CRITIQUE OF THE POWERS AND AUTHORITY OF THE CODE OF CONDUCT TRIBUNAL

BY

WILLIAM AGWADZA ATEDZE

NSU/LAW/Ph.D/001/15/16

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DECLARATION

I hereby declare that apart from reference made to other works on this topic which I have duly acknowledged, this thesis is the product of my research and that it has neither been presented in whole nor in part for the award of a Ph.D degree elsewhere.

.....

William Agwadza Atedze

NSU/LAW/Ph.D/001/15/16

CERTIFICATION

This dissertation has been read and duly approved as conceded with requirement of the Faculty of Law, Nasarawa State University, Keffi, for the Award of Doctor of Laws(Ph.D) Degree.

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Dean of Faculty	Date
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External Examiner	Date
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Dean, School of Postgraduate Studies	Date

DEDICATION

This Research is dedicated to Mrs Awuese Atedze who as a wife and friend, has provided the kind of support, comfort and the enabling environment for this project.

Our children – Ngo, Ngohol, Yua, Nguveren and Ungwa for their love and understanding.

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ABSTRACT

Every government whether military or civilian has always fought against corruption. This was majorly on the public servants. This explained why in most countries, especially in Nigeria, there were expectations from ordinary citizens that governments at all levels should establish and deliver probity, higher standards of integrity in the civil service and agencies of government. Consequently, as a result of this expectation, came the establishment of the Code of Conduct Tribunal. The Code of Conduct Tribunal and the Code of Conduct Bureau are complementary institutions established by the Code of Conduct Bureau and Tribunal Act 2004. The primary aim and objectives of the research topic is to critique the powers and authority of the Code of Conduct Tribunal and by extension, some other related bodies established by Federal Government of Nigeria to fight corruption. Doctrinal method of research was used in this work. Statutes including subsidiary legislation, conventions were used in this research. The judicial authorities are acknowledged in the footnotes. All source materials are documented as work cited. The method of appointment, removal of members, powers of members and the independence of the Tribunal were examined and discussed fully. The role of other related bodies like the Economic and Financial Crimes Commission, the Independent Corrupt Practices Commission, the Public Complaints Commission are discussed. The research observed that civil servants are expected to maintain and strengthen public trust and confidence in government. The Code of Conduct Tribunal and others were established to checkmate abuses of office and to ensure accountability in public service. The research recommends the need for the jurisdiction of the Code of Conduct Tribunal to be properly defined and that the appointment of the heads of anti-graft agencies like the Code of Conduct Tribunal by the President be stopped to make the agency truly independent.

CHAPTER ONE

INTRODUCTION

1.1 Background to the study

There is a campaign against corrupt practices in public service at all levels of government in Nigeria. This is always at the front burner of every governmental administration or regime. The fights against corruption, until recently, have always been concentrated on the public civil servant.[1] Perhaps, this is because they are the servants of the people, entrusted with the day to day administration of the machinery of government. Therefore, civil servants stand in the position of trustees of their duties for the benefit of the public.

The foregoing explains why in most countries today there are increasing expectations from ordinary citizens, business leaders and civil society, that governments should establish and deliver probity, higher standards of integrity in the civil service and agencies of government. Civil servants and public servants are expected to maintain and strengthen the public's trust and confidence in government, by demonstrating the highest standards of professional competence, efficiency and effectiveness, upholding the constitution and the laws and seeking to advance the public good at all times. Civil servants and public servants are expected to take and implement decisions and act solely in the public interest without consideration of their private interest.

Public employment being a public trust, the improper use of a public service position for private advantage is regarded as a serious breach of trust. This expectation is the result of better focused media attention and public scrutiny, and increasing impatience by ordinary

[1] It is only quite recently that the anti-corruption war, globally, extended to the private sectors. See Article 21 of the UNCAC 2003.

citizens and civil society whose members want to see an end to the corrupt practices and systems of the past.

Therefore, in order to ensure the needed efficacy of service and improved delivery to the citizens, there is the need to work and abide by certain codes of conduct. This code will serve as a checklist in determining the quality of service, transparency of government, accountability, and a yardstick in measuring how well, or poorly, a public servant has justified his continued service to the State.

Codes are the cornerstone upon which professions are built and the defining emblem of a professional, e.g. the Rules of Professional Conduct for Legal Practitioners in Nigeria (RPC) andthe Hippocratic Oath.[2] True, not all such codes are oaths. It is however often the case that codes are built into oaths administered at ceremonies towards becoming a professional.Codes of conduct or ethics are found increasingly in international anti-corruption agreements, beginning perhaps with the organization of American States Inter American Convention Against Corruption.

Globally, the UNCAC[3] is a groundbreaking international instrument which commits state parties/countries to working together to address corruption nationally and transnationally. The adoption of the United Nations Convention Against Corruption is a clear indication that the international community is determined to prevent and combat corruption. It warns that betrayal of the public trust will no longer be tolerated, and it reaffirms the importance of core values such as honesty, respect for the rule of law, accountability and transparency in government business, promoting development and making the world a

[2] Greek physician Hippocrates (400 BC.) formulated the Hippocratic Oath, a statement of physicians' professional and moral duties, including patient confidentiality; "into whatever houses I enter, I will go into them for the benefit of the sick, and will abstain from every voluntary act of and corruption".

[3] See paragraph 36 of the terms of reference of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption (Conference of the State Parties resolution 3/1, annex).

better place for all. The new convention is a remarkable achievement, and it complements another landmark instrument, the United Nations Convention Against Transnational Organized Crime[4], which entered into force just quite recently. It is balanced, strong and pragmatic, and it offers a new framework for effective action and international cooperation. The Convention introduces a comprehensive set of standard measures and rules that all countries can apply in order to strengthen their legal and regulatory regimes to fight corruption. It calls for preventive measures and the criminalization of the most prevalent forms of corruption in both public and private sectors[5]. It makes a major breakthrough by requiring Member States to return assets obtained through corruption to the country from which they were stolen[6]. These provisions, the first of their kind, introduce a new fundamental principle as well as a framework for stronger cooperation between States to prevent and detect corruption and to return the proceeds of corruption. Corrupt officials will in future find fewer ways to hide their illicit gains. This is an important issue for many developing countries where corrupt public servants have plundered the national wealth and where new Governments badly need resources to reconstruct and rehabilitate their societies.

On the international scale, States have been enjoined, in accordance with the fundamental principles of its legal system, to develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability[7]. Each State party is expected to establish and

[4] Article I statement of general purpose. United Nations Convention Against Transnational Organized Crime (2002)
[5] See Article 8 & 9, United Nations Convention Against Transnational Organized Crime.
[6] See Article 18 ibid.
[7] See Article 5 of the United Nations Convention Against Corruption.

promote effective practices aimed at the prevention of corruption and to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption[8].

Interestingly enough, there is no single comprehensive universally accepted definition of corruption. Attempts to develop such definition invariably encounter legal, criminological and, in many countries, political problems.

World Bank, which has been one of the institutions in the forefront of funding anti-corruption agencies, adopted a simple but broad approach to the definition of corruption as:

> *'The abuse of public office for private gain. Public office is abused for private gain when an official accepts, solicits, or extorts a bribe. It is also abused when private agents actively offers bribe to circumvent public policies and processes for competitive advantage and profit. Public office can also be abused for personal benefit even if no bribery occurs, through patronage and nepotism, the theft of state assets, or the diversion of state resources'*[9].

When the negotiations of the United Nations Convention Against Corruption began in early 2002, one option under consideration was not to define corruption at all but to list specific types or acts of corruption. Moreover, proposals to require countries to criminalize corruption mainly covered specific offences or groups of offences that depended on what type of conduct was involved, whether those implicated were public

[8] Ibid

[9] Quoted by Obianyo Nkolika E.et al in "Anti Corruption Strategies in Nigeria – Failure of Theories or Failure of Policies: Finding the Missing Link" Department of Political Science, Nnamdi Azikwe University, Awka, 9.

officials, whether cross-border conduct or foreign officials were involved, and if the cases related to unlawful or improper enrichments[10].

Thus, the increased scrutiny, heightened media participation and global increased activities and innovations in the crusade against corruption may be attributed to the general trend towards greater transparency and accountability in the public sector. Events which used to take place in the privacy of homes, hotels and offices, now get exposed on the front pages of newspapers and on the World Wide Web.

In a society dominated by 24-hour news channels and no holds-barred internet sites, politicians and civil servants can no longer shield themselves from the prying eyes and probing questions of the media and the public. They must account for every fund they spend and every decision they take. Not surprisingly, and quite rightly, voters expect their elected and appointed officials to obey the law just like everyone else, and want them to lead by example when it comes to professional/office ethics and integrity. Elected representatives are entrusted by the public to exercise power on their behalf, a trust that cannot and must not be abused.

Thus, in accordance with the immediate fore-going, Nigeria has focused increasingly on developing strategies to tackle corruption. Domestically, the establishment of anti-corruption agencies has emerged as a core component in the reforms pursued by government. However, often established with great expectations and optimism, experience has shown that the effectiveness of anti-corruption agencies have varied between success and failure. This is in view of the high expectations of the new approaches to combating corruption. There are those who constantly seek cracks in the

[10] Initial proposals for the UN Convention Against Corruption were gathered at an informal preparatory meeting held in Buenons Aires from 4-7 December 2001 and compiled in documents A/AC.261.3, Parts IV. Proposals to define "corruption" are in Part 1, and proposals to criminalize acts of corruption are found in Part II.

walls and circumvent the new approaches in order to bend the standards and continue the practice of corruption. Lessons learned show that capable anti-corruption agencies tend to be well resourced, headed by strong leadership with visible integrity and commitment, and situated among a network of state and non-state actors who work together to implement anti-corruption laws. On the other hand, weaker anti-corruption agencies have often been undermined by weak political will manifested in limited resources, professional incompetence and poor staff capacity.

It is no exaggeration of the tragic events of the country since independence, to say that all efforts to establish a just and efficient administration have been frustrated by corruption. Corruption is an ancient problem, and it is a major reason for the socio-economic stagnation of Nigeria.

Ethical conduct and corruption in the public sector are two sides of one coin; to the extent that an organization succeeds in enhancing its own ethical climate internally, and that which it operates in essence, reduces the acceptability of corruption.

A Code of Conduct usually sets out specific standards of conduct expected in a range of realistic circumstances, representing a particular organisations preferred or required interpretation of the core values or principles which are seen as important to its work.

In some countries, especially in the UK and Nigeria (the Ethics and Privileges Committee of the Senate), many parliaments have created an Advisory Committee on the Conduct of Members (or similar body) whose role is to give guidance to members on the interpretation and implementation of the Code of Conduct and which may seek advice from outside experts.

In Nigeria, the Code of Conduct for public officers is the collection of rules, regulations, prescriptions and prohibitions binding on public officers in the discharge of their official duties. They are listed in the Fifth Schedule of the 1999 Constitution covering areas such as assets declaration, conflict of duties, abuse of office, running a private business, operating a foreign account, etc. To enforce these imperatives, the Code of Conduct Bureau and Tribunal were created by the Constitution[11] and an Act of the National Assembly.[12]

The Code of Conduct Bureau and the Code of Conduct Tribunal are complementary institutions established by the Code of Conduct Bureau and Tribunal Act (2004).[13] The Act was enacted for the establishment of the Code of Conduct Bureau and the Code of Conduct Tribunal to deal with complains of official corruption by public servants for the breach of its provisions.[14] The former prosecutes while the latter adjudicates. They exercise jurisdiction over public servants, as provided by the Act, with the subject-matter jurisdiction being any alleged breach of the Code of Conduct for public officers.

The Bureau has mandate to establish and maintain a high standard of morality in the conduct of government business and to ensure that the actions and behaviours of public officers conform to the highest standards of public morality and accountability. The Bureau which receives and investigates complaints against public officers refers those to be prosecuted for contravention of the Code of Conduct to the Code of Conduct Tribunal for trial. Public Officers for the purpose of the Code of Conduct are as listed in Section 19 of the CCBTA.

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[11] See the 5th Schedule CFRN 1999 (as amended)
[12] CCBTA, Cap. C14.LFN 1990
[13] Hereinafter referred to as The Act
[14] See part II, 5th Schedule CFRN 1999 (as amended.)

Rules 2008 which regulates public service behavior. Nigeria has basic legislation for regulating the Code of Conduct for Public Service, but the Code of Conduct Bureau and Tribunal Act has minimal impact as enforcement mechanism put in place as a result of general corruption in all sectors of the economy.

The research intends to answer or address the following issues:-

1. In the face of advancement in our device and strategies of corrupt practices and taking cognizance of the fact that there are new schemes of corrupt practices adopted by public servants to beat institutional checks, is the Code of Conduct Bureau and Tribunal Act an effective legislation to tackle or ameliorate the increasing advancement in corrupt practices schemes?
2. What measures are needed to address the widening gap in corrupt practices in the Public Service in the face of the inadequacy in the extant laws on the subject of the code of conduct for public servants?
3. Does the punishments meted out by the CCT or prescribed by the enabling laws serve as enough deterrence?

1.3 Aims and Objectives of the Study

The Public Service in Nigeria is an amorphous organization that is responsible formanaging the resources of the nation on behalf of the people who are owners of these resources. It is run by both elected and appointed officials[17] who are required by law to observe and abide by a Code of Conduct that clearly spells out how they are to relate to

[17] See S. 318(1) of the Constitution of the Federal Republic of Nigeria as amended.

the resources entrusted to them. Their code of conduct is in place to stem or extinguish corruption in the public service.

The aim of this research is to critically examine and analyze the efficacy and relevance of the Code of Conduct Bureau and Tribunal Act as a tool for combating corruption in the public service.[18]

Flowing from the foregoing, the research intends to achieve the following objectives:

1. Analyzing the extent to which to which the powers and authority of the CCBTA could be deployed for tackling corruption in the public service
2. Examining the extent of the authority of the CCT in relation to challenges being made on its authority and jurisdiction
3. Propose measures that will strengthen the enforcement mechanism of the CCT decisions on cases before it.

1.4 Significance of the Study

Corruption is rampant in Nigeria. It is important that the study is carried out so that this common malady can be stamped out of Nigeria. The findings would go a long way to strengthen the Code of Conduct Bureau and Tribunal in its enforcement of ethical code of behavior for the public service. The legislature, the judiciary and government will gain greatly from the outcome of this study because the study will be an exposition on the strengths and weaknesses of the legal infrastructure of the CCT and a pointer on ways of making it work better. The work will serve as a useful tool in understanding how the CCT can be a better tool in combating public service corruption in Nigeria.

[18] Ibid.

1.5 Scope and Limitation of the Study

This study relates only to the Code of Conduct Bureau and Tribunal, as a tool for combating corruption in the Public Service. There are other statutory bodies also charged with similar function.The study will analyze the essential features of this Act as enunciated by the Constitution of the Federal republic of Nigeria (1999) and other laws. The study also will go further to examine the various theories and framework of ethics in the public sector for the purpose of providing the theoretical background to the study. The thesis will be located within the normative framework provided by the 1999 Constitution and will attempt to determine whether that framework sufficiently or substantially addresses the challenges in the anti-graft efforts in the system with the CCT as its focal point.

Furthermore, the research would consider the practical efforts made by the State in a bid to minimize the epidemic of corruption through the instrumentality of the CCB and CCT. There will also be a comparative study of other jurisdictions like Britain, China and the U.S.A., etc in their effort to stem the tide of corruption[19] within the public sector. This is to enable the research properly contextualize Nigeria's approach in this regard, from a comparative perspective.

The research also aims to identify or suggest other viable means of ensuring compliance with the Code of Conduct for public officers, besides the ones already specified in the extant laws.

Another objective of the research is to pro ffer measures to curb new threats to the compliance of the Code of Conduct for public officers, in view of more recent and

[19]Gawthrop L.C. Louis C: Public Service and Democracy: Ethical Imperatives for the 21st Century. (Chatham House Publishers) (1998) Washington D.C pp 8-11.

advanced strategies that have posed as a setback to the realization of the aims and objectives of the extant laws.

1.6 Research Methodology

The research is essentially doctrinal. Thus statutes including subsidiary legislations, treaties, conventions, will be relied upon. Relevant textbooks, journals, decided cases , constitutional, provision would be consulted. Rich source materials in term of references would be included.

CHAPTER TWO

LITERATURE REVIEW

2.1 Conceptual Framework

Ethics derives from the Greek word "ethikos" meaning custom. This Greek word has a Latin synonym or equivalent known as "mors" which translates to custom or mores. The mores of a particular place or group of people are the customs and behavior that are typically found in that place or group. As a field of inquiry, ethics developed as a branch of philosophy, and this explains why it is referred to as moral philosophy or taken as being synonymous with morality.

M.O. Ikeanyibe[20]posted that ethics as a branch of philosophy deals with the analysis and evaluation of human conduct to determine the fundamental principle that makes it good or bad, right or wrong. He corroborated that early philosophers have taken this aspect of philosophy to handle questions on how humans ought to behave. What is good life for man? How do we determine which actions are rightly or wrongly performed? How do we arrive at a decision that certain actions are right or wrong? Upon what criterion or standards are such judgments made?

