police. The governing board of the CCB comprises of a Chairman and nine other members. The 3<sup>rd</sup> Schedule of the Constitution and the CCB Act do not specify the discipline or profession of the members other than stating that they should be persons of unimpeachable integrity in Nigerian society and, at the time of their appointment, must not be less than 50 years old.<sup>25</sup> With respect to the ICPC, the composition of its governing board comprises of a Chairman who shall be a serving judge of the court of appeal, a retired police officer not below the rank of Commissioner of Police, a legal practitioner, a retired judge of a superior court of record, a retired public servant not below the rank of director, a woman, a youth not below 21 years or more than 30 years, and a chartered accountant.<sup>26</sup>
- C. The enabling statutes creating ACAs such as the BPP, the EFCC and the CCB contain legislative consideration of inter-agency collaboration in their anti-corruption functions. Paragraph 14 of the Code of Conduct Standard Operating Procedure 2017 promotes and encourages strategic collaboration between the CCB and other ACAs and empowers the Executive Committee of the CCB to, inter alia, determine the procedure, framework and processes necessary for such inter-agency cooperation, approval of joint preventive anti-corruption policies and actions, and approval of sharing and exchange of intelligence information etc. The collaborative mandate of the BPP is well entrenched in Section 53 and 58 of the Public Procurement Act. The Supreme Court in the case of *Alao v FRN*<sup>27</sup> gave a joint interpretation of section 6 of the EFCC Act and the section referred to earlier of the Public Procurement Act to mean that the BPP can refer corruption allegations to the EFCC for investigation and prosecution. Furthermore, Paragraph 14 of the Code of Conduct Bureau Standard Operating Procedure Regulation 2017 vests the Enforcement Committee of the CCB with an inter-agency collaborative mandate. Section 6(o) of the EFCC Act mandates the EFCC to liaise with the Attorney General (AG), the Nigerian Customs Services, the Immigration and Prison Services Board, the Central Bank of Nigeria, the National Deposit Insurance Corporation, the National Drug Law Enforcement Agency and all government security and law enforcement agencies and such other financial supervisory institutions in the eradication of economic and financial crimes.

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<sup>24</sup> (2002)9 NWLR (Pt 772) 222.

<sup>25</sup> Section 1 of the Code of Conduct Bureau and Tribunal Act Cap C15 Laws of the Federation of Nigeria 2004.

<sup>26</sup> Section 3(1)-(7) of the Corrupt Practices and Other related Offences Act Cap C31 Laws of the Federation of Nigeria 2004.

<sup>27</sup> (2018) 10 NWLR (Pt 1627) 284.



In furtherance of the collaborative mandate entrenched in the EFCC Act, Nigeria's anti-corruption campaign has witnessed several synergies between the EFCC and other LEAs and ACAs such as the CBN and the NDIC in the banking reforms which necessitated the prosecution of infractions of the Banks and Other Financial Institutions Act<sup>28</sup> by several bank executives.<sup>29</sup> The EFCC has also entered into oral and written understandings with other LEAs such as the Nigerian Postal Service, the Financial Reporting Council of Nigeria (EFCC, 2017: 9), and the Nigerian Oil and Gas Local Content Management Board.<sup>30</sup> Recently the EFCC embarked on enforcement campaigns in collaboration with the Federal Inland Revenue Services (*Vanguard News*, 2018b).

- D. The collaborative mandate of the NFIU and the SCUML can be deduced from their statutory obligation to receive and disseminate financial intelligence from and to other LEAs.<sup>31</sup> Between 2009 and 2015 the NFIU (then a unit within the EFCC) disseminated a total of 1,439 intelligence reports to 13 ACAs and/or LEAs such as the ICPC, the National Drug Law Enforcement Agency, the Special Fraud Unit under the NPF, the CCB, the Federal Inland Revenue Services, and the Department of State Security (EFCC, 2015: 57). Over the same period, the NFIU received 54 and responded to 75 intelligence request from about 42 foreign financial intelligence units (*ibid.*: 52).
- E. In Table 1 the collaborative mandate of the EFCC resonates very clearly in the multidisciplinary and multi-agency composition of the Commission which comprises a Chairman,<sup>32</sup> the Secretary of the Commission,<sup>33</sup> 16 ex-officio members drawn from the leadership of 16 LEAs<sup>34</sup> and four eminent Nigerians with cognate experience in finance, banking or accounting.<sup>35</sup> Section 6(j) of the EFCC Act also vests the EFCC with the function of collaborating with government bodies both within and outside Nigeria carrying on functions wholly or in part analogous with those of the EFCC such as the identification and determination of the whereabouts and activities of persons suspected of being involved in economic and financial crimes; the movement of proceeds or properties derived from the commission of economic and financial and other related

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<sup>28</sup> Cap B1 Laws of the Federation of Nigeria 2004.

<sup>29</sup> For example, Mrs Cecilia Ibru, the former managing director of Oceanic Bank Plc (who entered a Plea Bargain with the EFCC); Mr Erastus Akingbola, then managing director of former Intercontinental Bank Plc (whose prosecution is ongoing); and Mr Barth Ebong, the former managing director of Union Bank Plc.

<sup>30</sup> <https://www.ncdmb.gov.ng>

<sup>31</sup> Section 2(1), 3(1)(a)(b), (d), (e), (f), (h) of the Nigerian Financial Intelligence Unit Act 2018.

<sup>32</sup> The Chairman is the Chief Executive and Accounting Officer of the EFCC who must be a serving or retired member of any government security or law enforcement agency not below the rank of the Assistant Commissioner of Police or equivalent and possessing not less than 15 years cognate experience.

<sup>33</sup> The Head of the Secretariat of the EFCC subject only to the supervision and control of the Chairman.

<sup>34</sup> The Governor of the CBN; representatives of the Federal Ministries of Foreign Affairs, Finance and Justice; the Chairman of the National Drug Law Enforcement Agency; the Directors General of the National Intelligence Agency and Department of State Security, the Registrar General of the Corporate Affairs Commission, the Director General of the Securities and Exchange Commission, the Managing Director of the Nigeria Deposit Insurance Corporation, the Commissioner of Insurance, the Post Master General of the Nigerian Postal Services, the Chairman of the Nigerian Communications Commission, the Controller General of the Nigeria Customs Services, the Controller General of the Nigerian Immigration Services, the Inspector General of the Police and/or their respective representatives.

<sup>35</sup> Section 2 of the EFCC Act.

crimes; the exchange of personnel or other experts; establishment and maintenance of a system for monitoring international economic and financial crimes in order to identify suspicious transactions and persons involved; maintaining data, statistics, records and reports of person, organisations, proceeds, properties, documents or other items involved in economic and financial crimes; undertaking research and similar works with a view to determining the manifestation, extent, magnitude and effects of economic and financial crimes; and advising government on appropriate intervention measures for combating the same.

Between 2011 and 2015 the EFCC referred 6,739 petitions that were filed with to sister ACAs and LEAs for investigation and possible prosecution (EFCC, 2015).

The above deductions from Table 1 reveals that the EFCC possesses the widest collaborative mandate yet on the following grounds: firstly, the composition of the EFCC Board is wider than that of other ACAs and comprises representatives of around 16 LEAs with a strategic mandate to combat economic and financial crimes; secondly, unlike other ACAs (except the ICPC), it is understood that the EFCC is the only ACA that is statutorily mandated to liaise with other LEAs and ACAs.

The above notwithstanding, our research and interviews have identified the following gaps in the coordinative and collaborative functions of the Nigerian anti-corruption ecosystem:

- A. The ACAs and LEAs often do not collaborate with each other. This is likely due to incentives for each ACA and/or LEA to guard its own jurisdiction and preserve its perceived relevance within the campaign against corruption, and results in inter-agency strife that is conflated with limited budgetary allocations from the Federal Government.
- B. There is evidence of a lack of coordination amongst ACAs and LEAs in the enforcement and prosecution of economic and financial crimes. For example, in 2018 the ICPC had to withdraw corruption charges against ex-Governor and Senator for Plateau North in the NASS Mr Jonah David Jang, because the EFCC had filed an earlier charge against Jang in respect of the same offences. The lack of coordination is compounded by the presence of overlapping mandates amongst ACAs, such as in relation to enforcement jurisdiction over public-sector corruption which is held by the ICPC, the EFCC and the CCB. There is also an overlap of mandates between the Special Fraud Unit of the NFP and the EFCC in respect to private-sector offences such as Advance Fee Fraud.<sup>36</sup> It is our intention that the analysis within this paper will ensure that a framework for effective anti-corruption coordination exists to help reduce or eliminate such overlaps.

Table 2 examines the remit of the enforcement powers of the organisations under review. We have excluded the SCUML and NFIU from this analysis as their overarching function is operating as a financial intelligence unit for the purpose of receiving, collating, analysing and disseminating financial intelligence that will assist other ACAs and LEAs in the performance of their anti-corruption functions.

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<sup>36</sup> See Section 7(2)(b) of the EFCC Act and Section [] of the Advance Fee Fraud Act Cap A Laws of the Federation of Nigeria

**Table 2: The remit of ACAs' enforcement powers**

ACA	Investigative powers <sup>a</sup>	Jurisdiction over public-sector economic and financial crimes	Jurisdiction over private-sector financial crimes <sup>b</sup>	Prosecution independent of AG <sup>c</sup>	Prosecution through or subject to consent of the AG	Powers to seize and compel forfeiture of assets	Power to compound offences or enter a plea bargain
NPF							
CCB							
PCC							
ICPC							
EFCC							
BPP							
NEITI							

Notes: a) This includes the powers to arrest (with or without warrant), issue summons, search and detain; b) The term 'Private-sector economic and financial crimes' is mere shorthand for various categories of crimes in the private sector including, but not limited to, fraud, forgery, currency counterfeiting, tax evasion, intellectual property theft, looting and embezzlement in private organisation, foreign exchange infractions, oil bunkering etc.; c) Prosecution powers will always be subject to the overriding power of the AG to institute, continue and overtake prosecution of economic and financial crimes.

Table 2 allows us to make a few significant observations that are relevant to understanding the remit of the various agencies:

- All the ACAs have the power to investigate corrupt crimes within their jurisdiction except for the BPP which has no power to investigate crimes but refers corruption or other crimes to other LEAs such as the EFCC.<sup>37</sup> Hence, the BPP does not prosecute economic and financial infractions.
- The functions of NEITI include evaluation of relevant contractual and sovereign obligations; the practices of all extractive industry company and government respectively; obtaining from extractive industry companies the record of the cost of production and the volume of the sale of oil, gas or other mineral extracted; requesting from any company in the extractive industry or organ of the government an accurate account of money paid by and received from the company.<sup>38</sup>
- In respect of the prosecutorial powers of the NPF, Section 23 of the Police Act vests in the NPF the power to prosecute offences subject to the powers of the AG to institute, take over and discontinue criminal prosecution as affirmed in the case of *Osahon v FRN*.<sup>39</sup> With respect to the CCB, pursuant to paragraph 11(5)(a), the Executive Committee may prosecute offences at the CCT or any other court with the consent of the AG.
- Between the ICPC and the NPF, the Corrupt Practices Act does not derogate the powers of the NPF to investigate and prosecute any offence under the Corrupt Practices Act provided that the NPF shall notify the ICPC of such investigation and/or prosecution.

<sup>37</sup> *Alao v FRN*, Supra.

<sup>38</sup> Section 3 of the Nigeria Extractives Industries Transparency Initiative Act Cap N159, Laws of the Federation of Nigeria 2004.

<sup>39</sup> (2003) 16 NWLR (Pt 845) 89.

- The BPP, ICPC and CCB only have jurisdiction over public-sector-related corrupt crimes whilst the EFCC, NPF, NEITI and PCC have jurisdiction over both public- and private-sector-related corrupt crimes.
- With respect to the ICPC, the Corrupt Practices Act does not vest in the ICPC direct prosecutorial powers, it grants the ICPC the power to recommend the prosecution of Public Office Corrupt Crimes by the AG. Prosecution of offences shall be by the AG or any person to whom he shall delegate his authority and any offence prosecuted under the Act shall be deemed to have been initiated by the AG. Hence, any prosecution not instituted by the ICPC is deemed instituted by the AG and thus valid. In other words, no one save the AG can challenge the power of the ICPC to institute an action in the name of the Federal Republic of Nigeria.<sup>40</sup>
- The CCB can investigate all declared and undeclared property and assets and, where necessary, refer the matter to the CCT for an order to seal off the property or premises or freeze accounts of a public official or that of related corporate entities or groups, proxies or cronies where the investigation reveals or there is reasonable suspicion that the property, premises or assets declared by a public official was illegitimately acquired. The CCB may in respect of an asset sealed by the CCT with the consent of the Attorney General charge the sealed asset for the purpose of forfeiture to the Federal Government.<sup>41</sup>
- One of the novel introductions of the EFCC Act is the power of the EFCC to compound offences and by implication introduce into Nigerian law the concept of plea bargaining.<sup>42</sup> The concept of plea bargaining is further entrenched in the Administration of Criminal Justice Law of Lagos State and the Administration of Criminal Justice Act 2015.
- The powers of the EFCC to engage in seizure and forfeiture of assets as contained in sections 28, 29 and 30 of the EFCC Act was sanctioned by the court of appeal in *Ukiri v EFCC*<sup>43</sup> where it was held that the EFCC has no outright or arbitrary power of its own to attach and cause forfeiture of any asset or property to the Federal Government of Nigeria even when necessity demands that they attach the assets with requisite speed. The EFCC is required to apply for an order of court sanctioning the seizure of an asset, but such application for seizure can only be made where the allegations of corruption are so certain and real to serve as grounds for a charge or an indictment. The essence of the interim order of forfeiture is to preserve the asset from dissipation or being carried away to frustrate the prosecution of the offender and recovery of the asset required. It is also imperative to note the Presidential Order 6 of 2018 ('Order 6') which provides that assets of any Nigerian citizen within Nigeria or within the possession or control of any person known to be a current or former government official, a person acting for or on behalf of such an official, any politically exposed person or any person who is complicit in, or is directly or indirectly engaged in corrupt practices, is to be protected