Deriving from the above questions, ethics can be conceived as a science of morals (meta-ethics), and as a system of morals which defines or states the code or set of principles by which men live. As a science of morals, it investigates the nature, sources and fundamental principles that should guide human actions. Seen this way, it is a normative science that aims at stating the way human beings ought to behave, rather than empirical science which attempts to describe the way things are, (and) the way things behave.

[20]Principles and Practices of Public Personnel Administration: A Nigerian Perspective, (Perfect Image, 2009)

The focus of this research is the Public Sector, which implies that attention should be given to actions or behavior of bureaucrats/administrators. This inevitably leads us to ask: what is Administrative Ethics?

Administrative ethics may refer to moral values (such as honesty, justice, professionalism) that are either present or absent in a worker, official or bureaucrat or in an organization. Thus, organizations are perceived as always ethical, differing only in the form that ethics are presented. To this extent, an administrator could be regarded as unethical if he/she deviates from the moral norms or codes of the organizations.

Thompson (1985) sees administrative ethics as involving the application of moral principles to the conduct of official responsibilities and duties. Agara and Olarinmoye (2009), on the other hand, focused the definition of ethics on the civil service. To them ethics is the application of moral standards in the course of official work. In essence, civil servants are expected to bring to bear in the discharge of their duties, certain ethical considerations especially where they are to make value judgment which may have a direct relationship with their professional standing. In another work, Thompson (1993) christened unethical behavior as mediated corruption which involves the use of public office for private purposes in a matter that subverts the democratic process. Maesschalck (2004) sees ethics as a proposed lever to restore trust in government. He also discussed ethics under two approaches – compliance and integrity. Compliance implies that an individual can choose to follow rules which he called ethical or refuse to follow the rule which he described as unethical. Integrity focuses on internal control (self-control) exercised by public servants. He concluded by suggesting group grid theory. Grid represents the extent to which individuals are constrained by rules, laws, and procedures.

And group represents the extent to which individuals are embedded into social units. Swanton[21] (2001) examines virtue ethics as the basis for determining the rightness of an action. Thompson[22] (1980) in discussing the moral responsibility of public official severed that because different officials make contributions to decisions and policies of government, it is difficult to identify who is morally responsible for political outcomes. This he called the problem of many hands. He therefore, came up with a model through which an official can be held responsible for the outcomes of their action.

Our working definition of administrative ethics refers to moral values or characteristics that are present in an organization or are exhibited by its employees and certain codes of conduct/morals that are upheld within an organization or a particular administrative system. At this juncture, it is necessary to state that there exists a debate that hinges on the status of public service ethics linking it to formal rules and guidelines of correct behavior, while according to the other view, it is a personal matter that emanates when an individual is free to make a choice(s) (Gow, 2005)[23]. This debate however, is not the concern of this paper.

However, a pertinent question at this point is, of what significance is ethics to public administration or human endeavours in general? Answers to this question are provided by Ikeanyibe[24] as follows:

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[21] C SWANTON, A Virtue Ethical Account of Right Action, in Ethics 112 (1), 2001, pp. 32-52

[22] DF THOMPSON, Moral Responsibility of Public Officials: The Problem of Many Hands, in *American Political Science Review* 74(Dec.), 1980, pp. 905-915.

[23] JI GOW, A Practical Basis for Public Service Ethics, Paper for the Annual Conference of the Canadian Political Science Association, Western University, London, Ontario, June, 2005.

[24] (n. 20)

1. Ethics as the science of human acts furnishes the norm by which relations among men are regulated. It shows what such relations must be and indicates the reasons that require them to be so.
2. Ethics as an applied science is fundamental to other fields of study and practice, it is important because it guides/stipulates codes guiding human actions in many aspects of life.
3. It reaffirms the uniqueness of man among other creatures in view of the fact that human life is an ethical self-construction.
4. To a greater extent, the study of ethics facilitates the formation of fundamental attitudes to life. Training in ethics should enable us to see the defects in our own and other people's conducts and to understand their exact nature, so that we are better able to set things right in our own conduct and to make profitable suggestion to others.
5. It functions as a societal strategy for improving human life through the preservation of a more humane eco-system and for attaining social and global harmony. It thus facilitates common societal values, rewards/reinforces positive values.
6. It has inter-twining link with religion, implying that it shares close affinity with religion. Most religions are built on the fundamental principle that good conduct will be rewarded and bad/evil punished. This link with religion provides an ultimate reason for right deeds and aversion for evil.

(a) The Theory of Utilitarianism

This paper utilized the ethical theory of utilitarianism. Like other ethical theories, its emphasis is on what is morally good and the principle that should guide man's conduct. Jeremy Bentham (1748-1832) and John Stuart Mill (1808-1873) appear to be the most prominent exponents of this ethical theory anchored on utilitarian principle. To the utilitarian, an act should be judged right or wrong based on the pleasure or happiness produced as well as the pain avoided. Utilitarians are particularly concerned with outcome or effects of an action and not necessarily on the motive or intention. Jeremy Bentham argued that any action that has a tendency to augment the happiness of the community than it has to diminish it, is in conformity with the principle of utilitarianism. In essence, the morality of an action is determined by its ability to promote the happiness of the greatest number of people (cited in Ezeani, 2006).

Chukwujekwu[25] (2007) identifies three points that are germane to utilitarianism in respect of moral standard for deciding which actions are right and which ones are wrong.

These points are:

(1) Rightness or wrongness of action should be judged by their consequences;

(2) The consequences are measured in terms of happiness, pleasure or pain/unhappiness; In other words, in terms of the utility or usefulness of the consequences;

(3) Furthermore, the value of happiness or pain can be determined by how long (duration), how intense (intensity) and fecundity (its purity or chance that it is not

[25] SC Chukwujekwu, *A Basic Course in Ethics: A Study of Ethical Values*, Rex Charles and Patrick Ltd, Nimo, 2007.

followed by sensation of the opposite kind). This is what he called hedonistic calculus.

This theory has however been punctured by critics. The greatest problem of utilitarian moral theory is the difficulty in calculating how much happiness or pain an action causes. Cederblom and Dougherty[26] (1990) described this as balancing the ethical ledger. Not only is it pretty difficult to measure the units of outcomes, the issue of probabilities is another problem to grapple with. Consequences are in the future. Utilitarian principle does not assume that the same experience is good for all people. Thus, in order to determine the overall consequences of an action, the interests of other people have to be given serious consideration.

Cederblom and Dougherty observed that:

> ***making ethical decision this way is not easy. To carry out the procedure, you would have to sensitize yourself to the feelings of many people. To be as accurate as you can you have to exercise your imagination, so that you can sympathetically "live through" the experiences of others imagining the happiness or pains that you think they would feel (Cederblom and Dougherty, 1990,41).***

Another difficulty associated with the utilitarian theory has to do with probability attached to the consequences of an action which has been mentioned before. Ikeanyibe[27] noted that though "rule utilitarianism", a brand of the theory, has tried to take care of this

[26] J Cederblom and CJ Dougherty, *Ethics at Work*, Wadsworth Publishing Belmont, California, 1995.
[27] Loc. cit

problem by holding that the right actions are those ones that agree with those rules which could maximize utility of everybody accepting them, Popkin, Stroll and Kelly[28], (1969) in line with the above also highlighted the problem of subjectivism. That is, if a chosen action as stipulated by rule turns out to have bad effect in future, do we say we acted wrongly in acting upon the best probabilities or that we acted rightly?

In spite of the above criticism, this theory is still applicable in explaining unethical conduct in the Nigerian public sector and its implications on public service delivery. Ikeanyibe (2009) asserts that corruption and many other unethical practices are fingered as the bane of Nigerian public administration. This is because unethical behavior stifles efficiency in the public sector, thereby, generating public outcry, hence the various mechanisms put in place as a response to check unethical practices in the public sector. Agara and Orimoloye[29] (2009) argued that in spite of all the control measures put in place to ensure an ethical bureaucratic system, there seems to be no respite as the various measures have been frustrated, making corruption and unethical behavior the norms. The increasing rate of unethical behavior in the public sector and attendant inefficiency has led to dissatisfaction of the general public and has resulted into commercialization and privatization of some organizations in the public sector.

Having laid the above background, we should ask or probe to what extent ethics can contribute to the effectiveness of public administration or the public sector in Nigeria? The next section of this paper will attempt to unravel this poser.

[28] RH Popkin and A Stroll and AV Kelly, *Philosophy Made Simple*, Heinemann, London, 1969.

[29] T and O. Olarinmoye, 'Ethics and Accountability in Nigeria's Public Service: An Historical Overview' [2009] *Journal of Public Administration and Policy Research* 1 (1) 011.

(b) Ethics In the Nigerian Public Sector

Attempts at cultivating ethical conduct in the Nigerian public sector have found overmanifestations in the Public Service Rules (as instruction manual for civil/public servants), Financial Regulations; Due Process Act and Ancillary enactments that seek to guide and regulate the activities of public officials in the discharge of their duties. The profoundest and perhaps the most laudable of effort at instilling ethical behavior is contained in the Code of Conduct for Public Officers as spelt out in the fifth Schedule of the 1999 Constitution of the Federal republic of Nigeria.

Part I dealing with general provisions encapsulates the following: conflict of interest with duty; restrictions on specified officers; prohibition of foreign accounts; prohibition of retired public officer from accepting more than on remunerative position as chairman, director or employee of any public authority or government owned/controlled enterprises; prohibition of retired public officers from service or employment in foreign companies or enterprises; restriction on loans gifts or benefit in kind/cash to certain public officers; bribery of public officers; abuse of powers; membership of cult/secret societies is prohibited for public officers, declaration of assets by public officer; allegation of breach of these codes shall be made to the Code of Conduct Bureau.

The constitution also established the Code of Conduct Tribunal which shall consist of a Chairman and two other persons. Tenure of staff, Chairman and other members of the Tribunal, powers of the Tribunal are spelt out in the Constitution. Part II of the fifth Schedule defined/listed Public Officers for the purpose of the Code of Conduct.

As lofty as the above mentioned intentions are, there are reports of unethical behaviours in the Nigerian Public Sector. To buttress this, Ikejiani-Clark[30] (2001, 122) submitted that "the initial publications on Corruption....were concentrating on local government levels. They were described as institutions riddled with bribery, nepotism, politics and corruption". She averred further that "over the years, as more documentation on corruption in central government accumulated, it became evident that corruption was a universal problem". The universality of the corruption dilemma in Nigeria implies that it permeates all tiers of government and societal strata.

In corroborating the above, Ezeani[31] (2006, 373) building on the works of Rasheed posited that "... recent experience with public administration....has necessitated a rethink on the issue of ethics in public administration.

Rasheed (1995, 1)[32] reported that:

> ***the lack of accountability, unethical behavior and corrupt practices have become so pervasive, and even institutionalized norms of behavior...to the extent that one may conveniently speak of a crisis of ethics inpublic services***

The above averment by Rasheed (1995) appears exploratory and e xplanatory of the ethical dilemma and question on the public sector in Nigeria. It is therefore not surprising that Ikeanyibe[33] (2009, 193) bluntly asserted that "corruption and many other

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[30] M IKEJIANI-CLARK, The Pathologies of Local Government Administration: Corruption/ Fraud, in *Contemporary Issues in Public Administration*, eds. E.J.C. DURU, M. IKEJIANI–CLARK, and D.O. MBAT, BAAJ International Company, Calabar / Benin, 2001,pp. 122-137.

[31] Ezeani, ibid. p. 373

[32] S Rasheed, 'Ethics and Accountability The African Civil Service' [1995] *DPMN Bulletin*, 3 (1) 12.

[33] Ikeanyibe, op.cit.p. 193.

unethical practices are fingered as the bane of Nigerian public administration." He rhetorically asked the question on how ethics can contribute to the effectiveness of public administration in Nigerian. An attempt will be made to respond to this question in the section dealing with institutional mechanisms for enforcing ethical behavior in Nigerian public administration.

In adducing reasons or explanations for corruption and sundry unethical conducts in the Nigerian public sector, Ikejiani-Clark[34] (2001) reported that "the complexities of modernity and the fact of cultural transmission have resulted in unsettled value systems". These unsettled value systems must be explained in the context of the interface of Nigerian culture/values with those of the capitalist West, economic interaction and inherited capitalist economic system and values which infused Western behavioural patterns/values into the Nigeria culture.

Other factors according to IkejianiClark[35] (2001) are: lack of commitment to public cause; generalized poverty of Nigerians; infrastructural deficit or non-administrative and political practice.

Efforts at curbing unethical behaviours/practice and enforcing accountability in Nigeria and many African countries have received vent due to the under listed reasons:

The increase in the incidence of unethical practices and lack of accountability;

The wave of political liberalization that engulfed most of Africa since 1989, which has embolden a budding civil society into demanding greater enforcement of ethical standards and the punishment of violators;

[34] Ibd. 130-133
[35] ibid

A growing recognition that unethical practices have contributed to the economic difficulties that many African countries face;

The pressure exerted by international donors requiring stricter adherence by African countries to good governance and the curtailment of waste and squandering of resources (Rasheed, 1995, 12).

In Nigeria, the manifestation of unethical practices and the intertwining adverse effect take the form of bribery, peonage, nepotism, embezzlement, use of one's position/public office for self-enrichment, absenteeism, cronyism, corruption in administrative and personnel practices, lack of accountability and transparency in the conduct of government and private businesses. All these have untoward consequences explainable in terms of poor or ineffective implementation of government policies and retarding development efforts generally. From the work of Iyanda,[36] (2012), fraud, extortion, embezzlement, bribery, nepotism, influence peddling, bestowering of favours to friends among others are some of the unethical conducts in the public service.

Some of the manifestations of corruption (in the Nigerian public sector) according to Egwemi[37] (2012, 75) include solicitation or acceptance, directly or indirectly by a public official or any other person, of any goods of monetary, or other benefit, such as a (induced) gift, favour, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance, of his or her public functions. The offering or granting, directly or indirectly to a public official or any other

[36] DO Iyanda, 'Corruption Definition, Theories and Concepts' [2012] *Arabian Journal of Business and Management Review* (OMAN Chapter) 2 (4) 37.

[37] V Egwemi, 'Corruption and Corrupt Practices in Nigeria: An Agenda for Taming the Monster' [2012] *Journal of Sustainable Development in Africa*, 14 (3) 72.

person for the purpose of illicitly obtaining benefits for himself or for a third party; to mention just a few.

Attempts at reversing the above ugly state of affairs have led successive Nigerian governments to institutionalizing mechanisms for enforcing ethical conduct in Nigerian public administration.

2.2 The Meaning, Nature and Dimension of Corruption in the Public Service

Corruption has plagued the Nigerian nation right from independence so much that it has been argued that since this malaise assumed a monstrous dimension in Nigeria one cannot say that there has been real development in Nigeria. Rather the euphoria on national development is no more than the lingering false impression of development falsely created to cover for the failed or static state of under development in Nigeria. Bearing the above scenario in mind, this research sets out to examine the concept of corruption, its nature and scope. The causes of corruption,the overview of corruption from independence and its dimension. Also the meaning of development, the impact of corruption on development in Nigeria and the legal framework for curbing corruption in Nigeria is also discussed.

Corruption is a manifestation, an end product or outcome of multiplicity of actions that are debilitative to the society. It is apt to note that most non-violent crimes perpetrated with the aim of gaining private or personal advantage to an individual or particular group of persons as against the interest of the generality of a group or the society are literally considered to be corruption. Sometimes even moral turpitude is classified as corruption. However, corruption becomes a worrisome issue when it goes a step further beyond

moral misdemeanors to real infringement of existing legislation or law. In other words, corruption is a crime though different from a violent crime. It is a more dangerous crime because of its cankerworm nature, and the tendency for it to be tolerated as normal while it gradually eats up the political and economic fabric of a nation.

Several attempts have been made to define corruption.Black's Law Dictionary defines corruption as:

The act of doing something with an intent to give some advantage inconsistent with official duty and the rights of others; or a fiduciary or official use of a station or office to procure some benefits either personally or for someone else contrary to duty and the right of others.[38]

The World Bank has defined corruption as, "the abuse of public office for private gain". While the above definitions emphasizes conferment of benefit, it is submitted that sometimes act of corruption may not necessarily confer benefit. A deliberate act done in order to prevent or deny another person of a benefit, or to deliberately distort an official or a legal policy by the use of official position does not cease to be corruption simply because no benefit is conferred on the perpetrator or any other person. Also experience has shown that most cases of abuse of office are acts of corruption.

The above position is further buttressed by the fact that public office is abused when an official accepts, solicits, or extorts a bribe or when a private agent offers a bribe to circumvent public policies and processes for competitive advantage and profit. Public office can also be abused for personal gain even if no bribery occurs, through patronage

38. See BA Garner, Blocks Low Dictionary (7th ed. West Group 1999) p.348.

(cronyism) and nepotism, under pricing of state assets, collusion to divert public resources, or outright theft[39].

The Independent Corrupt Practices and Other Related Offences Act 2002 define corruption as including: bribery, fraud, and other related offences[40]. However, all the postulated definitions of corruption tend to agree on one thing, that corruption is an illegal act perpetuated in the course of carrying out a legitimate duty, which results in a personal gain. It also includes all forms of perverted acts which are detrimental to the operation and image of a governmental/public organization, the judiciary or the private sector of a country.

SH Atlas has defined corruption as;

The subordination of public interest to private aims involving a violation of the norms of duty and welfare, accompanied by secrecy, betrayal, deception and callous disregard for any consequences suffered by the public[41].