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<sup>40</sup> Section 10(a) and 30 of the Corrupt Practices and Other Related Offences Act; *Ehindero v F.R.N.* Supra.

<sup>41</sup> Paragraph 6(2),(3) and (4) of the Code of Conduct Bureau Standard Operational Procedure 2017.

<sup>42</sup> See Section 14(2) of the EFCC Act, See also the cases of *Romrig (Nig) Ltd v FRN* (2015) 3 NWLR (Pt 1445) 62 and *PML Securities Company Limited v FRN* (2015) 4 NWLR (Pt 1450) 551.

<sup>43</sup> (2018) 1 NWLR (Pt 1599) 155 and then the Supreme Court in (2018) 12 NWLR (Pt 1632) 1.

from dissipation by employing lawful means including an order of court to preserve such assets until a final determination of the court. To this end, Order 6 empowers the AG to coordinate the implementation of the executive order and enlist the support of the LEAs in the seizure of assets suspected to be the proceeds of corrupt practices. Many legal commentators<sup>44</sup> have challenged Order 6 as being un-constitutional on the premise that it takes the role of the judiciary by enabling seizure of assets on the suspicion of it being the proceeds of corruption without adequate evidence that the said assets are proceeds of corrupt practices. It has also been argued that Order 6 violates the principles of separation of power and the fundamental human rights to property. Recently, the Federal High Court in Suit No. FHC/ABJ/CS/740/2018 upheld the constitutionality of Order 6 on the grounds that its provision is without prejudice to existing laws and is subject to the powers of the AG under the Constitution more so as the order of court would have to be obtained prior to an interim seizure of assets.

It is noteworthy, however, that there exists no statutory regime for the management and administration of seized assets pending the final determination of the criminal suit. As such, the seized assets waste away or dissipate while it lies in the custody of the EFCC or other ACAs.

To allow for the effective administration and preservation of the value of the seized assets, the Proceeds of Crime Bill is presently awaiting passage at the NASS, which is reputed to have exhaustive provisions on the administration and value preservation of alleged proceeds of crime. One of the resolutions reached at the 1<sup>st</sup> National Anti-Corruption Stakeholders' Summit from 27 to 28 March 2017 was the need to push for the passage of the Proceeds of Crime Bill into law to enable efficient management of seized assets.

Furthermore, the EFCC Act and several forfeiture orders of the court direct the forfeiture of assets to the Federal Government of Nigeria, which would in most cases be paid into the Federation Account<sup>45</sup> and will ultimately be mixed with other funds to be disbursed to all federating states of Nigeria. However, this ignores the fact that Nigeria comprises federating states, and hence it can be argued that the victim state is short-changed in the asset recovery process when other federating states benefit from the disbursed funds when they are not immediate and direct victims of the corrupt crime.<sup>46</sup>

- Sections 174 and 211 of the Constitution make the office of the AG the repository of prosecutorial powers with powers to institute, take-over and discontinue prosecution of economic and financial crimes. The AG can delegate these prosecutorial powers in the

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<sup>44</sup> Eze Onyekwere "The Constitution and Executive Order No. 6" Published in Punch Newspaper July 9, 2018, <https://punchng.com/the-constitution-and-executive-order-no-6/>; Mike Ozekhome (Senior Advocate of Nigeria) "Executive Order No. 6 Illegal, Unconstitutional and Undemocratic" published in Vanguard Newspaper on July 17, 2018- <https://www.vanguardngr.com/2018/07/executive-order-no-6-illegal-unlawful-unconstitutional-undemocratic-mike-ozekhome/>

<sup>45</sup> Section 31(3) of the EFCC Act. See also Paragraph 6(6) of the Code of Conduct Bureau Standard Operational Procedure 2017.

<sup>46</sup> Interview with Justice of the Court of Appeal.

interest of expeditious administration of justice, however, which within the EFCC would be undertaken by its Legal and Prosecution department.<sup>47</sup>

Significantly the Nigerian Supreme Court has held that the EFCC can prosecute economic and financial crimes independently of the AG as prosecution, though not an exclusive preserve of the AG, is subject to the constitutional powers of the AG to institute, continue or discontinue criminal prosecution (*ibid.*). The Supreme Court has also held that no person can challenge in court the power of the EFCC to prosecute economic and financial crimes.<sup>48</sup> This decision somewhat contradicts the provision of Paragraph 10 of the EFCC (Enforcement Regulation) 2010 ('EFCC Regulation 2010'), however, which stipulates that where the EFCC conducts an investigation in respect of serious or complex matters,<sup>49</sup> it shall forward the outcome of its investigation to the AG with recommendation on whether or not there are sufficient grounds to initiate prosecution. Furthermore, where the EFCC is unable to determine whether it is in the public interest to prosecute a case, it is required to seek the advice of the AG. These provisions make it difficult to reconcile the decision of the Supreme Court and the EFCC Regulation 2010.

The above deductions from Table 2 reveal that the EFCC has very robust enforcement powers compared to other ACAs. For example, Section 6(c)(n) and (o) of the EFCC Act vests the EFCC with the function of coordinating and enforcing all economic and financial crimes laws and enforcement functions conferred on any other authority (a provision not contained in the enabling statute of other ACAs and LEAs), a power that has been recognised by the Supreme Court.<sup>50</sup> Furthermore, Section 7(2) of the EFCC Act empowers the EFCC to enforce any and all laws and regulations relating to economic and financial crimes, including the Money Laundering Act, the Advance Fee Fraud Act, the Failed Banks (Recovery of Debts) and Financial Malpractice in Banks Act 1994 (as amended), the Banks and other Financial Institutions Act 1991 (as amended), the Miscellaneous Offences Act and any other law or regulations relating to economic and financial crimes including the Criminal Code and Penal Code. Furthermore, the reach of the EFCC's enforcement powers exceeds that of public-sector corruption conferred on the CCB and the ICPC, with the EFCC enjoying enforcement and prosecutorial powers in respect of both public- and private-sector crimes.