While the above definitions emphasizes the three elements i.e. Corruption is an abuse of power, violation of official or fiduciary duty and international design to obtain personal gain against the interest of the public or individuals which is the feature of the earlier definitions, the definition also introduces the element of secrecy to suggest that corruption is perpetrated secretly. However, the enormity with which corruption is committed in Nigeria leaves one with the temptation of concluding that is no more a secret affair. Be that as it may, it is however clear from the various definitions offered above that, corruption is anti-social, it taints, spoils, vitiates, depraves, debases and above all undermine the growth of any political system.

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[39] See Pieter Bottelier supra.

[40] Section 21 ICPC Act 2002

[41] SH Atlas, *The Sociology of Corruption* (Times International, 1980) 320

Corruption covers multifaceted acts or omissions, it wears multiple appearances and cover a wide range of acts or omissions which according to Olukonyinsola A. etal[42] includes nepotism, bribery, treasury looting, inflation of prices, financial services crime, money laundering, banking distress, advance fee fraud, smuggling, obtaining by false pretence, capital flight forgery, fraud and a host of other economic crimes just to mention a few. It is important to note at this point that corruption can only be committed through human agents. Even where corporate entities are found culpable in corrupt act, such acts must have been committed through human agents who are the alter ego of such artificial entities.

2.3 Overview of Corruption from independence and its Dimension

Perhaps the first indication of corruption in Nigeria manifested in public administration or governance in 1956. Before then, Nigeria had experienced large-scale economic activities resulting in general economic indiscipline occasioned by the near absence of official rules to regulate the conduct of official government and private business. Even where the rules were made the weak institutional structures impeded the enforcement of those rules. It is however important to note that while spirited attempts were made to fight the scourge when it reared its head in 1956, it was the military regime of OlusegunObasanjo that for the first time gave legal backup to official corruption when he promulgated the Public Officers Protection against False Accusation Decree. The main purpose of this decree was to avoid publication of activities of public officers.

[42] A Olukonyinsola and O Simisola, 'Nigeria on the Frail of a Spectre-Destabilisation of Developing and Transitional Economy' [1998] *Journal of Money Laundering Control* Vol. 1 No. 4 April, 321 (Institute of Advance Studies, London)

The first official investigation of corruption and abuse of office was the celebrated Dr. NamdiAzikiwe case where a panel of inquiry headed by Justice Stafford Foster Sutton[43] was set up on July 24th, 1956 to look into the affairs of Dr. NnamdiAzikwe with the African Continental Bank. It was alleged by Mrs. E. O. Eyo[44] that Dr. Azikwe had abused his office by allowing public funds to be invested in the bank in which he, Dr. Nnamdi, had interest. The panel indicted Dr. Azikwe who subsequently agreed to transfer all his right and interests in the bank to the Eastern Nigerian Government. This position made the Eastern Nigerian Government to henceforth own the African Continental Bank (ACB). The panel's report was published on January 16th 1957[45].

The celebrated Dr. NnamdiAzikiwe's case was useful in the circumstance to the effect that it opened the way for other Commissions and Tribunals to be established to probe similar cases of abuse of office by public office holders.

Shortly after independence, Chief ObafemiAwolowo became a subject of a probe panel set up to investigate allegations of corrupt practice leveled against him. The allegation was that various statutory corporations including a private company, National Investment and Property Company had been employed in various ways to divert public money into unauthorized projects. Consequent upon these allegations made by leading members of Action Group namely: Ayo Rosiji, AbiodunAkerele and Chief O. O. Okonkwo, the Federal Government of Sir. AbubakarTafawaBalewa appointed Justice G. B. Coker Commission to investigate the allegation[46]. The commission's report[47] revealed that there was overwhelming evidence indicating reckless and indeed atrocious and criminal

[43] Sir Forster Sutton was the then Chief Justice of Nigeria in 1956
[44] EO Eyo was the Chief Whip of NCNC Government in Eastern Nigeria between 1954 and 1956
[45] New Breed Magazine, July 2, 1989, p. 10.
[46] The Commission was set up on the 20th June, 1962.
[47] The Report was released on December 31st 1962.

mismanagement and diversion of public funds. It went on to report that Chief Awolowo knew about the diversion of large sums of money in the coffers of the Action Group. The asset of the National Investment and Property Company (NIPC) was taken over by the Western Region Government.

Barely four (4) years[48] after, another Commission of Inquiry was instituted to investigate assets of 15 public officers in the then Mid Western Region including the premier chief Dennis Osadebe and his deputy, Chief Omo-Osagie. The Commission found as of fact that the officers had corruptly enriched themselves and were made to forfeit to the government what they corruptly got. They were also declared unfit to hold public office for not less than ten years.

Statistics also has it that between the years of 1957 and 1966, Nigerian crude oil had been under-priced due to the deliberate connivance by the protagonists of Nigeria independencewho had given active support to oil companies to embark on such fraudulent practices. In the process such leaders share the excess of the under payment[49]. The effect of this fraud was that most oil exporting countries were being paid £190 (pound sterling) for each 1000 barrels. The estimated loss to Nigeria for this period in crude oil export was £20 million pound sterling. Then there came the Gowon's Regime, under which Nigerians resorted to the use of affidavits sworn to in courts to uncover corrupt practices of public officers. Under this practice the former Federal Minister of Communications in Gowon's regime, Joseph SarwuanTarka was forced to resign in 1974 over serious allegations of corruption and abuse of office.[50]

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[48] Ibid, Note 113 p.10

[49] See Analyst Magazine of May/June, 1988, p.15

[50] New Breed Magazines (Supra) p.13

Again in March 1974 the Federal Government had placed order through the Nigerian National supply Company for two million metric tones of cement with various firms in the USSR, Romania and the USA. The Ministry of Defence which needed just 2.9 million metric tons for its projects, placed order for 16.23 million metric tons. At the time, the cost of a ton of cement (including price and freight) was $40 (forty dollars) per ton. The logical inference was that someone was being enriched by $75 (seventy five dollars) per ton multiplied by 16.23 million metric ton. Consequently, Justice M.B. Belgore panel was set up to investigate the irregularities which indicted the then Permanent Secretary of the Defence Ministry, Dr. Dameida who was accordingly dismissed along with officers including Captain Ekename. F. A. Ilori, S. Enebechi and AlhajiOsumanAhmaduSuka[51].

After General Murtala Mohammed took over power from Gowon in July 29 1975, a Federal Assets Investigation Panel was set up to probe the assets of all former Governors, the Administrators of East Central States and some 119 Federal Commissioners who served under Gowon's regime. The report of the panel issued on February 3, 1976 found all the governors (except Mobolaji Johnson and OluwoleRotimi) guilty of gross abuse of office and they were dismissed while their assets were frozen and acquired by government[52].

After Murtala Mohammed was killed, General OlusegunObasanjo took over the regime of government and promulgated the Public Officers Protection Against False Accusation Decree (Decree No. 11 of 1976). The main purpose of this decree was to avoid publication of activities of public officers, which was an indirect way of

[51] (n. 50) 330
[52] Ibid.

entrenching corruption in Nigeria. Like Mr. Femi Falana said, the Decree institutionalized corruption[53] and rendered the Corrupt Practices Decree of 1975 impotent as far as public officers were concerned. This was a turning point in the history of the fight against corruption. It is opined that the country was gradually taking drastic action againstofficial corruption which in the course of time may have succeeded in checking the rising tide of the scourge but for the misadventure of the promulgation of Decree 11 of 1976.

Corruption was on the rise during the period of 1976 to 1979 when the then President OlusegunObasanjo was at the helm of affairs. It would appear that Decree 11 was a premeditated law to cover all acts of corruption during the period of his rule. It is also worthy of note that this was the same period that N2.8 billion petroleum revenue was reported missing from the NNPC accounts[54]. Again, a probe panel headed by Justice Ayo Irikefe was set up to investigate the matter. The impression of the public was that the government deceptively set up the panel to quieten the public uproar on the matter. The outcome of the report was that no money was missing. The outcome of the panel's report would not have been anything less than what it was in view of the cover provided by Decree 11.

It is reported that at the time ShehuShagari assumed the reins of power as Nigerian President on 1st October 1979, the country's total external reserve stood at N2.3 billion[55]. Within four years of his rule, Nigeria had earned about N40.5 billion in foreign exchange. But 51 months later after the Shagari's regime was overthrown in a coup d etat, our external reserve had vanished and Nigeria's public external debt stood at N10.21 billion.

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[53] See "29 years of Unbridled Corruption" in New Breed Magazine, July 2, 19989, p. 14

[54] (n. 53)

[55] Analyst Magazine, Vol. 2, No. 2 of 1987, p. 16

The question was where did the money ago? It was again reported that duringShagari's rule (1980-1983) all the countries that exported their products to Nigeria paid a total of N30.122 billion as payment for these exports leaving an excess of N7.167 billion unaccounted for[56]. There were many of such instances of corrupt practices characterizing the regime of Shagari, which may not find space in this work.

Consequent upon the orgy of large-scale corrupt practices, about seventeen Commissions of Inquiry and Tribunals were set up to probe the various allegations of frauds and corrupt practices between the years 1957 and 1989. These were the:

(a) Justice Strafford Sutton Commission, which investigated ACB NnamdiAzikiwe affairs.

(b) G.B Coker Commissions, which investigated the activities of certain government Corporations, in Western State involving ObafemiAwolowo.

(c) Justice Wheeler judicial Commission, which looked into Kano State Tender Board of some Ministries.

(d) Justice Uthman Mohammed Judicial Commission, which investigated the activities of institutions and the Divisional Tenders Boards.

(e) Federal Assets Investigation Panel investigated into conduct of public officers under Gowon's regime.

(f) Justice M.B. Belgore Commission looked into the Cement importation in the Ministry of Defence.

(g) AlhajiMaitamaSule Panel of Inquiry investigated into the purchase of Leyland buses for FESTAC.

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[56] See International Monetary Fund's (IMF) Official Journal of International Financial Statistics of 1984/85.

(h) Ministerial Committee set up by Shagari on Contract Awards.

(i) Justice Awogu Commission.

(j) Justice Mohammed Nasir Panel.

(k) Justice Okurubido Commission.

(l) Justice Ayo Irikere Investigated into N2.8 billion mission petroleum funds.

(m)Justice Awomyi Commission which investigated the Biwater Towel Scandal in Niger State.

(n) Justice Babalakin in Commission on the activities of FEDECO

(o) Justice Uwaifo's Tribunal which investigated the activities of Second Republic Political actors.

(p) Justice Mohammed Bello Tribunal which tried up 67 corrupt public officers, and

(q) Justice AkintolaAguda Panel on exchange control anti-sabotage actors[57]

The above survey fairly represents the position at government or public sector. The private sector represented by banks and insurance also suffered tremendously. For instance, the National Bank of Nigeria (NBN) which was the first indigenous African Bank to be incorporated as far back as 1934. An otherwise healthy bank when it commenced business was forced to close down in 1989 due to corrupt and unethical banking practices which eroded its asset base. The most pathetic revelation about the banking industry is that bank failures of the 1959s and early 1960s were as a result of incompetence and internal fraudulent practices and corruption[58]. Also the deregulation of

[57] Details of the Panel are contained in Newsbreed Magazine of July 2, 1999 p.14

[58] B Yusuf, 'Ethical Expectations and Fraud in Nigerian Banking industry', *in ECPER* for *Political and Economic Studies.*

the economy by the Babangida administration leading to the proliferation of banks and the subsequent bank failure experienced between 1985 to 1990 occurred as a result of large scale fraud and other corrupt practices that came with the deregulation policy.

2.4 Theoretical Explanation of the Causes of Corruption

It is necessary to provide a theoretical understanding of corruption in order to place the various assumptions and related causal concepts in proper perspectives. Most of these theoretical and philosophical concepts go a long way in explaining the casual factors and anatomy of the impact of corruption on sustainable development of Nigeria. However, the theoretical framework as propounded in the form of theories tend to address more or less issues pertaining to social phenomena and human activities in general. Certainly, not all the theories are applicable to corruption; therefore, in the search for an appropriate theoretical explanation, we must determine the usefulness of the theory. It is our argument that certain factors, such as poverty, unemployment, culture, greed and so on, may facilitate corruption. It would however, be a mistake to conclude that they are the causes as the general public may believe. It is more appropriate to refer to them as indicators or correlations because defining them as causes would invariably mean that corruption would always occur where any of these factors exist. A careful study of these factors in relation to corruption will reveal that some of them are also symptoms or impacts of the scourge rather than causes of corruption.

Several theories have been propounded in order to explain the causes of crime which is relevant to this research. This will help in properly situating the causes of corruption as an aspect of crime and/or analyzing the impact and symptoms of the scourge. It is apt to

point out that these theories, no matter how plausible they may be, are subject of ardent criticism. For instance, the "Differential Association" theory 1940[59] postulates that learning process and social interaction inclines one to criminal conduct, though Sutherland's contributions to the study of white collar crime[60] have been useful to the development of criminology. The major criticism of this perspective however, is that it relies on the socialization process and blames it for creating criminals rather than critically analyzing the environmental conditions which gives rise to social interactions. It also relies heavily on individual freewill as a vector of criminality without probing other constraining factors on the individual. Thus, differential theory has been dismissed as inadequate in explaining crimes like corruption from a wider macro perspective[61].

Also, there is the culture conflict theory, which assumes that physical and social environment determine human actions. However, social environment alone cannot adequately explain the behaviour of the offenders, especially individual choice. Thus, to fully understand the impact of ecology, we need to also understand human preferences, taste and the conditions which create such preferences. Thus, social ecology theory may be strengthened when juxtaposed with a related paradigm that is the "anomie or strain theory, which assumes that people often or commit crimes as a result of frustrations arising from differential opportunity. Like the other theories, relative deprivation theory cannot adequately explain why some privileged elites are corrupt while others are not given the same opportunity. Nor could it adequately explain why a drug trafficker

[59] D Glazier (ed). Handbook on Criminology op. cit.

[60] White collar crime refers to corrupt acts committed in public offices, (Sloan A. P. Adventure of a white collar criminal) in Glazer D. (ed) Handbook on Criminology, op cit.

[61] The line of intense criticism of this theory and others discussed below which the present author totally agree with is as proffered by A. Y. Shuhu, Economic and Financial Crimes in Nigeria (Lagos: NOU 2006)

chooses to use his legitimately earned wealth to commit crime. The nature of power and mobilization of resources are unexplained. These two illustrations and indeed several other theories are therefore, inadequate to explain the causes of corruption. With the above understanding perhaps it will be wise to examine prevalent social factors to see whether really they can provide the reason for engaging in corrupt practices. Some of the factors are below discussed.

(i) Collapse of Our Moral Value System

Perhaps the reasons behind some of the dimension of corruption in Nigeria can only be explained by the fact that in the last four decades there has been a gradual collapse and erosion of the value system in Nigeria, the get rich quick syndrome has permeated the very fabric of moral life and distorted our value system as a nation. The celebration of mediocrity and the importance attached to wealth acquisition however gotten has made us a nation that celebrates corruption rather than condemns it. Criminals are now recipients of chieftaincy titles and those who have been indicted or have cases to answer are those who are nominated and given National Honours. The ostentatious lifestyle Nigerians have come to imbibe has further worsened the value system in Nigeria. Indeed, since the advent of the oil boom in the 1970s, Nigerians have developed an unhealthy love for easy wealth and luxury goods while at the same time losing their traditional appetite for hard work. This has given way to corrupt enrichment and corrupt way of life which is now entrenched in our social life.

(ii) Poverty

Poverty is one of the often identified causes or preconditions for crime generally and corruption particularly. Poverty is a condition of need and insecurity from want, which is more prevalent in the less developed societies. It is in less developed society that systemic corruption has deepened in recent time.[62] In Nigeria, poverty has been identified as one significant reason for corruption. The poverty level is relatively high and is put at about at 85%.[63] Although poverty may prompt a few unemployed youths to attempt the "fast lane" by being involved in financial crimes such as advance fee fraud[64], there is no empirical data to prove that poverty is necessarily a precondition for all forms of corrupt practices especially corruption when materially and exceptionally comfortable public servants are involved. As the largest producer/exporter of petroleum product in Africa, the level of poverty in Nigeria, to say the least, is very astonishing and embarrassing for a country that exports over 2 million barrels of crude oil per day, at an average price of $25 per barrel, with an annual budget of about $11 billion, which about 90% of the budget expenditure is derived from oil sales and yet the level of poverty is considerably high. One explanation is that these earnings are not properly managed to improve the living standard of the citizenry. The exploitation of the oil resources constitutes one of the immediate sources of corruption among a few privileged elites. Even with substantial budgetary allocation of ten billion Naira (N10 billion approximately $100 million) for poverty eradication[65], the result is insignificant as the

[62] From the cases of looting involving Duvalier in Haiti, Marcos in the Philippines, Suharto in Indonesia, Fujimori in Peru and Abacha, in Nigeria, the third world has become the first victim of grand corruption. Invariably the patterns in all these cases are the same stealing and laundering in financial systems of the developed countries.

[63] This was one of the estimates in a Report Prepared for the Government of Nigeria by Price Water House, titled "Nigeria's Investors Road Map. An Enabling Environment Strategy" December 2002, Abuja. This report was snubbed by the Obasanjo Administration.