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<sup>47</sup> Shema v F.R.N (2018) 9 NWLR (Pt 1624) 337.

<sup>48</sup> Alao v FRN (2018) 10 NWLR (Pt 1627) 284, Olagunju v FRN (2018) 10 NWLR (Pt 1627) 272.

<sup>49</sup> This includes: (a) having a significant international dimension; (b) involving money or assets in excess of N50,000,000; (c) requiring specialised knowledge of financial, commercial, fiscal or regulatory matters such as the operation of markets, banking systems, trusts or tax regimes; (d) involving allegations of fraudulent activity against numerous victims; (e) involving substantial and significant loss of funds by a ministry or department or a public body; (f) that it is likely to be of widespread public concern or (g) involving alleged misconduct that amounts to an act of economic sabotage.

<sup>50</sup> Ugo-Ngadi v FRN (2018) 8 NWLR (Pt 1620) 29; Danfulani v EFCC (2016) 1 NWLR (Pt 1493) 223; Shema v FRN (2018) 10 NWLR (Pt 1628) 399; Ahmed v FRN (2009) 13 NWLR (Pt 1159), Alao v FRN (*supra*).

Our research and interviews have identified the following gaps and inconsistencies in the anti-corruption framework in Nigeria, however:

- 1 There exists jurisdictional overlap between the powers of the ACAs, particularly between the EFCC, the Special Fraud Unit and the Financial Malpractice Unit of the NPF, and overlapping jurisdiction amongst the EFCC, NPF, ICPC and CCB in respect of public-sector corrupt crimes. This enables unscrupulous complainants to abuse the legal process. For example, in the cases of *Diamond Bank Plc v Opara*<sup>51</sup> and *EFCC v Diamond Bank*<sup>52</sup> the complainant filed a petition of financial fraud at the FMIU and proceeded to file another petition at the EFCC in respect of the same offence. The Court castigated the complainant for engaging in such abuse of the legal process. There are also several instances whereby complainants 'forum-shop' between the EFCC and the NPF depending on the sum involved in order to have their cases heard in the court most likely to provide a favourable judgement, and instances where complainants have filed petitions at both the EFCC and the NPF. This may result in a multiplicity of complaints before the NPF and the EFCC, which was frowned upon by the court in the case of *Ahmed v FRN* (Supra). Such practices inhibit the efficacy of anti-corruption efforts and can amount to double jeopardy for the accused who is being investigated and prosecuted by different ACAs for the same alleged offence.
- 2 The overlapping prosecutorial powers of ACAs and the AG may give rise to political interference in the prosecution of corruption cases by the EFCC, due to the fact that the AG and the Minister of Justice are political appointees of the President. This was most evident during the administration of the former president, the late Musa Yar'Adua, who had appointed Mr Kaase Aondoakaa as AG. During Aondoakaa's tenure there was considerable rivalry between the office of the AG and the EFCC in respect of the prosecution of named ex-governors of federating states for corruption charges. It is worthy of note that Aondoakaa had acted as solicitor to one such ex-governor prior to his appointment as AG (Ogbu, 2008).
- 3 There exists no statutory regime for efficient and economic administration of confiscated assets which can be remedied with the passage of the Proceeds of Crime Bill into law. Furthermore, the law does not contain a system whereby the victim federating state of a corrupt crime is solely compensated as orders of forfeiture are made into the Federation Accounts that benefit all states.

In summary, our analysis reveals that the EFCC serves as the chief coordinating ACA for implementation of anti-corruption efforts in Nigeria, but that jurisdictional overlap and limited inter-agency coordination in enforcement defeat the statutory mandate of a coordinated and comprehensive anti-corruption apparatus.

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<sup>51</sup> (2018) 7 NWLR (Pt 1617) 92.

<sup>52</sup> (2018) 8 NWLR (Pt 1620) 61.



## 4. The effectiveness of the EFCC as a prosecuting agency

By virtue of the provisions of the EFCC Act,<sup>53</sup> the Commission has adopted criminal prosecution as its primary tool in the anti-corruption crusade. Based on data obtained through interviews with judicial officers, ACA officers, documentary analysis and participation in various focus group discussions on Nigeria's anti-corruption drive organised under the ACE project in Abuja on 16 August 2018, this section examines how effective the EFCC is in fulfilling its criminal enforcement and prosecution mandate, particularly with respect to high profile prosecutions.

The EFCC has recorded some reasonable achievements since its establishment, however certain responsibilities have been constrained as a result of the political corruption described in section 3.

The productivity levels of the EFCC can be evaluated by comparing the number of petitions received by the EFCC with the number of cases investigated, prosecuted and then finally the number of successful convictions secured. Our computation of the petitions received, rejected and investigated, and eventual arrests and successful prosecutions is limited by the fact that the EFCC does not have a comprehensive data base to record this information. Our analysis can provide an indication of trends that can be opened up for detailed analysis in future papers, however. It should also be noted that the data analysed in this report does not indicate the number of convictions that are on appeal before the appellate courts, as the convictions data is restricted to prosecutions and/or convictions at the Federal High Court, the High Courts of the States and the High Court of the Federal Capital Territory Abuja.

Between May 2003 and June 2004 the EFCC is reported to have recovered money and assets worth over N700 billion and to have arrested over 500 advance fee fraud kingpins (Ogbu, 2008). Furthermore, between 2003 and 2006, the EFCC arraigned around 300 persons and secured 92 convictions (Osipitan and Odusote, 2014). Again in 2006, the EFCC is said to have received 4,200 petitions on illegal corruption, investigated 1,200 petitions and instituted 406 corruption cases in court (Obuah, 2010). Between 2010 and 2014, the EFCC recovered a total of N65.3 billion, which is equivalent to about US\$360 million, while in 2015 it recovered N141.9 billion which is equivalent to about US\$715million (EFCC Landmark Achievement)<sup>54</sup>.

Premised on the fact that the EFCC's emphasis is on prosecution for economic and financial crimes, the best data points for an evaluation of the Commission's effectiveness would be:

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<sup>53</sup> Cap E1 Laws of the Federation of Nigeria 2004.