[64] Popularly referred to in Nigerian local parlance as '419'.

[65] See 2000, 2001, 2002, 2003, 2004, 2005 and 2006 budgets for example.

management of the poverty reduction fund is seen by those concerned as another source of rent reeking. Thus, the level of poverty will remain the same of it does not get worse.

Granted that poverty could lead to a pervasive level of crime in society, especially in a developing society where the institutional capacity is weak but can we really attribute crime, particularly corruption in Nigeria to poverty given the caliber and class of people involved? On the contrary, one would rather argue that poverty is a symptom rather that a cause of financial crime especially corruption. There are many explanations for this. First, at independence in 1960, there was poverty in the society, even though the level was not as high as what obtains in the present day Nigeria. Corruption was not as rampant as it is today. Modesty, integrity, honesty, selflessness and accountability which are the main principles of leadership, characterized political leaders in the 1960s[66]. There was little or no problem with service delivery at the time. Today, there is evidence that the profligacy and mismanagement in the last 3 decades by the political leadership in Nigeria, have contributed to the increasing level of poverty which is sometime reflected in financial crime activities like advance free fraud and corruption involving lower echelons cadre of public servants who due to cost of living and intense poverty, their take home pay cannot take them home.

Secondly, even if poverty were a cause of crime in all societies, could it be justified in Nigeria? Since crime rates of other poorer countries are not as high as Nigeria? When has poverty become a 'licence' to steal or to cheat or even defraud? Are those involved in the looting of public treasury, embezzlement, bribe, and fraud in financial institution poor? Certainly not! For from that, it is the same class of the privileged elites who

[66] That Nolan Report on Standards in Public Life in the United Kingdom (1999) identified these principles

engage in these forms of corruption. Thus, it might be plausible to imagine that greed rather than poverty is the possible motivation for corruption.

Thirdly, if poverty were the cause of corruption, Nigeria has been rated as one of the 'most corrupt' nations in the world for over seven years in succession[67],yet, the proceeds of corruption have not been used to remedy poverty. Indeed, those involve in corruption do not do so to remedy any poverty they increase poverty. The idea that poverty is the greatest obstacle to combating corruption has little substance because poverty can only be ameliorated when corruption is curtailed. Essentially therefore, although poverty is a correlation variable to crime, it is not a cause of phenomenal rise in corruption and other financial crimes in Nigeria. Let us now address the issue of covetousness and greed as a possible cause.

(iii) Greed, Covetousness and Avarice

Corruption is a rational choice activity dependent on motivation, opportunity and means. Rather than attribute it to poverty, corruption in Nigeria, to a large extent, should be attributed to greed and ostentatious lifestyle of most Nigerians leading to quest for material acquisition. On the one hand, such greed and avarice could be blamed on the socio-economic policies of the state which create unequal opportunities for competition to attain social status. This leads to primitive accumulation of wealth and material things which has become the norm in Nigeria. The high level of social insecurity created by a policy that does not guarantee a better retirement life also contributes to the primitive

[67] Transparency International (TI) Annual Corruption Perception Index 1996, 2006, TI is a non-governmental organisation based in Berlin Germany that is concerned with fighting corruption globally.

acquisition syndrome. Thus, those who have opportunity to manipulate the system to their benefit do so with impunity.

(iii) Poor Reward System

Studies have documented the possible impact of a poor reward system on the level and extent of corruption in society[68]. For purposes of clarity, it is necessary to categorize the reward system into two types, namely, individual/private sector reward, and public sector remuneration. With regard to individual reward, the economic system in Nigeria which is based on a superficial free market and competition does not seem to provide the opportunities for individual self-actualization. Obviously, for one to compete in such a market situation, one must be appropriately empowered or equipped to do so. Another important means is to provide a level playing field for competitive entrepreneurship. In this way, private sector would be able to absorb a good number of unemployed persons. Unfortunately, it seems that the various employment-policies and programmes in addition to the poverty alleviation programmes have not significantly improved the unemployment situation in the country, hence the rising wave of crime. A probable explanation is either that government policies are not properly implemented or they are themselves a source and products of corruption.

In an ideal free market economy, a strong private sector could play a critical role in combating corruption. What we have in Nigeria is a 'parasitic/dependent' private sector. In other words, the private sector, which is supposed to lubricate the economy, is dependent on government funds and patronage. Subsidies and tax exemptions are granted

[68] See TI's Anti-Corruption Year Book, Berlin, 2003

preferentially to those private sector organizations which have some connections in government. Indeed, the operation of the private sector in Nigeria raises a more fundamental question of conflict of interest because most of the private companies are owned directly or indirectly by the same privileged elites either in government or in retirement. Thus, they provide sources and means of rent seeking through government contracts. Thus, where the market and economy do not correlate; services are inadequately provided and little or no incentive is given to boost production, it would only exacerbate scarcity and the need to bribe or pay off to obtain services that ordinarily should have been provided without the need to corrupt the system. Finally, the public sector remuneration is a major source and possible cause of corruption in Nigeria. Given the low wages of civil servants, which lead to low morale, lack of patriotism, declining productivity and confidence in the system, this increases the tendency to be corrupt. The level of corruption in the public sector is such that "over the years, Nigeria has established the 'Dubious' reputation as a place where nothing ever gets done until money changes hands. As a result of this, it has become the country with one of the highest cost of contracts in the world. Projects executed in the country have often attracted costs more than 300 per cent above what obtain in other comparable developing countries"[69]. This practice impinges on the quality of governance.

(v) Bad Governance System and Poor Economic Policy

Financial crime in general and corruption in particular are also governance related issues because they have to do with governmental policy at a particular time. In Nigeria, evidence has shown that the type or system of governance has a significant impact on the

[69] See the remarks of Anthony Ani in Time Magazine, May 22nd 1998.

level and extent of corruption[70]. Although there is no consensus among scholars regarding the immunity of any form of government to corruption, there is an understanding that where the system is dictatorial, unitary, and unaccountable to public opinion and abhors transparency, then corruption is most likely to flourish[71]. The military have ruled Nigeria for over 32 years of its 50 years of political independence and corruption is perceived to have grown under the military more than any other time in the history of Nigeria. Under the military, public administration was subjected to dictatorial rules and secrecy. Consequently, one of the greatest tragedies of military rule is that corruption was allowed to grow unchecked, transparent and accountability rules and regulations for doing official business were deliberately ignored leading to the persistent deterioration in the quality of our governance. This resulted in instability and the weakening of all government institutions. Government and all its agencies became thoroughly corrupt and reckless[72].

Apart from official corruption, the period also witnessed the manifestation of financial crimes like advance fee fraud (popularly known as 419). Also the unguided deregulation of the economy and the introduction of the Structural Adjustment Programmed (SAP) led to the devaluation of the naira through the dictate of the International Monetary Fund (IMF). This resulted in devastating depreciation of the currency, rapid deterioration in the standards of living, rising unemployment, poverty and increasing rate of crime among

[70] Many empirical studies have documented the impact of corruption on development and stability in Nigeria, including A. Y. Shehu op. cit, Odekunle, (1982) (ed) Corruption in Development, Ibadan University Press, Lame et.al (2001) (eds), Fighting Corruption and Organised Crime in Nigeria; Challenges in the New Millennium, Abuja Spectrum Books, Nigeria.

[71] The cases of massive wealth holding by serving and retired generals during the military regimes are clear examples.

[72] President Obasanjo in inaugural speech May 29th 1999, Obasanjo seemed to have forgotten that this would be the result of this institutionalizing corruption through his promulgation of Decree 11 of 1976 when he became military head of state.

others. The phenomenal increase in frauds and malpractice in banks and other financial institutions were also recorded during the most intense period of economic deregulation, especially in the 1980s and 90s[73].

Indeed Nigeria is saddled with a problem of poverty of leadership not that of material poverty. There has been no difference between the military regimes and the civilian regimes. Corruption has continued unabated and has now assumed an endemic proportion under President Goodluck Jonathan Administration. This has caused a rethink on the saying that the worse civilian government is better than the best military dictatorship.

2.5 International Legal Framework

Nigeria is a signatory and Member State of the United Nations Convention Against Corruption (UNCAC), which came into force in 2005. The Convention, with 181[74] parties, is the first legally binding international anti-corruption instrument aimed at providing a legal framework for fighting corruption and recovering its proceeds. Its Chapter V provides a comprehensive asset recovery regime as an effective sanction against corruption and a fundamental principle of international public law. It underscores three basic principles: firstly, the regime sends a strong signal that corruption does not pay and that consequences will follow those who steal from the poor.; secondly, it helps to disrupt the circle that sustains these organizations and fraudsters; and thirdly, it allows the stolen funds to be recovered and used to the benefit of the people. Article 54 of UNCAC states that:

[73] This led to the establishment of Nigeria Deposit Insurance Corporation (NDIC) or its reports and statement of account from 2003 to date.
[74] As at 20th March, 2017

'Each State Party shall, in accordance with its domestic law

(c) consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases."

In demonstrating its commitment to tackling corruption and furthering the objectives and the requirements of UNCAC, Nigeria has enacted a number of non-conviction based forfeiture provisions in various legislation.Though not a satisfactory position, the laws nevertheless recognize forfeiture in consideration of properties illicitly acquired.

(a) General consideration in forfeiture cases:

There are general considerations that have been raised across many jurisdictions about the use of non-conviction based forfeiture. In order to assist the courts and parties, the approach adopted to these issues in some jurisdictions, including in the European Court of Human Rights, is set out here. This information is provided for guidance only. It is self-evident that any binding determinations as to procedure or substantive law in cases within Nigeria are a matter for determination by the courts.

(b) **Universal Legal Practice:**

Case law has usefully articulated the common underlying rationale and principles of non-conviction based forfeiture.[75]Having regard to international legal mechanisms such as

[75]Gogitidze&Others v Georgia ECHR 158 (2015) – European Court of Human Rights.

UNCAC[76] and the 40 Financial Action Task Force Recommendations[77] (in addition to two Council of Europe conventions), universal legal standards can be said to exist where:

a) The confiscation of property is linked to serious criminal offences such as corruption, money laundering, drug offences and so on, thus, confiscation of property without the prior existence of a criminal conviction is encouraged.
b) Confiscation measures may be applied not only to the direct proceeds of crime but also to property, including any income and other indirect benefits obtained by converting or transforming the direct proceeds of crime or intermingling them with other, possibly lawful, assets.
c) Confiscation measures may be applied not only to persons directly suspected of criminal offences but also to any third parties which hold ownership rights without the requisite bona fide with a view to disguising their wrongful role in amassing the wealth in question.

The ECTHR observed that 'the non-conviction based forfeiture provisions in question' formed an essential part of a larger legislative package aimed at intensifying the fight against corruption in the public service' by both compensating the state and serving as a preventive warning to others:

> "The aim of the civil proceedings in ream was to prevent unjust enrichment through corruption as such, by sending a clear signal to public officials already involved in corruption or considering so doing that their wrongful acts, even if

[76] Nigeria signed UNCAC on 9 December 2003, and became a party by ratification on 14 December 2004
[77] Nigeria is a member of GIABA and subscribed to FATF 40 Recommendations

they passed unscaled by the criminal justice system, would nevertheless not procure pecuniary advantage either for them or for their families".

in the case of Hack v The Financial Intelligence Unit &The Attorney General [78]

In commenting upon the nature and purpose of the legislation, the court commented thus:

a) "The Proceeds of Crime Legislation only seeks to ensure that benefits from that activity and other criminal conduct cannot be enjoyed by a person in Seychelles. Is the provision a bold departure from previous enacted laws? Undoubtedly it is; but desperate times require desperate measures".

b) "Jurisdictions around the world have had to create laws to fight money laundering and organized criminal and terrorist financing. Seychelles has to meet commitments under UN Conventions and satisfy other international standards concerning such activities. Our laws contain provisions that are no more and no less of these requisite standards".

(a) Are the proceedings criminal & do they amount to an unjust 'punishment'?

The case law cited below essentially concludes that the proceedings are more akin to civil proceedings than criminal proceedings. It follows that case law concludes that although a forfeiture order might be punitive in its effects, but its aim is not to punish, as is often the intention of sentencing in criminal proceedings. The action is taken against the property itself.

[78](Seychelles, SCA 10 of 2011).

Gogitidze& Others v Georgia[79], of which, in provisions that reflect sections 36 (1) and 36(5) of the Nigeria constitution, Article 6 of the European convention on Human Rights states that:

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

Thus, the ECtHR stated that there is 'well-established case-law to the effect that proceedings for confiscation such as the civil proceedings in rem in the present case, which do not stem from a criminal conviction or sentencing proceedings and thus do not qualify as a penalty but rather represent a measure of control of the use of property cannot amount to "the determination of a criminal charge" within the meaning of Article 6[80]. The proceedings are not of a punitive but of a preventive and/or compensatory nature[81].

Hackl v The Financial Intelligence Unit &The Attorney General[82]

[79]ECHR 158 (2015) – European Court of Human Rights.

[80] See ECtHR decisions in the cases of Arcuri and Others v. Italy (dec.), no. 52024/99, ECHR 2001-VI; Butler v. the United Kingdom (dec.), no. 41661/98, 27 June 2002, Silickiene v. Lithuania, no. 20496/02, & 65, 10 April 2012; Veits v. Estonia, no. 12951/11, & 58, 15 January 2015

[81] See ECtHR decisions in the cases of Butler v. the United Kingdom (dec.), no. 41661/98, 27 June 2002; Veits v. Estonia, no. 12951/11, & 70, 15 January 2015; *Silickiene v. Lithuania*, no. 20496/02, & 65, 10 April 2012

[82](Seychelles, SCA 10 of 2011)

Citing case law from South Africa[83], America[84], Ireland[85] and the UK[86], the court reiterated its conclusion in FIU v Mares Corp [2011] SCAA 48 that "POCCCA sits uncomfortably between civil and criminal law and while it deals with the proceeds of criminal conducts its provisions are essentially civil in nature" . Rather than the aim being to punish a person, the action is ultimately taken against the property to prevent unjust enrichment. The court further stated that:

"It is worth noting that legislation using civil procedures to deal with "criminal assets" is an emerging global trend in the battle against crime".

Simon Prophet v. The National Director of Public Prosecutions[87]

In describing why no crime needs to be proved, the Constitutional Court stated:

"Civil forfeiture provides a unique remedy used as a measure to combat organized crime. It rests on the legal fiction that the property and not the owner has contravened the law. It does not require a conviction or even a criminal charge against the owner."

NDPP v RO Cook Properties[88]

The court held that forfeiture, once exacted, operates as a punishment. However, that fact alone does not render such forfeiture constitutionally impermissible:

"The pursuit of the statutory objectives cannot exceed what is constitutionally permissible. Forfeitures that do not rationally advance the inter-related purposes of

[83]Simon Prophet v. The National Director of Public Prosecutions CCT 56/05
[84] United States v. Ursery (95-345), 518 U.S. 267 (1996); Bennis v. Michigan (94-8729), 517 U.S, 1163 (1963)
[85] Gilligan v. Criminal Assets Bureau and others and Murphy v. GM. PB and ors (2001) IESC 82
[86] Attorney General v. Blake (Jonathan Cape Ltd. Third Party) [2001] HL 1 AC 268
[87]CCT 56/05 (South Africa)
[88][2004] (2) SACR 208 (South Africa)

legislation are unconstitutional. Deprivations going beyond those that remove incentives, deter the use of property in crime, eliminate or incapacitate the means by which crime may be committed and at the same time advance the ends of justice are in our view not contemplated by or permitted under the Act".

(b) Do proceedings after an acquittal amount to a double punishment?

Prophet v. National Director of Public Prosecutions[89]

The judgment concludes that such proceedings are not a double punishment:

"The acquittal of the appellant on a technicality indicates the difficulties the State has to contend with in its endeavors to combat drug-related crimes. And a prosecution, followed by a conviction and sentence is no bar to the invocation of Ch. 6. Counsel accepted that organized crime has become a growing international problem and that societies in transition (like South Africa) are susceptible to organized crime groups, and that ordinary criminal law measures are ineffective in targeting these criminal organizations, thus necessitating extraordinary measures such as civil forfeiture in terms of Ch. 6 of the Act".

Hackl v The Financial Intelligence Unit &The Attorney General[90]

Article 19(5) of the Constitution of the Seychelles provides:

"A person who shows that the person has been tried by a competent court for an offence and either convicted or acquitted shall not be tried again for that offence or for any other

[89]2006 (1) SA 38 (SCA) (South Africa).
[90](Seychelles, SCA 10 of 2011)

offence of which the person could have been convicted at the trial for that offence, save upon the order of a superior court in the course of an appeal or review proceedings , relating to the conviction or acquittal."

Citing the case law set out at paragraph 28 above, and in particular the American case law on civil forfeiture and double jeopardy [91] , the court concluded that, because the proceedings are civil

innature,'they do not attract the protection of Article 19(5) of the constitution of the Seychelles

see the paragraph above] [24].

(c) Innocent until proved guilty & reverse burdens of proof

S36(5) of the Constitution of Nigeria, 'every person who is charged with a criminal offence shallbe presumed to be innocent until he is proved guilty'. The case law suggests, in light of the conclusions above that the proceedings are not 'criminal', that this presumption does not apply to asset forfeiture cases.

Gogitidze&Others v Georgia[92].

Article 6(2) of the European Convention on Human Rights relates to a presumption of innocencein 'criminal' proceedings, and thus non-conviction based forfeiture proceedings do not give rise to the application of the presumption[93] [126]. Furthermore, an aspect of

[91] United States v. Ursery (95-345), 518 U.S. 267 (1996);
[92] ECHR 158 (2015) – European Court of Human Rights
[93] See ECtHR decisions in the cases of AGOSI v. the United Kingdom (24 Otober 1986, & 33 – 42, Series A no. 108; Riela and Others v. Italy (dec.), no. 52439/99, 4 September 2001; Arcuri and Others v. Italy (dec.), no. 52024/99, ECHR 2001-VI; Butier v. the United Kingdom (dec.), no. 41661/98, 27 June 2002.

the presumption of innocence is to prevent the outcome of the criminal process from being undermined after proceedings have ended other than by way of conviction by going behind the outcome. In rem forfeiture does not undermine the outcome of the criminal process, particularly because it is preventative and/or compensatory rather than punitive in nature.

Some provisions, such as S15(3) of the Code of Conduct Bureau and Tribunal Act of Nigeria impose a burden of proof upon the property owner. Drawing upon UNCAC and the UNODC Technical Guide to UNCAC, the court stated that one of the 'universal legal standards' that can be said to exist in connection with asset forfeiture is that the burden can in fact be reversed in asset forfeiture proceedings without infringing fundamental rights:

'the onus of proving the lawful origin of the property presumed to have been wrongfully acquired may legitimately be shifted onto the respondents in non-criminal proceedings for confiscation, including civil proceedings in rem'.

(d) Right to Property (Sections 43/44 of the Constitution of Nigeria)

S43 of the Constitution enshrines the right to acquire and own immoveable property anywhere in Nigeria. S44 protects interests in both moveable and immoveable property, and prohibits

compulsory acquisition of such property 'except in the manner and for the purposes prescribed by a law'.

The case law set out below establishes the position of the European Court of Human Rights and certain other jurisdictions about the relationship between non-conviction based forfeiture and the right to property under similar provision of the European Convention on Human Rights.

Orders for forfeiture of property must be proportionate

Gogitidze&Others v Georgia[94].

Drawing together the ECtHR case law, it was held that:

(a) Article 1 Protocol 1 of the European Convention on Human Rights guarantees the right to peaceful enjoyment of property:

(1) Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

It is well established that forfeiture proceedings do amount to an interference with this right[95].

However, states are entitled to control the use of property in accordance with the 'general interest' (or 'public interest'). This includes the use of judicial proceedings which could lead to the irrevocable forfeiture of property. Any interference with the right to peaceful

[94]ECHR 158 (2015) – European Court of Human Rights.

[95] See ECtHR decisions in the cases of *Air Canada v. the United Kingdom*, 5 May 1995, & 34, Series A no. 316A; *Riela and Others v. Italy* (dec.), no. 52439/99, 4 September 2001; *Veits v. Estonia*, no. 12951/11, & 70, 15 January 2015; and *Sun v. Russia*, no. 31004/02, & 25, 5 February 2009.

enjoyment of property must be reasonably proportionate to the aim sought to be realized. In other words, a "fair balance" must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The requisite balance will not be found if the person or persons concerned have had to bear an individual and excessive burden[96].

It therefore concluded that the bringing of such proceedings was therefore neither arbitrary nor disproportionate. The proceedings pursued a legitimate aim.

AG v Mugesi and others[97] (in the context of conviction based forfeiture).

The court emphasized (in the context of conviction based forfeiture) that interference with property must be proportionate and judged on the facts of each case:

"It was never the intention of Parliament nor is it in the "general interest" of our society, that the provisions of the Proceeds of Crime Act, be applied indiscriminately to innocent property owners in all cases" .... "earthly power doth show likest God's when mercy seasons justice (The Merchant of Venice Act IV, Sc.I, I. 196".

NDPP v RO Cook Properties[98]

Although the court was not ultimately obliged to determine the issue of proportionality on the facts of the case, the court made relevant comment. The court stated that forfeiture, once exacted, operates as a punishment. The pursuit of the statutory objectives

[96] See ECtHR decisions in the cases of the Former King of Greece and Others v. Greece (GC), no. 25701/94, & 79 and 82. ECHR 2000-XII, and John and Others v. Germany (GC), nos. 46720/99, 72203/01 and 72552/01, & 81 – 94, ECHR 2005-VI).

[97] 12 February 2014 – Tanzania

[98] [2004] (2) SCAR 208 (South Africa)

cannot exceed what is constitutionally permissible. Therefore "deprivations going beyond those that remove incentives, deter the use of property in crime, eliminate or incapacitate the means by which crime may be committed and at the same time advance the ends of justice are in our view not contemplated by or permitted under the Act".

Hackl v The Financial Intelligence Unit &The Attorney General[99].

Observing that the right to property was not absolute, the Supreme Court stated:

(a) "we find that the Applicant's use of the Seychelles Charter of Human Rights is an attempt to deflect from its aims and purposes and are clearly contrary to the values of the Charter. This ground is therefore not sustainable".

(b) [The proceeds of crime legislation] provides for the confiscation of proceeds of crime. These are necessary and proportionate limitations to the right to property as permitted by our Constitution. It is not in the public interest that persons be allowed to transfer money and freely invest in, buy or enjoy property in Seychelles when such money derives from their nefarious activities. It does not serve the good name or reputation of Seychelles. Seychelles has an interest in suppressing the conditions likely to favour the reward of crime committed; removing the instruments and the assets derived from the commission of unlawful activity which might in turn permit the funding of further offences meet this objective.

[99](Seychelles, SCA 10 of 2011)

CHAPTER THREE

THE LEGAL FRAMEWORK OF CODE OF CONDUCT TRIBUNAL IN NIGERIA

3.1 The Code of Conduct Tribunal in Nigeria

The Code of Conduct Tribunal is established under paragraph 15 part 1 of the Fifth schedule of the Constitution[100]. The code of conduct tribunal consists of the chairperson and two other persons[101]. The members of the Code of Tribunal are appointed by the president on recommendation of the National Judicial council[102].

The chairperson and members of the tribunal cannot be removed from office except by the president upon an address supported by the two third majority of each House of the National Assembly praying that he so be removed for inability to discharge the functions of his office (whether arising from infirmity of mind or body) or for contravention of the Code of Conduct[103].

People appointed as chairperson must have held office or qualified to hold office as a judge of a superior court in Nigeria[104].The chairperson and members of the Tribunal are to retire at 70years[105].The remunerations and salaries of the chairperson of the Tribunal and it members are charge upon the Consolidated Revenue Fund of the Federation and chairperson or any member who has held office for a minimum of 10years shall if retires

[100] 1999 CFRN, as amended.
[101] Para 15(1) Part 1, Fifth Schedule, 1999 CFRN, as amended.
[102] Para 15(3) Part 1, Fifth Schedule, 1999 CFRN, as amended.
[103] Para 17(3) Part 1, Fifth Schedule, 1999 CFRN, as amended.
[104] Para 15(2) Part 1, Fifth Schedule, 1999 CFRN, as amended.
[105] Para 17(1) Part 1, Fifth Schedule, 1999 CFRN, as amended.

at the age of 70years, be entitled to pension for life pension at a rate equivalent to his last annual salary in addition to other retirement benefits to which he may be entitled.[106]

Jurisdiction of The Code of Conduct Tribunal

The constitution did not expressly define the jurisdiction[107] of the Code of Conduct Tribunal but impliedly granted the Tribunal powers to punish breach of the Code of Conduct in paragraph 18(1) and (2)[108], also the National Assembly may by law confer on the Tribunal such additional powers as may to it to effectively discharge the functions conferred on it[109].

In regards to jurisdiction of the Code of Conduct Tribunal, Justice Kariby-white is of the view that the jurisdiction of the tribunal is confined and limited to the conduct clearly outlined in paragraph 1-13 of the 5th schedule of the 1999 Constitution[110].

President Aigbeye, assert as follows "A non-public officer is not subject to the jurisdiction of the Tribunal. What determines whether the Code of Conduct Tribunal has jurisdiction is the fact that the accused is a public and that the mental element of commission and omission has to do with the code of public officers and not narrowly assets declaration"[111].

In Nwankwo v Nwankwo[112] it was held by the Supreme Court that the Code of Conduct Tribunal is the only body vested with the jurisdiction to handle breaches of the Code of

[106] Para 17(2) Part 1, Fifth Schedule, 1999 CFRN, as amended.
[107] A courts power to decide a case or issue a decree
[108] Para 18, Part 1, Fifth Schedule, 1999 CFRN, as amended.
[109] Para 15(3) Part 1, Fifth Schedule, 1999 CFRN, as amended.
[110] President Aigbohan, Judicial competence of the Code of Conduct Tribunal, The Nation, Febuary 16, 2016. Thenationonlineng.net/judicial-competence-of-code-of-conduct-tribunal/. Last visited 1st of August 2016.
[111] ibid
[112] (1995) 30 LRCN 24

Conduct. Also in FRN v Atiku Abubakar[113], the Code of Conduct Tribunal ruled that, it was vested with the powers to handle allegations bordering on breach of Code of Conduct by public officers.

Same position was taken by the Code of Conduct Tribunal in the recent of the senate president, DrBukolaSaraki[114] over allegation of false declaration of assets.

On jurisdiction of the Code of Conduct Tribunal, Odey-Agbaltite Emmanuel Esq. (2016) posits that[115] "the Tribunal has been granted the power to punish breach of the Code of Conduct, has the jurisdiction to hear and determine cases of alleged breach of the Code of Conduct by public officers. This is also buttressed with the fact that the Code of Conduct Bureau receives complaints about non-compliance with or breach of the Code of Conduct or any law in relation thereto, investigate the complaint and where appropriate, refer such matter to the Code of Conduct Tribunal[116]"

3.2 Appointment of Chairman and Members of the Tribunal

The Tribunal consists of a Chairman and two other persons (Members). The Tribunal Chairman is expected to be a person who has held or is qualified to hold office as judge of a superior court of record in Nigeria. Superior court of record means any of the following: the Federal High Court, National Industrial Court, High Court of the Federal Capital Territory and that States, the Court of Appeal and the Supreme Court. The Chairman and members are appointed by the President on the recommendation of the National Judicial Council. The provision does not require the President to make such

[113] (2007) 8 NWLR
[114] Suit No: ABT/01/15
[115] 'Declaration of Assets and Liabilities by Public Officers in Nigeria, an Appraisal'Long Essay, Faculty of Law, Nasarawa State University. 2016. Page 33
[116] Para 3(e) Part 1, Third Schedule, 1999 CFRN, as amended.

appointments "on the recommendation" of the National Judicial Council; it would seem that he is only required to make his appointments [117] in line with a general recommendation by the Council. The President is not bound to appoint any particular person that the Council may recommend to him.[118] He is only required to appoint as Chairman of the Tribunal only a person who has held or is qualified to hold office of a judge of a superior court of record in Nigeria.Members of the Tribunal are expected to appoint and exercise disciplinary control over the staff of the Tribunal. Such power is exercisable in accordance with the provisions of an Act of the National Assembly enacted in that behalf.[119] The members of the Tribunal hold office until they attain the age of seventy years and if they have held office for at least ten years, are entitled to pension for life if they retire at the age of seventy years. A person holding the office of Chairman or member of the Tribunal shall not be removed from office or appointment by the President except upon an address supported by two-third majority of each chamber of the National Assembly praying that he be so removed for inability to discharge the functions of the office in question (whether arising from infirmity of the mind or body), or for misconduct or for contravention of the Act. It is to be noted that because of certain political circumstances of recent (trial of high profile cases or politically exposed persons), the National Assembly wants to be in the position to appoint the Chairman and members of the Tribunal. This has been resisted strongly by the general public. It is to be noted that the Code of Conduct Tribunal forms part of the Fifth Schedule as a judicial body not in any way responsible to the Executive or to the Legislature in the discharge of its duties.

[117] Para 18(6) &7 , Part 1 of the Fifth Schedule, CFRN 1999 (as amended).
[118] AOluwadare, *Understanding the Nigerian Constitution of 1999*, MIJ Professional Publishers Ltd, 2000, pp. 255.
[119] Para. 16(2) Part 1 Fifth Schedule.

3.3 Removal of Tribunal Members

The removal of the Chairman and members of the Code of Conduct Tribunal is as may be prescribed by law.[120] The Chairman and other members of the Tribunal hold office until the age of seventy. After holding office for not less than ten years, the Chairman and every member of the Tribunal shall be entitled to retire on a pension for life at a rate equivalent to his last annual salary in addition to other relevant benefits to which he may be entitled.[121] In most cases they may be entitled to take away their official cars with them upon retirement. They may also be eligible to buy their official houses if they wish.

The Chairman or member of the Tribunal may be removed from office by the President but only upon an address supported by two-third majority of each Chamber of the National Assembly praying that he be so removed for inability to discharge the functions of the office in question (whether arising from infirmity of mind or body) or for misconduct or for contravention of the Code.[122]

The power to appoint the staff of the Tribunal and exercise disciplinary control over them is vested in the board of the Tribunal and shall be exercisable in accordance with the provisions of the Act.[123]

The Constitution in the following words makes provisions in respect of the pension rights of those who have served in the public service of both the federation and the states.

"Subject to the provisions of the Constitution, the right of a person in the public service of the Federation to receive pension or gratuity shall be regulated by law.

Furthermore;

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[120]Para. 15(1) Part , Fifth Schedule CFRN 1999 (as amended)
[121]Para. 17(2) Fifth Schedule
[122]Para.17(3) of Part 1, Fifth Schedule.
[123]Section 2(1) & (2), CCBT Act, Cap C15, LFN 2004.

(a) Any benefit to which a person is entitled to in accordance with or under such law as is referred to in subsection (1) of this section shall not be withheld or altered to his disadvantage except to such extent as is permissible under any law, including the code of conduct.

(b) Pension shall be reviewed every five years or together with any Federal Civil Service salary review, whichever is earlier.

This immediate foregoing provision is only on paper. Pension review takes a long time to be effected and when effected, it takes many months before payment is made.

(c) Pensions in respect of service in the public service of the Federation and in the states are not taxed. The pension in itself is not much. It will be punishment for the pensioners if their pensions are taxed.

3.4 Powers of the Tribunal

The provisions of the Code of Conduct Bureau and Tribunal Act do not directly confer any powers upon the Tribunal to try or punish any public officer who has, or is, alleged to have contravened the provisions of the code. It is to be noted that such powers are clearly implied in the provisions of paragraph 18 of the Fifth Schedule which states as follows:

" (1) Where the Code of Conduct Tribunal finds a public officer guilty of contravention of any of the provisions of this Code, it shall impose on that officer any of the punishments specified in sub-paragraph (2) of this paragraph and such other punishment a may be prescribed by the National Assembly.

(2) The punishment which the Code of Conduct Tribunal may impose shall include any of the following -

(a) Vacation of office or seat in any legislative house as the case may be;

(b) Disqualification from membership of a legislative house from holding of any public office for a period not exceeding ten years;

(c) Seizure and forfeiture to the State of any property acquired in abuse or corruption of office".

The National Assembly may by law, confer on the Tribunal such additional powers as may appear to it to be necessary to enable the Tribunal more effectively to discharge the functions conferred on it by this Schedule."[124]

The sanctions mentioned in sub-paragraph (2) hereof shall be without prejudice to the penalties that may be imposed by any law where the conduct is also a criminal offence.

Where the Tribunal gives a decision as to whether or not a person is guilty of a contravention of any of the provisions of this code, an appeal shall lie as of right from such decision or from any punishment imposed on such person to the Court of Appeal at the instance of any party to the proceedings.

Any right of appeal to the Court of Appeal from the decision of the Code of Conduct Tribunal conferred by sub-paragraph (4) hereof shall be exercised in accordance with the provisions of an Act of the National Assembly and rules of court for the time being in force regulating the powers, practice and procedure of the Court of Appeal.

Nothing in the paragraph shall prejudice the prosecution of a public officer punished under this paragraph or preclude such officer from being prosecuted or punished for an offence in a court of law.

[124] Para 15 (a), Fifth Schedule, CFRN 1999 (as amended)

The function of the Tribunal is to follow the rules of procedure to be adopted in any prosecution for the offences under the Act establishing the Tribunal. The methods to be used in such prosecutions are set out in the Third Schedule of the Act. Prosecutions for all offences in the Act shall be instituted in the name of the Federal Republic of Nigeria by the Attorney-General of the Federation or such officers in the Federal Ministry of Justice as the Atorney-General of the Federation may authorize.

The Attorney-General of the Federation may, after consultation with the Attorney-General of any state, authorize any officer of the Ministry of Justice of the state concerned to undertake any such prosecutions directly.[125] If perhaps the Tribunal so requests or if contingencies so dictate, authorize any other legal practitioner in Nigeria to undertake any such prosecution or assist therein. The question whether any authority has been given in pursuance of the subsection referred to shall not be inquired into by any person.[126] Any person accused of any offence referred to in the Act setting up the Tribunal shall be entitled to defend himself in person or by a person of his own choice, who is a legal practitioner qualified to practice law in Nigeria.