<sup>54</sup> 180.33 to 1USD Inter-bank Foreign Exchange Market, December 2014, Central Bank of Nigeria official website, <https://www.cbn.gov.ng/rates/exrate.asp?year=2014&month=4>

196.99 to 1USD Inter-bank Foreign Exchange Market, December 2015, Central Bank of Nigeria official website, <https://www.cbn.gov.ng/rates/exrate.asp?year=2015&month=4>



the number of petitions filed with the commission; the number of petitions that resulted in investigations having excluded the irrelevant and non-criminal investigations; the number of prosecutions arising from investigations; and finally the number of convictions culminating from prosecutions and taking into account the number of convictions against acquittals (see Table 3). Furthermore, it is important to ascertain the number of convictions secured by the EFCC that were affirmed by the appellate courts and those that were overturned on appeal.

However, due to the dearth of information on the above, data was obtained and mined only in respect of:

- a. petitions, investigations, prosecutions and convictions by the EFCC between 2010 and 2015
- b. convictions secured in 2016
- c. recoveries made for the years 2010 and 2015.

The data on acquittals are not available and cannot be accurately deduced from the data on prosecutions and convictions as some prosecutions may still be pending. At a press conference on the 12<sup>th</sup> November 2018, the Acting Chairman of the EFCC revealed that the EFCC had secured 703 convictions between January 2015 and November 2018, that 103 conviction in 2015, 194 convictions in 2016, 189 convictions in 2017 and 217 convictions from January 2018 to November 2018 (EFCC 2018). We are however unable to access data of the EFCC operations for the years 2016, 2017 and 2018 other than this press release by the EFCC.

**Table 3: Operational activities of the EFCC (2010-2015)**

Year	Petitions received	Petitions transferred to sister agencies	Petitions rejected	Petitions investigated	Cases prosecuted	Convictions
2015	5,979	1,178	1,401	2,662	462	103
2014	4,941	1,082	631	2,512	388	126
2013	6,089	1,027	609	2,883	485	117
2012	4,914	707	245	2,062	502	87
2011	7,737	2,385	2,746	2,606	417	67
2010	6,782	2,477	1,767	2,399	206	68
TOTAL	36,442	8,856	7,399	15,124	2,460	568

Source: EFCC (2013; 2015).

Between 2010 and 2015, the EFCC investigated a total of 15,124 petitions, which is equivalent to 41.5% of all petitions received (36,442). The computation reveals that 568 convictions were secured, representing 3.75% of the investigated cases and a conviction rate of around 23% against the 2,460 cases filed. In 2016 the EFCC secured a marked increase in convictions at 182 cases, however no data was obtained in respect of 2016 petitions received, transferred, rejected, investigated or prosecuted so we cannot comment on conviction rates for that year. For 2013, 2014 and 2015, 76%, 81% and 78% of convictions

were secured within three years of filing cases in court, respectively.<sup>55</sup> However, it is noted that the vast majority of these convictions can be categorised as low- or mid-level economic and financial crimes such as advance fee fraud (that is, obtaining by false pretences, criminal conspiracy, criminal breach of trust, forgery and uttering, employment scam, impersonation and currency counterfeiting), compared with higher level convictions arising from grand embezzlement of public funds, illegally dealing in petroleum products and money laundering. Thus, it seems that cases of grand corruption, particularly prosecutions involving politically exposed persons, are rarely concluded within three years of being filed and it would appear that the conviction rate is better for low- and mid-level corruption. At a workshop organised by the Centre for Socio-Legal Studies and the National Judicial Council's Corruption and Financial Cases Trial Monitoring Committee, the judges in attendance decried the delays suffered in the criminal prosecution of high profile Nigerians and that this occurrence threatens the modest successes so far achieved (Punch 2018). Furthermore, a judge of the Federal High Court expressed frustration in respect of a former governor convicted abroad but whose associates were arraigned before him on corruption charges but 2 years after arraignment of the associates, the prosecution states that they have been unable to conclude investigations against the former governor (Punch 2018).

Our analysis of convictions also reveals regional trends in the types of criminal activities prevalent in Nigeria over this period. From the data we see that convictions for illegal dealing in petroleum products were mostly prevalent in Port Harcourt, Rivers State, whilst convictions related to criminal breach of trust and criminal misappropriation were mostly prevalent in Northern Nigeria, in Abuja, Kano and Gombe States.

Offences investigated by the EFCC are categorised as: advance fee fraud, public-sector corruption, bank and security fraud, cybercrime, oil bunkering and vandalism, procurement fraud and real estate fraud (EFCC, 2013; 2015). Between 2011 and 2015, 9,218 investigations were in respect of Advance Fee Fraud; 3,926 investigations related to public-sector corruption; 2,581 investigations were in respect of bank and securities fraud; 338 related to cybercrimes; 158 related to oil bunkering and vandalism; 2,163 to procurement fraud; and 59 related to real estate fraud.

The Advance Fee Fraud Act<sup>56</sup> describes this crime as obtaining or inducing the obtention of any property or the conferment of benefit by false pretence with fraudulent intent irrespective of whether the property is obtained or its delivery is induced through contract. Advance fee fraud appears to be the most prevalent offence, accounting for 54% of all EFCC investigations in 2015, and 59% of investigations in both 2014 and 2013. In terms of demographics, 80% of the alleged perpetrators of advance fee fraud during the period under review were male adults mostly residing or operating in the coastal metropolis of Lagos and Port Harcourt. This finding could be attributed to the high level of unemployment and poverty amongst Nigerian youth coupled with the low level of anti-corruption education amongst this group.

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<sup>55</sup> See list of convictions at [www.efccnigeria.org](http://www.efccnigeria.org)

<sup>56</sup> Cap A6 Laws of the Federation of Nigeria 2004.

With respect to public-sector corruption investigations (which encompasses offences such as abuse of office, embezzlement, bribery, extortion, diversion, criminal conversion of public funds, tax evasion, economic cabotage and money laundering), 33% were Federal Government-related investigations, while state- and local government-related investigations accounted for 58% and 9% of EFCC public-sector corruption investigations respectively. Thus, public-sector corruption investigations at the state government level were the most prevalent (EFCC, 2013; 2015)

Bank and securities fraud (which includes issuance of dud cheques, bank fraud, capital market fraud, suspicious transactions, bank card fraud, fraudulent transactions and financial misconduct) accounted for 2,581 investigations by the EFCC between 2011 and 2015, and the data shows a decrease in the number of investigations over time. The reason for this reduction in investigations is not easily determined, however it can be said that it coincides with the issuance of the Central Bank (Anti Money Laundering and Combating Financing of Terrorism in Banks and Other Financial Institutions) Regulation 2013 and the Securities and Exchange Commission (Anti Money Laundering and Combating Financing of Terrorism) Regulation 2013 for capital market operators.

One reason for the EFCC's evident failure in narrowing the gap between investigation and conviction may be due to political corruption, which results in a general adherence to the rule by law (where the law is selectively applied) rather than impartial application of the rule of law.