The Tribunal can issue search warrants. For instance, if the Chairman of the Tribunal is satisfied that there is reasonable ground to suspect that there may be found in any building or other place whatsoever, books, records, statements or information in any form whatsoever, which in his opinion, are or may be material to the charge or any trial under the Act, he may issue a warrant under his hand authorizing any police officer or any member of the security agencies to enter, if necessary by force, the said building or other

[125] See Subsection (2) of the Third Schedule CCBTA .
[126] Refer to the ongoing trial of the Senate President by the Tribunal.

place and every part thereof and to search for, seize and remove any such materials as aforesaid, found therein.

In respect to the Criminal Justice Administration in the High Courts and Magistrate Courts of Lagos State 2007, as regards search of arrested person, whenever a person is arrested by a police officer or a private person, the police officer making the arrest or to whom the private person hands over the person arrested, may search the person, using force as may be necessary for such purpose."[127]

In the Administration of Criminal Justice Act 2015, section 12 (2)[128], where the access to a house or place cannot be obtained under sub-section (1) of the Act, the person or police officer may enter the house or place and search it for the suspect to be arrested, and in order to effect an entrance into the house or place, may break open any outer or inner door or window of any house or place, whether that of the suspect or of any other person, or otherwise effect entry into such house or place, if after notification of his authority and purpose, and demand of admittance duly made, he cannot obtain admittance. This is clearly the position on matters of arrest in Nigeria today.

3.5. Independence of the Tribunal

The Tribunal has some degree of independence, free from any authority whatsoever to do her work to the best and ability of members of the Tribunal. However it is suggested by the researcher that the Code of Conduct Tribunal should no longer operate as an agency or institution under the executive branch of government. It is suggested that it should operate under the judicial branch of government and be made accountable to judicial oversight bodies such as the National Judicial Council. The researcher believes that this

[127] See Criminal Justice Administration in the High Courts and Magistrate Courts of Lagos State 2007, sections 1-4 generally.
[128] See Section 12(1) ACJ Act 2015.

will give the Tribunal greater independence and ensure more effective oversight of the performance of the Tribunal members, enhance performance standards of the Tribunal and make the Tribunal a more accountable anti-corruption institution. It is suggested that amendments should make clearer demarcation and allocation of powers among the members of the board of the Tribunal (i.e., the Chairman and two members). There should be better clarity of decisive-making powers amongst members. The Chairman should not exercise or enjoy any 'casting vote' privileges.

The Tribunal needs power to make its rules of practice and procedure and amend same whenever it becomes necessary to meet the exigency of its mandate without needing to have amendment of the parent legislation anytime this need arises. This will align with the powers of other similar judicial bodies to make rules of practice and procedure for the smooth and effective discharge of the responsibilities of the bodies.[129]

3.6 Major Problems of the Tribunal

i. **Workload:** The workload of the Tribunal is very tedious. Members work every day so that cases can be heard as when due without any delay.

ii. **Safety of Justices:** We thank God that there is no unpleasant problem so far. It will be better if the safety of the justices is not compromised in any way.

iii. **Late Payment of Staff Salaries:** There is distressing situation in the lateness in receiving staff salaries. The rigorous bank transfer which has characterized the method of paying staff has not yielded any positive dividend. Officers have continued to decry the late payment of salaries and its attendant consequences. In some outstations the situation has succeeded in making some staff

[129]See sections 248, 254, 259 of the CFRN 1999 which respectively provide for the heads of courts to make rules of practice and procedure for the courts.

membersdebtors. This is degrading leading to poor self esteem and particularly poor image of the Tribunal.

iv. **Imprest:** The inadequate allocation of fund for the day-to-day running of our offices has continued to dominate problems raised by our colleagues. There are cases where officials have to source for funds privately to execute official assignments, then write for re-imbursement to the Tribunal head office and wait for months for the refund of such fund. This does not make for high motivation needed. It does not enhance effective job performance.

v. **Poor Communication/ICT:** Business of the Tribunal is still conducted manually. Computers are needed for effective and efficient communication.

The structure of the Nigerian Judiciary under the 1999 Constitution shows that judicial powers of the Federation and the states are vested in the superior courts of record established in the Constitution and other courts established by Acts of the National Assembly and State Houses of Assembly pursuant to powers conferred on them by the Constitution. The courts established by the Constitution are:

a) The Supreme Court
b) The Court of Appeal
c) The Federal High Court
d) The High Court of the Federal Capital Territory Abuja
e) High Court of each state
f) Sharia Court of Appeal of the FCT
g) Sharia Court of Appeal of each state
h) The Customary Court of Appeal of the FCT

i) The Customary Court of Appeal of each state

Is the Code of Conduct Tribunal a court of record that its powers cannot be contested by anyone?

3.7 Working Tools of the Tribunal

The Tribunal needs good working tools to enable it perform its functions properly. To Tribunal registry? Records section has to be updated. The registry has to continue to be re-organized for the purpose of enhancing performance. There must be improved job performance by way of quick delivery of mails. One major problem encountered by the unit is the late payment of dispatch claims. The Schedule officer has to use personal funds for official assignments like dispatching of mails. A vehicle should be provided for the unit .A good motorcycle will facilitate the job. The records being the storehouse of all relevant and vital documents concerning the day to day running of the Tribunal deserves more security than is currently the case.

Fireproof cabinets and burglary proof are necessary for safety. The Registry needs to be partitioned to make for easy classification of files and prompt retrieval of same.

In order to stay abreast to changes in the administrative processes and equip the workforce with new knowledge and skills on how to handle their day-to-day official assignments, the Tribunal usually send some members of staff for training. This has helped to equip the staff mentally to the benefit of the tribunal.

CHAPTER FOUR

THE ROLE OF OTHER RELATED BODIES IN FIGHTING CORRUPTION IN NIGERIA

This chapter discusses the roles and operations of other statutory bodies charged with the similar function of combating corruption in Nigeria.

4.1. The Role of Economic Financial Crimes Commission in the Conduct of Public Officers

For proper assertion of the role of the EFCC[130] in the conduct of Public Officers[131], it is of utmost importance to take a cursory look at functions and powers the commission is saddled with by it establishing Act[132]. The functions of the EFFC as provide by the EFFC Act[133] includes the following:

a. The enforcement and due administration of the provision of the Act:

b. The investigation of all financial crimes including advance fee fraud, money laundering, counterfeiting, illegal charge transfers, future market fraud, fraudulent encashment of negotiable instruments, computer credit and fraud, contract scam, etc.

c. The coordination and enforcement of all economic and financial crimes laws and functions conferred on any other person or authority;

d. The adoption of measures to identify, trace, freeze, confiscate or seize proceeds derived from terrorist activities, economic and financial crime related offences or the

[130] Economic and Financial Crimes Commission Act 2004

[131] A public officer is any person who is holding office in government, public service or civil service.

[132] Section 1 Economic and Financial Crimes Commission(Establishment) Act, 2004

[133] Section 6. ibid

properties the value of which corresponds to such proceeds; The adoption of measures to eradicate the commission of economic and financial crimes;

f. The adoption of measures which include coordinate, preventive and regulatory actions, introduction and maintenance of investigative and control techniques on the prevention of economic and financial related crimes;

g. The facilitation of rapid exchange of scientific and technical information and the conduct of joint operations geared towards the eradication of economic and financial crimes;

h.The examination and investigation of all reported cases of economic and financial crimes with a view to identifying individuals, corporate bodies, or groups involved;

i.The determination of the extent of financial loss and such other losses by government, private individuals or organizations;

j. Collaboration with government bodies both within and outside Nigeria carrying on functions wholly or in part analogous with those of the Commission concerning:

The exchange of personnel or other experts;

k.The establishment and maintenance of a system for monitoring international economic and financial crimes in order to identify suspicious transaction and person involved;

l.Maintaining data, statistics, records and reports on person, organizations, proceeds, properties, documents or other items or assets involved in economic and financial crimes;

m.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 same.

n.Dealing with matters connected with extradition, deportation and mutual legal or other assistance between Nigeria and any other country involving economic and financial crimes;

o.The collection of all reports relating to suspicious financial transaction, analyze and disseminate to all relevant government agencies;

p.Taking charge of, supervising, controlling, coordinating all the responsibilities, functions and activities relating to the current investigation and prosecution of all offences connected with or relating to economic and financial crimes;

q.The coordination of all existing, economic and financial crimes investigating units in Nigeria;

r.Maintaining a liaison with the office of the Attorney-General of the Federation, the Nigeria Customs Services, the Immigration and Prison Service Board, the Central Bank of Nigeria, the Nigerian Deposits Insurance Corporation, the National Drug Law Enforcement Agency, all government security and law enforcement agencies and such other financial supervisory institutions involved in the eradications of economic and financial crimes;

s.Carrying out and sustaining rigorous enlightenment campaign against economic and financial crimes within and outside Nigeria; and

t.Carrying out such other activities as are necessary or expedient for the full discharge of all or the functions conferred on it under the 2004 Act.

Special Powers of the Commission

The Commission has power[134] to:

a. Cause investigations to be conducted as to whether any person, corporate body or organization has committed an offence under the Act or other law relating to economic and financial crimes;
b. Cause investigations to be conducted into the properties of any person if it appears to the Commission that the person's life style and extent of the properties are not justified by his source of income.

In addition to the powers conferred on the EFCC by the Act, it is saddled[135] also with the responsibility of coordinating agency for the enforcement of the provisions of:

a. The Money Laundering Act 2004; 2003 No. 7. 1995 No. 13;
b. The Advance Fee Fraud and Other Related Offences Act 1995;
c. The Failed Banks (Recovery of Debt and Financial Malpractices in Banks) Act, as amended;
d. The Banks and other Financial Institutions Act 1991, as amended;
e. Miscellaneous Offences Act; and
f. Any other law or regulation relating to economic and financial crimes including the criminal code and penal.

Stemming from the wide range of functions and powers of the EFCC supra, the role of the EFCC cannot be overemphasized. For this purpose, I shall streamline my discus to "the role of the EFFC in the conduct of Public Officers". For the purpose of clarity I shall be discussing under the following Heading:

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[134] Section 7. ibid
[135] Section 7(2) Economic and Financial Crimes Commission Act 2004

Combating corruption amongst Public Officers and instilling of discipline on them: One major role the commission plays in the conduct of Public Officers is combating of corruption. Since the inception of the EFCC in 2004, it is notoriously known for its fight and stands against corruption, especially by Public Officers. The Commission stand against corruption is evident in series of arrest, investigation and conviction since its inception. It is reported[136] that the Commission recorded 603 convictions within three years "the figure aggregate 103, 195 and 189 convictions recorded in 2015, 2016 and 2017 respectively." A notoriety of the Commission fight against corruption, is the arrest, prosecution and conviction of some past Governors of some states and some well-placed Nigerians e.g. Diepreye Solomon Alamieyeseigha of Bayelsa state[137], OrjiUzohKalu of Abia state[138], TafaBalogun former Inspector General of Police[139], and the recent conviction of JollyNyame[140] and Joshua Dariye of Taraba[141] and Plateau State respectively for offences bordering on financial crimes.

Other arrest, investigation and prosecution made by the EFCC include amongst other : The arrest and detention of former House of Representatives speaker DimejiBankole in June 2011 over N10billion loan obtained by the House which was alleged grossly mismanage[142]; AliyuAkwe-Doma of Nassarawa state[143], and Gbenga Daniels of Ogun state[144] for allegedly misappropriating public funds.

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[136] File:///c:users/hp/downloads/efccsecures603convictionsin3years.saharareportershtm
[137] Saharareportes.com/2007/07/25/dspalamieyeseigha-pleads-guilty-jailed-2-years
[138] www.thisdaylive.com/index.php/2018/07/18/efccre-arraigns-abia-governor-kalu-for-n7-65bn-fraud/
[139] Npw.bbc.co.uk/2/hi/office/4460740.stm
[140] http://punch.com/breaking-ex-taraba-gov-jolly-nyame-bags-14-years-jail-stealing-nl-6bn/
[141] http://guardianng/news/court-convicts-former-platuea-governor-joshuadariye
[142] Saharareporters.com/2011/06/05/speaker-bankole-arrested
[143] www.efccnigeria.org/efcc/news/1998/-money-laundering-efcc-closes-case-against-ex-gov-akwe-doma
[144] http://www.pmnewsnigeria.com/2011/10/12/daniel-docked-slammed-with-16-count-charge

Holding Public Officers Accountable: The commission plays a vital role in holding Public Officers Accountable and ensuring Public Officers live according to their means. Also investigate Public Officers with questionable wealth, prosecute and make recovery where found wanting. This role is evident in series of investigations, recovery and convictions secured by the commission. Notable of such includes: seizing of six properties including a hotel and four falling stations in March 2012 from a former director of Pension Administration in the office of the Head of Civil Service of the Federation Dr. SaniTeidiShuaibu who stood trail over N4.56billion pension scam[145]. The prosecution of one time governor of Adamawa state MurtalaNyako and his son-Senator AbdullazizNyako on allegation of N15 billion money laundering offences[146], in July of 2015, the investigation and prosecution of about $2 billion arms deal by the former National Security Adviser SamboDasuki[147] and amongst others.

The fight of the Commission against corruption has earned it the slogan "the fear of the EFCC is the beginning of wisdom'' within local parlance.

Stemming from the above instances of arrest, investigations ,convictions secured by the commission and it wide range of powers , it goes without saying that EFCC " has very important role to play in the combating corruption amongst Public Officers, by so doing instilling discipline on them, making them accountable for their deeds in office and ensuring transparency''.

However, it is my opinion that the EFFC is yet to put it enormous powers effectively into use particularly section 7(1)(b)[148] which reads as follows:

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[145]International Journal of Scientific and Research Publications, Volume 6, Issue 4, April 2016

[146]ibid

[147] ibid

[148] Economic and Financial Crimes Act 2004

Cause investigations to be conducted into the properties of any person if it appears to the Commission that the person's life style and extent of the properties are not justified by his source of income.

It is therefore not in doubt that a greater percentage of Nigerians, particularly Public Officers both past and present live and own properties far beyond their income, with no investigation cause to determine the sources of their life.

4.2 The Role of the Independent Corrupt Practices Commission in the Conduct of Public Officers

The Commission[149] is established pursuant to Corrupt Practices and Other Related Offences Act 2000. The Role of the commission is provided for under section 6 of the Act to include the following:

(a)Where reasonable grounds exist for suspecting that any person has conspired to commit or has attempted to commit or has committed an offence under this Act or any other law prohibiting Corruption, to receive and investigate any report of the conspiracy to commit, attempt to commit or the Commission of such offence and, in appropriate cases, to prosecute the offenders;

(b)To examine the practices, system and procedures of public bodies and where, in the opinion of the Commission, such practices, systems or procedures aid or facilitate fraud or corruption, to direct and supervise a review of the,

(c)To instruct, advise and assist any officer, agency or parastatals on ways by which fraud or corruption may be eliminated or minimized by such officer, agency or parastatal;

[149] Independent and Corrupt Practices Commission

(d) To advise heads of the public bodies of any changes in practices, systems or procedures compatible with the effective discharge of the duties of the public bodies as the commission thinks fit to reduce the likelihood or incidence of bribery, corruption and related offences;

(e) To educate the public on and against bribery, Corruption and related offences; and

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

The ICPC ACT specifically targets public sector corruption such as bribery; gratification; graft; abuse and misuse of office. Details of the functions of the ICPC can be found in Sections 18 and 19 of the ICPC Act 2000.

It is said that "the ICPC deals with public sector corruption while the EFFC corruption by public officers.The ICPC deals with the mélange of abuses and misuses of power by public officers, the EFCC deals with the disposal of the proceeds of acts of corruption. It tracks illicit wealth accruing from abuse of office, especially where there are attempts to integrate such wealth into the financial system. While the ICPC deals with the misconduct itself, the EFCC deals with the "economics" of wealth acquired through abuse of office, embezzlement or theft of public funds"[150].

By virtue of the powers of ICPC under the Act, the Commission help in combating corruption in Public sector; ensuring that Public Officers conform to engagement ethics and free from corruption, therefore playing a very important role in the conduct of Public Officers. To buttress my assertion, several corruption related offences are created under section 8 to 26 of the CPOROA[151]. These offences include: the offences of accepting gratification, punishable under section 8; the making of corrupt offers to public officers,

[150] http://enn.wikipedia/wiki/independent-corrupt-practice-commission> accessed 10/12/2018

[151] The Corrupt Practices and other Related Offences Act

punishable under section 9: corrupt demands by public officers, punishable under section 10; fraudulent acquisition of property, punishable under section 12, fraudulent receipt of property, punishable under secti9on 13; offences committed through postal system, punishable under section 14; deliberate frustration of investigation, punishable under section 15; making false statement or return, punishable under section 16; gratification by and through agents, punishable under section 17; bribery of public officers is contrary to section 18; offence of using an office or position for gratification punishable under 19; section 20 deals with the forfeiture of gratification upon conviction; section 21 deals with bribery in relation to public auctions; section 22 penalizes bribery of public officers for contracts; section 23 makes it an offence for any public officer to fail or refuse to report bribery transactions; section 24 deals with concealing gratification; section 25 penalizes making of false statement to the commission; section 26 creates offences of attempts, preparations, abetments and conspiracy.

The ICPC in it first three years of establishment received a total of 942 petitions[152]. In august 2003 about 400 of the petitions were under investigation and about 600 were in at various stages of prosecution[153].