With respect to the transition from petitions received to petitions investigated, the Economic and Financial Crimes Regulation 2010 ('EFCC Regulations') does not provide indicative criteria for the rejection or investigation of petitions and, as such, it would appear that the decision to investigate or to reject a petition is at the discretion of the EFCC. Whilst a definitive list could prove too restrictive for the EFCC as it leaves little room for exercising discretion, it could be argued that the absence of any criteria leaves room for political and/or external interference in the processes of the EFCC and could contribute to the widening gap between petition investigation and rejection.

Indeed, Nigerian courts have also been quick to point out the political nature of some investigations. In the case of *Ihenacho v NPF*,<sup>57</sup> the Court of Appeal held that a few elements of the NPF and the EFCC had a tendency to look into very inconsequential cases with inefficient outcomes, and emphasised that the focus of the EFCC should remain economic and financial crimes. The court further stated that the spate of lawlessness in the polity could not be condoned, be it the handiwork of private individuals or state government executives whose top officials are expected to know better than to chase their adversaries with the help of state-sponsored LEAs. This is a significant observation made by the court, as many of the investigations pursued by ACAs in developing countries are usually a result of incumbents pursuing political rivals. Even in the heydays of the EFCC shortly after it was formed, allegations of investigations based on the directives of the then president were not

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<sup>57</sup> (2017) 12 NWLR (Pt 1580) 423.

uncommon (Lawson, 2009). The integrity and credibility of the EFCC is called into question when overzealous officers of the EFCC veer into matters that do not target individuals who are financially corrupt, and through judicial intervention the EFCC has been admonished and instructed to focus on its main brief.

There are other instances where essentially civil matters have been brought before the EFCC because petitioners and their legal advisers give the complaint a criminal interpretation so as to bring it within the jurisdiction of the EFCC. This is due to a lack of trust in the civil justice system. Complainants willingly rely on the EFCC as a means of recovering civil debt, a practice that has resulted in a plethora of judicial reprimands – the words of the Supreme Court in the case of *Diamond Bank Plc v Opara*<sup>58</sup> are particularly notable and were to the effect that power is conferred on the EFCC to receive complaints and prevent and/or fight against financial crimes, and that this does not extend to the investigation and/or resolution of disputes arising from simple contracts or civil transactions; the EFCC is not a debt recovery agency and should not be used as such. The Supreme Court went on to say that it is the inherent duty of the EFCC to scrutinise all complaints that it receives carefully, no matter how carefully crafted by the complaining party, and to be bold enough to counsel such complainants to seek the appropriate and lawful means to resolve their disputes.

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<sup>58</sup> (2018) 7 NWLR (Pt 1617) 92.

## 5. Factors that constrain the effectiveness of the EFCC

In 2015 the former Minister of Finance of Nigeria, Ngozi Okonjo-Iweala, asserted that Nigerian institutions – including ACAs – are weak and that the country lacks the adequate institutions, systems and processes to combat corruption (*Premium Times*, 2015). Hence, an effective fight against corruption requires the building of strong institutions with firm rules that are applicable to all classes of the citizenry and that is not susceptible to political interference.

Three capacity deficiencies have been identified as obstacles to the efficiency of African ACAs, namely: (a) continuous political interference in the fight against corruption; (b) lack of technical capacity of staff in terms of training and expertise that enables crime detection and the conduct of credible and forensic investigations; and (c) operational incapacity which is caused by insufficient funding (Hope 2017). For the purpose of our analysis we group these deficiencies as 'political capture' (a) and 'organisational deficiencies' (b and c), and also discuss the impact of the judicial process on the functioning of the EFCC.

### 5.1. Political capture

A review of EFCC prosecutions reveals a significant number of cases involving politically exposed persons such as former governors and government ministers that have been filed since 2007 and have seen very limited progress. Similarly, investigations into allegations of corrupt practices against politically exposed persons have also seen limited progress.<sup>59</sup> The fight against corruption in Nigeria can be described as a fight against an oligarchy with immense resources to fight back, with the EFCC failing to successfully prosecute top government officials (Osipitan and Odusote, 2014). Indeed, out of about 31 former governors<sup>60</sup>, only two, Dariye and Nyame have been recently convicted and these convictions have been affirmed by the Court of Appeal but with a reduction in the sentence term from 14 years to 10 years and 12 years<sup>61</sup>.

Furthermore, the leadership of the EFCC has not been free from political capture either. In 2008, for example, the pioneering chairman of the EFCC, Nuhu Ribadu, was abruptly removed from his post and surreptitiously demoted under the guise of sending him for a course at the National Institute for Policy and Strategic Studies to become Deputy Commissioner of Police (Alaneme and Ashamu, 2008).

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<sup>59</sup> See the list of high profile cases at [www.efccnigeria.org](http://www.efccnigeria.org)

<sup>60</sup> Sunday Isuwa and Kunle Olanmi, EFCC To Reopen 14 Former Govs' Corruption, February 10, 2018, <https://leadership.ng/2018/02/10/efcc-reopen-14-former-govs-corruption-cases/>

<sup>61</sup> "Appeal Court Uphold Convictions of Dariye, Nyame and Reduce Jail Terms" Thisday Newspaper November 17, 2018- <https://www.thisdaylive.com/index.php/2018/11/17/appeal-court-uphold-convictions-of-dariye-nyame-reduce-jail-terms/>

In the course of our interviews, an officer of the EFCC noted that the lack of independence by the Commission can be traced to its institutional architecture, as the principal officers – namely, the Chairman and the Secretary – are appointed by the President subject to confirmation by the Senate. Consequently, there is the possibility that the Chairman of the EFCC will be reluctant to proceed with anti-corruption investigations or prosecutions against his appointing President and/or his political affiliates who belong to the ruling political party. Further to this, the EFCC Act empowers the President to remove the Chairman of the EFCC where the President is satisfied that it is not in the interest of the EFCC or in the interest of the public that the individual continues in office.<sup>62</sup>

This perception reflects the view of many Nigerians who see the EFCC as having become a tool for the settlement of political scores (Mordi, 2016). The appointment of the current EFCC Chairman, Mr Ibrahim Magu, has fuelled this perception and is another example of unhealthy political interference in the affairs of the EFCC as the Nigerian Senate has refused to confirm Magu's appointment due to an ongoing rift with the Presidency.

In order to mitigate against political capture, the tenure of the EFCC Chairman and Secretary should straddle at least two tenures of a President and Senate; that is, between five and six years during which time tenure shall be fixed and not renewable. Such a measure may guard against the use of the EFCC as a means of achieving political gains, as any EFCC Chairman would be required to serve under two Presidents from two different political parties.