The ICPC has prosecuted a number of cases and prominent Nigerians. A notoriety of such cases is the prosecution of Ghali Umar Na'Abba, speaker of the House of Representatives in 2002, Fabian Osuji, head of the Nigerian Federal Ministry of Education in 2006.

The ICPC seized cash and assets worth about N8 billion between November 2011 october 2015, received about 4,299 petitions out of which 3,764 were referred for

[152] https://arewatrust.net/2017/07/08/special-focus-on-icpc-under-mr-ekpo-nta/?>accessed 10/12/2018
[153] ibid

investigation, 899 were concluded, while 170 of these filed for prosecution for various financial crimes[154].

It is said that "[155]ICPC has come to be accepted by the populace and expectations on its activities are high. It volume of work has been on the increase since inception due to its public enlightenment strategies. The Commission goes all out to raise public awareness on corruption and its negative effects and the fact that the money being stolen is public money and it is therefore their duty to complain when officials behave corruptly. This has yielded results going by the number of petitions being received on a daily basis by the Commission.

Also that the Commission has gone further to create links with other government institutions by creating anti corruption units in Federal ministries and Parastatals with 100 of such units now established. The Commission hopes to increase its staff base by opening offices in the 6 geopolitical zones of the nation".

Considering the wide range of powers saddled on the Commission, it is not doubt that the ICPC plays enormous role in the conduct of Public Officers, particularly as it relates to instilling discipline, regulating corruption in public sectors and amongst public officers, ensuring transparency and holding Public Officers accountable. However the Commission is not left without criticism.

[154] http://www.ijsrp.org/research-paper-0416/ijsrp-p5253.pdf
[155] https://arewatrust.net/2017/07/08/special-focus-on-icpc-under-mr-ekpo-nta/

4.3 The Role of Public Complaints Commission in the Conduct of Public Officers

The Public Complaints Commission also known as the Ombudsman is an establishment of the Public Complaints Commission Act 2004[156].

The Commission[157] was created to checkmate the excesses of public servants and their administrative decision.

The Commission is also saddled with wide range of powers bordering on inquisition into complaints by members of the public concerning the administrative action of any public authority and companies or their officials, and other matters ancillary thereto.[158]

The Public Complaints Commission is obliged to cause investigation into the administrative actions of any government agency, ministry, or company, either of the Federal Government or of the states and local governments, as well as private companies, where such administrative action may be deemed to have caused injustice to a citizen of Nigeria or any person resident in Nigeria either on its own volition or base on petition before it.

By virtue of Section 5(2) 0f the PCC Act[159] the Commissioner is empower to investigate either on his own volition or upon complaint lodge before him by any person, administrative actions taken by-

a. Any Department or Ministry of the Federal Government or any State Government,
b. An y Department of any Local Government Authority(however designated) set up in any State in the Federation,

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[156] https://arewatrust.net/2017/07/08/special-focus-on-icpc-under-mr-ekpo-nta/
[157] The Public Complaints Commission
[158] See long title of the Public Complaints Commission Act 2004
[159] PCC Act ,2004

c. Any statutory corporation or public institution set up any Government in Nigeria,

d. Any company incorporated under or pursuant to the Companies and Allied Matters Act whether owned by any Government aforesaid or by private individual in Nigeria or otherwise however, or

e. Any officer or servant of any of the aforementioned bodies.

The Commissioner is also entitled to access all information necessary for the efficient performances of his duties under the Act and for this purpose may visit and inspect any premises belonging to any person or body that comes under complaint or investigation.[160]

Any Person required by a Commissioner to furnish information pursuant to any complaint or investigation is expected to comply with such requirement not later than thirty days from receipt of such notice.[161]

In the discharge of the above functions, a Commissioner have the power to summon in writing any person who is in the opinion of the Commissioner is in the position to testify on any matter before him, to give evidence in the matter and any person who fails to appear when required to do so shall be guilty of an offence.[162]

The power of a Commissioner to investigate include the investigation of administrative procedure of any court of law in Nigeria[163]. However the Public Complaint Commission is restricted to carryout investigation and inquiries in any of the following matter:

a. That is clearly outside the Commissioner terms of reference;

b. That is pending before the National Assembly, the Council of State or the President;

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[160] S.5(3)(b&c) of the Public Complaints Commission Act

[161] S. 5(7) Public Complains Commission Act

[162] S.9 of the Public Complains Commission Act

[163] S.5(3) of the Public Complaints Commission Act

c. That is pending before any court of law in Nigeria;

d. Relating to anything done or purported to be done in respect of any member of the armed forces in Nigeria or the Nigeria Police Force under the Armed Forces Act, as the case may be;

e. In which the complaint has not, in the opinion of the Commissioner, exhausted all available legal or administrative procedures;

f. In which the complainant has no personal interest.

The role of the Public Complaint Commission in relation to the conduct of Public Officers is enshrined in Section 5(3) of the Public Complaint Commission Act[164], which is primarily to ensure that the administrative action by any government official or other persons will not result in the commitment of any act of injustice against any citizen of Nigeria or any other person resident in Nigeria and for that purpose he shall investigate with special care administrative acts which are or appear to be-

i. Contrary to any law or regulation;

ii. Mistaken in law or arbitrary in the ascertainment of fact;

iii. Unreasonable, unfair, oppressive or inconsistent with the general functions of administrative organs;

iv. Improper in motivation or based on irrelevant considerations,

v. Unclear or inadequately explained; or

vi. Otherwise objectionable.

[164] 2004

6. Evidence that complainant has exhausted all available internal mechanisms for redress before a recourse to the Commission.

A prayeror request for a remedy[165].

Types of complaint the Commission may investigate includes the following:

Delay in payment of gratuity, land compensation e.t.c

(a) Non payment of goods bought or service rendered to government department and corporate bodies.

(b) Wrongful termination of appointment or dismissal.

(c) Difficulty in getting insurance companies to pay claims.

(d) Loss of postal documents or parcel by courier companies.

(e) Non-issuance of appointment letter or non adherence to the Labour Act by private Companies.

(f) Non-refund of contribution by the National Housing Fund, and other mortgage institutions.

(g) Unjust and indefinite suspension and termination of appointment.

(h) Non-issuance of share certificate/dividend warrant or outright cheating by financial institution.

(i) Non-issuance of result/certificate/ill-treatment by examination bodies, schools and higher institutions.

Stemming from the above statutory provisions creating and empowering the Public Complaint Commission, it is my view that "Despite the wide range of powers saddle on the Public Complaint Commission the Commission is yet to achieve it objective or better put not putting it enormous powers effectively into use to achieve it objective. My

[165] the violation of a right is prevented, redressed, or compensated.

assertion is premise on the fact there is still lot of abuses of office taking place in Nigeria without checks . The commission should embrace it mandate, particularly carrying out investigations on its own volition into administrative actions in both public and private sectors''

4.4 Code of Conduct Bureau

The code of conduct bureau is the first among bodies established in S. 153(1)[166]of the constitution. The main aims and objectives of the bureau shall be to establish and maintain a high standard of morality in the conduct of government business and to ensure that the actions and behavior of public officers conform to the highest standards of public morality and accountability[167]

Structure of the Code of Conduct Bureau

The structure[168] of Code of Conduct Bureau comprises of:

(a) a chairman[169]

(b) nine other members[170]

It is required that the chairman and members shall not be less than 50 years of age at the time of appointment and vacate office at the age of 70years[171].

The Chairperson and members of the bureau are appointed by the president subject to the confirmation of the senate[172].

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[166]1999 CFRN, as amended. Para 1(a), Part 1, Third Schedule, CFRN, as amended.
[167] S.2 CCB and Tribunal Act Cap C15 LFN.
[168]The organizations of elements or parts.
[169] Para 1(a), part 1 third schedule 1999 CFRN, as amended.
[170] Para 1(b), part 1 third schedule 1999 CFRN, as amended
[171] Para 1(b), part 1 third schedule 1999 CFRN, as amended

Where a person appointed in the public is appointed as chairperson of the Code of Conduct Bureau or member, he is deemed to have resigned his former office from the date of appointment[173].

Apart from Ex officio, no person is qualified for appointment as a member of the Bureau if he is not qualified or if he is disqualified members of the federal executive bodies listed in the section 152 of the 1999 Constitution or holder of any office on the ground of misconduct[174].

It is required that the Code of Conduct Bureau establish offices in each state of the Federation as it may require for the discharge of its functions[175].

The terms and conditions of service of Code of Conduct Bureau shall be the same as those provided for public officers in the civil service of the Federation[176].

(a) Powers of the Code of Conduct Bureau

Powers[177]of the Code of Conduct Bureau is embodied in para. 3, part 1, Third schedule to the Constitution, these include the following:

(a) Receive declaration made by public officers[178],

(b) Examine the declarations in accordance with the Code of Conduct or any law[179],

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[172]S.154(1)1999 CFRN, as amended.
[173] Proviso to S.156(b) 1999 CFRN, as amended.
[174] Proviso to S.156(1)&(b) 1999 CFRN, as amended.
[175] Para 2,Part 1, Third Schedule, 1999 CFRN, as amended.
[176]Para 4, Part 1, Third Schedule, 1999 CFRN, as amended.
[177]The ability to do something.
[178]Para 3(a)Part 1, Third Schedule, 1999 CFRN, as amended.
[179]Para 3(b)Part 1, Third Schedule, 1999 CFRN, as amended.

(c) Retain custody of such declarations and make them available for inspection by any citizen of Nigeria on such terms and conditions as the National Assembly may perscribe[180],

(d) Ensure compliance with and, where appropriate, enforce the provision of the Code of Conduct of any of the relating thereto[181],

(e) Receive complaints about non-compliance with or breach of the Code of Conduct or any law in relation thereto, investigate the complaint where appropriate, refer such matters to the Code of Conduct Tribunal[182],

(f) Appoint, promote, dismiss and exercise disciplinary control over the staff of the Code of Conduct Bureau in accordance with the provision of an Act of the National Assembly enacted in that behalf[183], and

(g) Carry out such other functions as may be conferred upon it by the National Assembly[184].

To actualize its objectives, a Code of Conduct Tribunal is established.

(b) Procedures for Actions at the Code of Conduct Bureau

The procedures for actions at the CCB can be streamlined into two headings as follows:

1. **Complaint and Investigation stage-** this is the stage where complaints is made by a person to the Code of Conduct Bureau alleging breach of the Code of Conduct by a public officer, the receipt and investigation of such complaint and refer it to the Code of Conduct Tribunal where necessary.

[180]Para 3(c) Part 1, Third Schedule, 1999 CFRN, as amended.
[181]Para 3(d) Part 1, Third Schedule, 1999 CFRN, as amended.
[182]Para 3(e) Part 1, Third Schedule, 1999 CFRN, as amended.
[183]Para 3(f) Part 1, Third Schedule, 1999 CFRN, as amended.
[184]Para 3(g) Part 1, Third Schedule, 1999 CFRN, as amended.

The procedure in line with statutory provisions at this stage is as follows:

(a) The lodging of complaint of alleged breach of the Code of Conduct against a public officer to the Code of Conduct Bureau[185].

(b) The Code of Conduct Bureau investigation of such complaint of alleged breach against a public officer and where necessary refer such matters to the Code of Conduct Tribunal[186].

(c) Where a Public Officer against whom a breach of the Code of Conduct is alleged makes a written admission of such breach or non compliance, no reference to the tribunal shall be necessary[187].

2. **The Prosecution and Trial Stage**- this stage entails the institution of actions against a public officer for alleged breach of The Code of Conduct and trial proceedings in line with statutory provisions:

(a) Institution of proceedings

Prosecution of breach of Code of Conduct is instituted in the name of the Federal Republic of Nigeria by the Attorney General of the Federation or such officers in the Federal Ministry of Justice as the Attorney General may authorize to do so[188]. This was one of the contentions on appeal to the Supreme Court in the recent case of Saraki v. F.R.N[189], where the Supreme Court reaffirmed the decision of the court of appeal that "the attorney general's power of prosecution is not exclusive to him as any other authority or person can institute and undertake criminal prosecution without his

[185] Para 12 Part 1, Fifth Schedule, 1999 CFRN, as amended.
[186] Para 3(e) Part 1, Fifth Schedule, 1999 CFRN, as amended.
[187] Proviso to Para 3, Part 1, First Schedule, Code of Conduct and Tribunal Act, Cap C15, L.F.N, 2004
[188] Para 24(2), part 1, First Schedule, Code of Conduct and Tribunal Act, Cap C15, L.F.N, 2004
[189] (2016) 3 pt. 1500 pg 531 at 582

authority". The prosecutor institutes such actions by way of an application, supported by a summary evidence or affidavit to the Tribunal[190].

(b) Order of the accused to appear

If upon the receipt and perusal of application and summary evidence, affidavit or any other evidence the tribunal considers necessary submitted to her by the Attorney General, the Tribunal if satisfied that a person have committed a breach of the Code of Conduct shall cause that person to be arraigned before her at such time and date as it may direct[191]. Where an accused summoned to appear before the Tribunal without reasonable excuse, fail to appear before the Tribunal on the time and date mentioned in the summons or willfully avoid the service of a summon upon him, the tribunal may issue a warrant to apprehend him and to bring him at the time and place mentioned in the warrant, before the tribunal in order to testify as aforesaid[192].

(c) Commencement of trail

On commencement of trail, the person is brought before the tribunal and the complaint made against him and he is asked if he is guilty of the offence or offences charged[193]. Where the accused[194] pleads guilty, the plea shall be recorded and may in the discretion of the tribunal be convicted thereon[195]. Where the accused pleads not guilty or makes no plea or refuses to make a plea or where the tribunal enters a plea of not guilty on behalf of the accused, the tribunal shall proceed to try the case[196].

(d) Presentation of case for the Prosecution/Evidence

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[190] Para (1) Third Schedule, Code of Conduct and Tribunal Act, Cap C15, L.F.N, 2004
[191] Para (2) Third Schedule, Code of Conduct and Tribunal Act, Cap C15, L.F.N, 2004
[192] Para (15) Third Schedule, Code of Conduct and Tribunal Act, Cap C15, L.F.N, 2004
[193] Para (3)(1) Third Schedule, Code of Conduct and Tribunal Act, Cap C15, L.F.N, 2004
[194] A person or group of people who are charged with or on trial for a crime.
[195] Para(3)(1) Third Schedule, Code of Conduct and Tribunal Act, Cap C15, L.F.N, 2004
[196] Para (4) Third Schedule, Code of Conduct and Tribunal Act, Cap C15, L.F.N, 2004

Where the accused plead not guilty or make no plea, the prosecutor[197] may open its case against the accused stating shortly the evidences it intends to use in proving the guilt of the accused[198]. After which the prosecution shall examine the witness for the purpose of the prosecution who may be cross examined by the accused or his counsel and may thereafter be re-examined by the prosecutor[199].

After the conclusion of presentation of evidence by the prosecutor, the accused is allowed to give evidence on his behalf or call any witnesses other than witness to character[200]. In the absence of the accused intention to call any witnesses other than the witness as to character, the prosecutor submits the case against the accused and the accused is then called upon to enter his defense[201].

If the tribunal after hearing the evidence against the accused or any of several accused, it considers the evidence not sufficient to justify the continuation of the trial, record a finding of not guilty in respect of such accused without calling upon him or them to open a defense and such accused shall therefore be discharged and acquitted and shall call upon the remaining accused if any, to enter upon their defence[202]. Before calling

upon the accused to enter his defense, the tribunal may call the prosecutor to sum his case against any other one or more of the accused persons against whom it considers that the evidence is not sufficient to justify the continuation of the trial and after hearing and

[197] A person, especially a public official, who institute proceedings.
[198] Para (5)(1) Third Schedule, Code of Conduct and Tribunal Act, Cap C15, L.F.N, 2004
[199] Para (5)(2) Third Schedule, Code of Conduct and Tribunal Act, Cap C15, L.F.N, 2004
[200] Para (6)(1) Third Schedule, Code of Conduct and Tribunal Act, Cap C15, L.F.N, 2004
[201] Para (6)(2) Third Schedule, Code of Conduct and Tribunal Act, Cap C15, L.F.N, 2004
[202] Para (6)(3) Third Schedule, Code of Conduct and Tribunal Act, Cap C15, L.F.N, 2004

summing up, if any may in its discretion record a finding of not guilty in respect of any such accused or call upon any of them to enter upon his defence[203].

(e) Defence

The accused upon entering his defence or his counsel may open his case stating the facts or law on which he intends to rely and making such comments as he thinks necessary on the evidence for prosecution and the accused proceed to give evidence on his own behalf, examine his witnesses if any and after cross-examination by the prosecutor, re-examines them, after which the accused or his counsel may sum up his case[204].

(f) Prosecutors reply

The prosecutor is entitled to reply if any of the accused calls any witness, other than a witness as to character, or any document, other than a document relating to character is put in evidence for the defence and may adduce evidence of previous conviction of the accused where he calls only witness as to character introduced by the accused[205].

(g) Consideration of findings

Upon completion of the case of the defence and reply of the prosecution, if any, are concluded and the Tribunal does not desire to put any further question to the accused, the Tribunal shall retire or adjourn to consider its findings[206].