The 2003 amendment to the Corrupt Practices Act which resulted in changes to the appointment mechanism of the ICPC is also worthy of note in terms of protection against political capture. Largely due to a perception that the ICPC was used as a means of settling political scores, in 2003 the NASS amended the Corrupt Practices Act such that the Chairman of the ICPC was no longer appointed by the President but was appointed on the recommendation of the National Judicial Council, subject to the confirmation of the Senate.

## 5.2. Organisational deficiencies

The effectiveness of the EFCC is also determined by its internal organisation and continued training of professionally qualified personnel. The EFCC Annual Report for 2013 identified as one of its operational challenges the 'dearth of consistent training of officers to meet the exigencies that are peculiar to the ever changing nature of economic and financial crim[es]' (EFCC, 2013: 84); the 2015 Annual Report later stated that 'Training is essential because it equips officers with the requisite skills and information on best practices in law enforcement. If we are to succeed in the fight against corruption, training must be adequately funded' (EFCC, 2015: 130).

It should be said that the EFCC has made considerable progress in terms of continuous training and education of its operatives: in 2013 its operatives participated in 17 training programmes (EFCC, 2013: 40) and 84 officers travelled abroad for training (ibid.: 57); in 2015

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<sup>62</sup> Section 3(2) of the EFCC Act.

EFCC operatives participated in 28 local trainings and ten international training (EFCC, 2015: 111-113). Whilst such attempts at continuous training of EFCC operatives are to be commended, the Commission has also stated that it 'has been largely dependent on the assistance of donor partners to train its staff. However it is pertinent to note that the percentage of officers that are trained is quite low compared to the number of staff eligible for training. Aside from Donor sponsored foreign trainings, the Commission was unable to fund germane training for its officers in 2015' (ibid.: 130). Prior to 2018, the EFCC also attributed its operational challenges to delays in the completion of its head office complex, which was eventually completed in 2018 at a cost to the government of about N24 billion.

In the course of our interviews, all participants partly attributed the organisational dysfunction of the EFCC to the requirement that the Chairman of the Commission should be a serving or retired officer of a LEA not below the rank of the Assistant Commissioner of Police or equivalent. The interviewees also referred to the fact that members of the police force occupy leadership positions in most departments and units of the EFCC – according to figures for 2015, of 2,194 EFCC staff members 709 were members of the police force (EFCC, 2015).

The police force in Nigeria is indeed looked upon with suspicion and lacks credibility among citizens.<sup>63</sup> In a report issued by the United Nations Office on Drugs and Crime (2017), around 46% of all adults who had interacted with the police within 12 months of the survey reported that they had paid bribes. The police force also reputedly conducts poor investigations, as they have been accused of demanding bribes to commence investigation while at the same time demanding bribes from crime suspects to drop their case (Orole et al., 2014). According to Umar et al. (2017), the dominance of the police in the EFCC is associated with the EFCC's lack of effectiveness in curbing public-sector corruption. The authors describe reports from one study participant that the EFCC has 10-11 departments and about seven of these are headed by the Nigerian police (ibid.).

The weakness of the institution further manifests in the failure of the EFCC to conduct thorough criminal investigations and the resulting inadequacies of criminal prosecutions that are struck out on technicalities. In the course of an interview with a Justice of the Court of Appeal, the individual mentioned that he had witnessed investigations being conducted ineptly by police officials of the EFCC, which culminated in criminal prosecutions floundering on technical grounds. He attributed the ineffectiveness of the EFCC in prosecution to the lack of professional and investigatory exposure of the police officers, who are largely oblivious to international best practices and adopt crude and rudimentary approaches.

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<sup>63</sup> The 2008 Report of the Second Presidential Committee on Police Reforms stated that 'Indeed the Police today is perceived as one of the most corrupt government institutions with its personnel constantly accused of bribery and extortion in the course of performing their functions. These accusations are rampant amongst the populace, especially that relating to extortion from members of the public. In addition, the police have also been accused of erecting illegal road blocks in order to extort money from the citizenry...This has resulted in the loss of public confidence in the integrity of police personnel...Most police officers readily cite their poor pay as the principal reason for extortion. Some even claim that in the absence of basic provisions for policing, the police use the proceeds from extortion to fulfil operational needs, such as stationery for recording statements from suspects, gasoline for patrol vehicles, batteries for mobile phone units and similar day-to day needs' (Ikpeze, 2013).



A final organisational obstacle to the efficient running of the EFCC is inadequate funding, with it being claimed that a lack of assets such as vehicles have prevented the Commission from carrying out investigations, arrests and prosecutions (EFCC, 2015). When Acting Chairman of the EFCC Mr Magu presented his 2017 budget proposal of N17.2 billion, the Senate promised to provide the EFCC with adequate funding for its operations (EFCC, 2017), which it can be said has resulted in the completion of the Commission's head office and the provision of infrastructures within it.

### 5.3. Judicial process

Some commentators have suggested that inefficiencies of the Nigerian legal system prevent the EFCC from fulfilling its mandate, with the EFCC (2015) itself associating some of its challenges to judicial hostility and delay in courts. It is important to note, however, that while delays may persist at the lower courts, the Court of Appeal has sought to mitigate the effect of delays in the justice system by providing for a system of fast-tracking criminal appeals through its 2013 Practice Direction.<sup>64</sup> This legislation mandates that the presiding Justice of each division of the Court of Appeal, in conjunction with the Deputy Chief Registrars of the division, ensures that their registries give priority to the listing, consideration and determination of all applications and substantive appeals related to agencies such as the EFCC, the ICPC and other recognised LEAs.<sup>65</sup> Similar provisions are found in the Supreme Court (Criminal Appeals) Practice Directions 2013. As a result, adjournment on criminal matters that usually take three to four months at the Court of Appeal and possibly as long as seven to eight months at the Supreme Court are now usually adjourned for two weeks to one month with the new Practice Direction.

In recognition that delayed criminal proceedings prevent the effective administration of criminal justice, the Court of Appeal and the Supreme Courts issued their respective practice directions to also mitigate delay in the administration of criminal judges. In *Dasuki v Federal Republic of Nigeria*<sup>66</sup> the Supreme Court recognised the necessity of a speedy trial and implored the court and the parties (including their counsel) to avoid any antics aimed at delaying the determination of the matter.

In respect of inordinate delays in the conclusion of corruption cases, it is important to note that the EFCC Act contains a novel provision in Section 40, which states that an application for stay of proceedings in respect of a criminal matter brought by the EFCC shall not be entertained until judgment is delivered by the High Court. This provision was also introduced into the Administration of Criminal Jurisdiction Act 2015 (ACJA), and in both cases was introduced to prevent the use of frivolous appeals against interlocutory rulings of the trial court pending the final judgment of the said trial court. As previously noted, the 2013 Practice Direction also sought to mitigate the effect of delays in the justice system by providing for a

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<sup>64</sup> Issued by the President of the Court of Appeal in furtherance of powers conferred by Section 248 of the Constitution.

<sup>65</sup> Paragraph 3(a)(i) of the Court of Appeal Practice Directions 2013.

<sup>66</sup> (2018) 10 NWLR (Pt 1627) 320.



system to fast-track criminal appeals. However, legal representatives have relied on technical legal principles such as filing a 'no case submission',<sup>67</sup> which is not treated as an interlocutory decision and means that the defence has the right to appeal against any refusal to uphold a submission. One example where this strategy was used is the high-profile case of *Walter Wabatsoma v Federal Republic of Nigeria*.<sup>68</sup> The prosecution had charged the accused with the offences of advance fee fraud, obtaining by false pretence and forgery in respect of an oil subsidy scam. When the prosecution closed its case, the defence made a no case submission which was refused by the trial court, however, in doing so the court considered and ruled on a point of law (the applicability of certain sections of the Admiralty Jurisdiction Act) on which points were not raised by either the prosecution nor the defence, and neither was given the opportunity to address the court on these issues. Consequently, at the Supreme Court, the ruling of the trial court on the no case submission was struck out and the case was remitted back to the trial court for retrial. This happened six years after the case was filed and almost four years after the judgment on the no case submission was delivered, which shows the impact of such dilatory tactics on the delay and weaknesses in the Nigerian judicial system.

To further curb delays in the judicial process, the ACJA introduced several other provisions including Section 396 of the ACJA. This provides that upon charging an accused person to court, the trial of the defendant shall proceed from one day to another until the conclusion of the trial and where it is impracticable to proceed from one day to another, no party to the proceedings shall be entitled to more than five adjournments from arraignment of the accused person to final judgment. Furthermore, the interval between each adjournment shall not exceed fourteen days. The ACJA further states that where it is impracticable to conclude criminal proceedings after the parties have exhausted their five adjournments each, the interval between one adjournment to another shall not exceed seven days including weekends. It goes on to provide that in all circumstances the court may award reasonable costs in order to discourage frivolous adjournments. The practicality of this provision of the ACJA has been called into doubt, however, as it does not take into account the quantity of case files (particularly as the courts do not have specialist corruption divisions), or the busy schedule of both defence and prosecution counsels.<sup>69</sup> Furthermore, it does not cater to exigencies such as securing the attendance of witnesses that may prejudice the dispensation of a fair trial, as espoused in Section 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) (Constitution).

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<sup>67</sup> A no case submission is filed to the effect that the prosecution has failed to prove all the necessary elements of the offence or that the evidence tendered by the prosecution cannot be considered grounds for conviction, or that no conviction can be made on the basis of the evidence cited by the prosecution.

<sup>68</sup> (2018) 8 NWLR (Pt 1621) 199.

<sup>69</sup> The constitutionality of these provisions of the ACJA was tested by the Court of Appeal in *Metuh v Federal Republic of Nigeria*, wherein the trial judge had refused application of the defendant and declined to sign the subpoena summons of the Ex- National Security Adviser Sambo Dasuki, who the defence wanted to call as a witness in the case (Dasuki's trial was ongoing as well at this time). One of the reasons the trial court refused the subpoena summons was based on section 396 of the ACJA. The Court of Appeal upturning the decision of the trial court held that the above mentioned provisions of Section 396 of the ACJA should not be read in isolation of each other but holistically to the effect that the defendant can still be granted further adjournments such that where it is impracticable to conclude a criminal proceedings after the parties have exhausted their five adjournments, the interval between one adjournment to another shall not exceed seven days inclusive of weekends and that in all circumstances, the court may award reasonable cost in order to avoid frivolous adjournments.

There is an ongoing debate regarding the creation of a specialised court for quick and fair dispensation of criminal justice for acts of corruption. Two of the judges interviewed as part of this study were not convinced that the establishment of a specialist court was the proper approach for two reasons. Firstly, establishing a corruption court that is isolated from the existing hierarchy of courts as a permanent superior court of record with its own rules will not isolate it from political interference and susceptibility to corruption; secondly, the court would not have its own bespoke substantive and procedural legal principles guiding it, such that it would warrant its creation. The judges proposed that the proper approach should be the creation of a corruption division within the existing court system, as considered in Sections 19(3) of the EFCC Act. This was done in Lagos State, where judges were selected upon recommendation of members of the Bar and on the criteria of versatility with criminal law and procedure, industry and attested integrity. In terms of government expenditure, a further consideration is that the creation of specialised corruption courts would greatly increase the transaction cost of combating corruption in terms of remuneration and physical infrastructure.

It is, however, our recommendation that the selection of designated judges be at the behest of the Chief Justice of the Federation and not the respective Chief Judges of the State, Federal Capital Territory and the Federal High Court. This is because appointment by the Chief Judges may make the designated judges subject to the influence of their presiding Chief Judges, who may be susceptible to political interference.

## 6. Conclusion and recommendations

As outlined in this paper, the EFCC is hugely significant politically, which is why policy that could make the Commission more effective may be difficult to achieve. While it might be so that procedural and political considerations limit the effectiveness of the EFCC, measures could be put in place to nudge the organisation in the right direction. We provide a brief outline of our recommendations in this report, which we hope to elaborate on in future publications.

### Recommendations

- 1 The tenure of the Chairperson and Secretary of the EFCC should be fixed and not renewable, and should straddle at least two tenures of a President and Senate (that is between five and six years) to limit political influence over the EFCC.
- 2 The Board of the EFCC should also have a staggered tenure, with no more than a third of members being appointed by the government in power.
- 3 Efforts should be made to undertake an organisational effectiveness map for the EFCC that identifies skill sets that are needed.
- 4 More relevant, targeted and bespoke training programmes should be designed that link to the skills sets that are identified as lacking.
- 5 Deliberations should continue on the institutional arrangements and focus of the ACAs (EFCC and ICPC) to understand the overlap and to allow for streamlining where needed.

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- 5 Code of Conduct Bureau and Tribunal Cap C15 Laws of the Federation of Nigeria 2010
- 6 Code of Conduct Standard Operating Procedure Regulations 2017
- 7 Constitution of the Federal Republic of Nigeria 1999 (As Amended)
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- 9 Counterfeit Currency (Special Provisions) Act Cap C35 Laws of the Federation of Nigeria 2004
- 10 Criminal Code Act Cap C38 Laws of the Federation of Nigeria 2004
- 11 Court of Appeal Practice Directions 2013
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- 18 Public Procurement Act No. 17 of 2007
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