(h) Announcement of findings/sentencing

After the tribunal has made its findings, the chairman of the Tribunal shall announce such findings and, where the accused is found guilty, it shall impose the appropriate

[203] Para (6)(3) Third Schedule, Code of Conduct and Tribunal Act, Cap C15, L.F.N, 2004
[204] Para (7)(1) Third Schedule, Code of Conduct and Tribunal Act, Cap C15, L.F.N, 2004
[205] Para (8)(1) Third Schedule, Code of Conduct and Tribunal Act, Cap C15, L.F.N, 2004
[206] Para (9) Third Schedule, Code of Conduct and Tribunal Act, Cap C15, L.F.N, 2004

penalty provided in the code of conduct and may issue an appropriate order accordingly[207].

Punishment For Breach Of Declaration Of Assets And Liabilities

By virtue of Paragraph 18(2)[208], the Tribunal upon finding a public officer of breach of the Code of Conduct or guilty of contravention of any provision of the Code shall impose the following punishment:

(a) Vacation of office or seat in any legislative house, as the case may be;Disqualification from membership of a legislative house and from the holding of any public office for a period not exceeding ten years;

(b) Seizure and forfeiture to the state of any property acquired in abuse or corruption of office

(c) Such other punishment as may be prescribed by the National Assembly.

Appeal from the Code of Conduct Tribunal

Where a person is dissatisfied with the decision or punishment imposed by the Code of Conduct Tribunal on contravention of the Code of Conduct, an appeal shall lie as of right from such decision or punishment to the Court of Appeal at the instance of any parties to the proceedings[209]. It is required that such right of appeal be exercised in accordance with the provisions of an Act of the National Assembly and rules of court for the time being in force regulating the powers[210].

[207] Para (10) Third Schedule, Code of Conduct and Tribunal Act, Cap C15, L.F.N, 2004
[208] Part 1, Fifth Schedule, 1999 C.F.R.N, as amended.
[209] Part 18(4)part 1, Fifth Schedule, 1999 C.F.R.N, as amended.
[210] Part 18(5)part 1, Fifth Schedule, 1999 C.F.R.N, as amended.

4.5 Non Conviction Based Forfeiture Proceedings in Nigeria

There are two principal ways of forfeiture as relates to Economic Crimes namely:

Conviction based forfeiture and,

Non conviction based forfeiture.

For this purpose ,my discuss shall be streamlined to Non Conviction Basedasset forfeiture.

Non conviction based asset forfeiture, is a civil action against a propertyrather than a person. It is a form of civil forfeiture where a property, other than a personis a defendant.

It is an alternative route to criminal action, which is less cumbersome and require lesser burden of prove unlike criminal action which requires proves beyond reasonable doubt.

Non conviction based asset forfeiture is focused at recovering the proceeds and instrumentalities of corruption and illicit enrichment. Particularly where the proceeds are transferred to a a third party or abroad of for some good reason the wrong doer is not available, dead or who has escaped from justice or immune to prosecution.

Non conviction based asset forfeiture allows for the recovery of assets without criminal trial or conviction. This mode of proceeding is supported and backed by a plethora of laws as listed.

i. Code Of Conduct Bureau and Tribunal Act, 2004[211],
ii. Money Laundering Act 2011[212],
iii. Advance Fee Fraud and Other Related Offences Act 2016[213],

[211]Section15(3) and Section 23(2).

[212]Section 18(2).

iv. Failed Banks Recovery of Debts and Other Financial Malpractices in BanksAct[214]

v. The Economic And Financial Crimes Commission Act 2004[215],

vi. Independent Corrupt Practices And Other Related Offences Act 2000[216];

vii. The Administration of Criminal Justice Act 2015 respectively[217].

Non conviction based forfeiture may arise where a criminal proceeding is abandoned or unsuccessful.

In 2017 the Economic and Financial Crimes Commission secured a number of Non Conviction Based Forfeiture orders[218] which includes a final forfeiture order of $43.5 million was obtained from the Federal High Court in Lagos. The forfeiture order was an *in rem* order, granted following the discovery of the funds in an apartment in Lagos, which no party formally claimed. The application for the order was served on the company that had paid $1.658 million in cash to purchase the apartment. According to the unchallenged evidence put before the court, the individual responsible for making the payments on behalf of the company was the wife of the director general of the Nigerian Intelligence Agency (NIA), a government division tasked with overseeing foreign intelligence and counterintelligence operations. When the money was discovered, the media reported that the director general claimed that it was part of the funds intended for the NIA's use in conducting covert operations. The director general was suspended and an investigation was ordered into the circumstances that had led to so much government money being kept

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[213] Section 14,15&16.
[214] Section 3.
[215] Section 7(1)(b), 28,29 and 30.
[216] Section 37,38,47 and 48.
[217] Part 33 and 34.
[218] BabajideOladipoOgundipefile:///C:/Users/hp/Downloads/High%20court%20issues%20non-conviction-based%20forfeiture%20orders%20-%20Newsletters%20-%20International%20Law%20Office.htm

in such a manner. Several months after the investigation was ordered, no information as to the outcome of the investigation, or whether it has been completed, has been made public.

Also, on August 7 2017 the EFCC obtained another final forfeiture order from the Federal High Court in Lagos in circumstances where no prior conviction had been obtained. On this occasion, the forfeiture order was *in personam*against:

i. Nigeria's former minister of petroleum, against whom the US government had commenced proceedings seeking the forfeiture of other assets as part of its Kleptocracy Asset Recovery Initiative;
ii. the company that held the title to an apartment building in Lagos; and
iii. a lawyer who had incorporated the company, allegedly on the former minister's instructions.

The court order forfeited to the federal government $2.75 million that had been found in an account in the company's name, as well as the apartment building.

The rationale for forfeiture of proceeds of crime may appear to be the need to deprive the offender of the financial gain arising from criminal activities. This is base on the assumption that the pursuit of financial gain is the motivation for the pervasiveness of such crimes.

CHAPTER FIVE

CONCLUSION

5.1 Summary

Civil Servants stand in the position of trustee, they are expected to carry out their duties for the benefit of the public. They are expected to maintain and strengthen public trust and confidence in government, hence the campaign against corrupt practices in public service at all levels of government in Nigeria.

Consequently, the Code of Conduct Tribunal, Economic and Financial Crimes Commission, Independent and Corrupt Practices Commission; and the Public Complaints Commission and other anti-graft agencies are established to checkmate abuse of office, hold Public Officers accountable and ensure accountability in Public Service.

Public Officers are under obligation to declare their assets and liabilities under the Code of Conduct for Public Officers.

Public Officers is defined in Section 7 of the Code of Conduct and Tribunal Acts to include : the President of the Federation, Vice President, the President and Deputy-President of the Senate, the Speakers and Deputy Speakers of House of Representatives and Speakers and Deputy-Speakers of Assembly of states and all members of legislative houses, Governors and Deputy-Governors of States, the Chief Justice of Nigeria, Justices of the Supreme Court, the President and Justices of the Court of Appeal , and other Judicial Officers and all Staff of the court of law, the Attorney General of the Federation and Attorney General of each state, Minister of Government of the Federation and

Commissioners of government of states, Chief of Defence Staff, Chief of Army Staff, Chief of Naval Staff, Chief of Air Staff and all members of the armed forces of the Federation, the Inspector General of Police and all members of the Nigeria police force and other government security agencies established by law, the Secretary to the government of the Federation, Head of Civil Service, Permanent Secretaries , Directors-General and all other persons in the civil service of the Federation or the state, Ambassadors, high commissioners and other officers of the Nigerian missions abroad, the Chairperson, members and staff of the Code of Conduct Bureau and Code of Conduct Tribunal, the Chairperson members and staff of local government councils, the Chairperson and members of the boards and other government bodies and staff of statutory corporations and of companies in which the federal or state has controlling interest, all staff of universities, colleges and institutions owned and financed by the federal, state or local government councils, the Chairperson, members and staffs of permanent commissions or councils appointed on a full-time basis.

False declaration of assets and liabilities and noncompliance of the Code of Conduct is a breach of the Code of Conduct. Allegation of breach of the Code of Conduct is made to the Code of Conduct Bureau.

Bodies that implement the Code of Conduct are the Code of Conduct Bureau and the Code of Conduct Tribunal. Punishment the Code of Conduct Tribunal may impose where there is established breach of the Code of Conduct includes: vacation of offices or seat in any legislative house, disqualification from membership of a legislative house and from holding public for a period not exceeding ten years: seizure and forfeiture to the state of any property acquired in abuse or corruption of office; such other punishment as may be

prescribed by the National Assembly. Appeal from the Code of Conduct Tribunal lies of right to the Court of Appeal.

The Code of Conduct Tribunal comprises of the Chairman and two other persons. The members and Chairman of the Code of Conduct Tribunal are appointed by the president on recommendation of the National judicial council. It structure comprises of a chairman and two other members, with offices in each state of the Federation.

The Code of Conduct Bureau has the mandate to receive assets declaration forms, examine assets declaration forms, keep records of assets declaration, receive complaints of alleged breach of the Code of Conduct, investigate complaints of allege breach of the Code and refer such complaints to the Code of Conduct Tribunal where it has been established that a breach has been committed.

Cases bordering on breach of the Code of Conduct are tried by the Code of Conduct Tribunal. The Code of Conduct Tribunal is of co-ordinate jurisdiction with the High Court. The Code of Conduct Tribunal has the power to punish breach of the Code of Conduct.

The Economic and Financial Crimes Commission, Public Complaint Commission and the Independent Corrupt Practices Commission, play very important role in the conduct of Public Officers.

The Economic and Financial Crimes Commission has power to:

a. Cause investigations to be conducted as to whether any person, corporate body or organization has committed an offence under the Act or other law relating to economic and financial crimes;
b. Cause investigations to be conducted into the properties of any person if it appears to the Commission that the person's life style and extent of the properties are not justified by his source of income.

In addition to the powers conferred on the EFCC by the Act, it is saddled [6]also with the responsibility of coordinating agency for the enforcement of the provisions of:

a. The money laundering Act 2004; 2003 No. 7. 1995 No. 13;
b. The advance fee fraud and other related offences Act 1995;
c. The failed banks (Recovery of Dept and Financial Malpractices in Banks) Act, as amended;
d. The Banks and other Financial Institute Act 1991, as amended;
e. Miscellaneous Offences Act; and
f. Any other law or regulation relating to economic and financial crimes including the criminal code and penal.

The role of Independent Corrupt Practices Commission includes the following:

a. Where reasonable grounds exist for suspecting t hat any person has conspired to commit or has attempted to commit or has committed an offence under this Act or any other law prohibiting Corruption, to receive and investigate any report of the conspiracy to commit, attempt to commit or the Commission of such offence and, in appropriate cases, to prosecute the offenders;

b. To examine the practices, system and procedures of public bodies and where, in the opinion of the Commission, such practices, systems or procedures aid or facilitate fraud or corruption, to direct and supervise a review of the,

c. To instruct, advise and assist any officer, agency or parastatals on ways by which fraud or corruption may be eliminated or minimized by such officer, agency or parastatal;

d. To advise heads of the public bodies of any changes in practices, systems or procedures compatible with the effective discharge of the duties of the public bodies as the commission thinks fit to reduce the likelihood or incidence of bribery, corruption and related offences;

e. To educate the public on and against bribery, Corruption and related offences; and

f. To enlist and foster public support in combating Corruption.

The ICPC deals with public sector corruption generally while the EFFC deals with corruption by public officers.

The ICPC deals with the mélange of abuses and misuses of power by public officers, the EFCC deals with the disposal of the proceeds of acts of corruption. It tracks illicit wealth accruing from abuse of office, especially where there are attempt to integrate such wealth into the financial system. While the ICPC deals with the misconduct itself, the EFCC deals with the "economics" of wealth acquired through abuse of office, embezzlement or theft of public funds".

The Public Complaints Commission also known as the Ombudsman, the Commission was created to checkmate the excesses of public servants and their administrative decision.

The Commission is also saddled with wide range of powers bordering on inquisition into complaints by members of the public concerning the administrative action of any public authority and companies or their officials, and other matters ancillary thereto.

The Public Complaints Commission is empowered to cause investigation into the administrative actions of any government agency, ministry, or company, either of the Federal Government or of the states and local governments, as well as private companies, where such administrative action may be deemed to have caused injustice to a citizen of Nigeria or any person resident in Nigeria either on it own volition or base on petition before it.

The Commissioner is also entitled to access all information necessary for the efficient performances of his duties under the Act and for this purpose may visit and inspect any premises belonging to any person or body that comes under complaint or investigation.

Any Person required by a Commissioner to furnish information pursuant to any complaint or investigation is expected to comply with such requirement not later than thirty days from receipt of such notice.

In the discharge of the above functions, a Commissioner have the power to summon in writing any person who is in the opinion of the Commissioner is in the position to testify

on any matter before him, to give evidence in the matter and any person who fails to appear when required to do so shall be guilty of an offence.

Non conviction based asset forfeiture, is a civil action against a property rather than a person. It is a form of civil forfeiture where a property, other than a person is a defendant.

It is an alternative route to criminal action, which is less cumbersome and require lesser burden of prove unlike criminal action which requires proves beyond reasonable doubt.

Non conviction based asset forfeiture is focused at recovering the proceeds and instrumentalities of corruption and illicit enrichment. Particularly where the proceeds are transferred to a third party or abroad for some good reason the wrong doer is not available, dead or who has escaped from justice or immune to prosecution.

5.2. Observations.

1. The menace of corruption in public office in Nigeria can be well combated if the CCT and the CCB optimally discharge the mandate of their creation. A critique of these bodies as presented in this work reveals that with the right machinery and infrastructure, assets declaration by public officers is one of the viable and potent weapons that can be used to combat public service corruption, since there is the high likelihood that all stolen funds and looted monies possibly end up as one asset or the other in the hands of the looter. Thus, a good machinery in the form of an optimally functional CCT and CCB to ascertain who owns what and by what means, will go a long way to stem the tide of public service corruption in the country.

2. Irrespective of 1 above, enforcement alone as a means of tackling corruption is not a foolproof solution to the menace of public service corruption in Nigeria. From the general perspective, Nigeria has one of the greatest number of anti-corruption legislation worldwide, but rather than abate, the stem of corruption appears to be intensifying. Why is it so? This poser suggests that the answer lies not just in enforcement. The foundation of a long-term sustainable war against corruption lies in attitudinal change. It takes enlightenment, orientation and cultural revolution to bring about attitudinal change which in turn encourages prevention.
3. The CCT is expected to play an adjudicatory role and is of co-ordinate jurisdiction with the Federal High Court, but unfortunately, it is not listed as a Superior court under Section 6(5) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).
4. The budget of the CCT is not charged to the consolidated revenue fund of the Federation. Hence, this has tended to affect its independence.

5.3. Recommendations

There should be a constitutional amendment to align the CCT with the other superior courts of recordas provided under Section 6(5) of the CFRN 1999 (as amended).

Also, the budgetary provisions for the CCT should be such as to guarantee its independence.

There is utmost need for amendment of the Constitution and inclusion of stringent sanction for failure to declare assets and liabilities.

The Constitution needs to be amended and the jurisdiction of the Code of Conduct Tribunal should be clearly defined and broadened.

In tackling the menace of corruption on a long term basis, there is the need to activate and energize a national strategy. Fortunately, there is in place a National Anti-Corruption Strategy which addresses all major areas in fighting corruption form prevention to enforcement. Such strategy ought to be diligently executed and pursued to achieve the desired goal. The need to provoke a cultural revolution to fight corruption should be diligently satisfied. We need to create a culture that abhors corruption.

There is need for the Economic and Financial Crimes Commission, Public Complaint Commission and the Independent Corrupt Practices Commission to step up their fights against corruption by putting the enormous powers saddled on them into proper use.

The appointments of heads of anti-grafts agencies by the President does not portray total independence of these agencies, therefore there is the need to stripe the President of such powers.

Non conviction based assets forfeiture should be codified, and given both legislative and judicial backing.

5.4. Contribution to Knowledge

There is presently very little or no known literature on the Code of Conduct Tribunal in its mandate to combat corruption in the public service sector of Nigeria. This research will serve as a well-documented work ever carried out in that regard with respect to the CFRN, the composition and *modus operandi* of the CCT.

5.5. Areas for Further Studies

In view of the limitations of the study, the following areas are suggested for further study

1. Causative factors of endemic corruption in public agencies
2. Corruption as it relates to our cultural values, particularly the gift system as permitted by African culture.
3. Corruption tendencies and practices in our universities and other institutions of learning.
4. The study of the activities of private sector stakeholdersin corruption of public officers.

5.6. Conclusion

Corruption and abuse of office in Nigeria cannot be overemphasized. In an attempt to checkmate abuse of office and hold Public Officer accountable for their deeds in office; also to ensure transparency the Code of Conduct Bureau and other anti-graft agencies are established. However, the purpose of the establishment of these agencies cannot be said to have been achieved in totality, as there are lot of abuses of offices going on unchecked. Also there is still lack of accountability in Public Sector as a good number of Public Officers live far beyond their earnings.

Even declaration of assets and liabilities by Public Officers as obligated by the Constitution and the Code of Conduct Tribunal Act is more theoretical than as it isin practice "the research has seen instances where Public Officer fail to declaretheir assets and liabilities before assuming office as demanded by the Constitution without sanctions". There is also need for these agencies to put their enormous powers into practical and

effective use. Non conviction-based asset forfeiture proceedings should be utilized more often to recover our looted resources

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