

**LEGAL DYNAMICS OF THE ENFORCEMENT OF  
ECONOMIC CRIMES IN NIGERIA**

**A PAPER PRESENTED BY**

**PETER .A. AKHIHIERO ESQ.  
LL.B (HONS) IFE; LL.M LAGOS; B.L.  
CHIEF LEGAL OFFICER  
MINISTRY OF JUSTICE  
EDO STATE**

**AT THE LAW WEEK OF THE BENIN BRANCH OF THE  
NIGERIAN BAR ASSOCIATION**

**HELD AT**

**THE BISHOP KELLY'S PASTORAL CENTER, OFF  
AIRPORT ROAD, BENIN CITY.**

**ON THE 24TH OF JULY, 2007.**

# LEGAL DYNAMICS OF THE ENFORCEMENT OF ECONOMIC CRIMES IN NIGERIA

## 1. INTRODUCTION

The American crime writer Mario Puzo prefaced his epic best selling novel **The Godfather**, with a quotation from the French writer, Balzac, that **“Behind every great fortune there is a crime”**.<sup>1</sup> This statement aptly summarises the **modus operandi**, adopted by the super rich in the society, to amass their stupendous wealth. In a materialistic society such as ours, the worth of a man is determined not on the basis of his intellectual prowess, but mainly on the basis of his economic potentials. As the question was put by one of our eminent Legal luminaries recently: **“if one may ask what chances in the first place, has a poor man in a “monetized” society where people must spend several millions to get into political positions and appointment, into public office is determined by the amount of influence of the sponsoring “godfather?”**<sup>2</sup>

There is no gainsaying the fact that corruption has corroded the moral fabric of Nigeria as a nation. This is not a recent phenomenon. For a long time, corruption has been acknowledged as the single most important obstacle to economic progress and democracy in Nigeria.<sup>3</sup>

1. The Godfather: Putnam Publishers 1969
2. Chief Afe Babalola S.A.N.: I.C.P.C. NEWSLETTER, Vol. II No. 2, March, 2007.
3. Akinseye Y. G. L Jurist Nigeria Correspondent

The corruption saga is manifested mainly in the form of bribery, embezzlement of public funds and advance fee frauds.

Corruption contributed in no small measure to the collapse of the First Republic (1960-1966) and the Second Republic (1979 – 1983). In both cases, the military cited pervasive corruption as the justification for the overthrow of the democratically elected governments. Ironically, the military who claimed to be on a salvage mission, turned out to become the greatest culprits in the corruption saga.

The Nigerian State inherited in 1999 by the elected government of President Olusegun Obasanjo GCFR, was that of a near comatose nation, under a heavy yoke of corruption. By the time the government came on board, corruption in Nigeria had assumed an endemic dimension. It had so permeated all levels of the Nigerian society that it had become a way of life acceptable to all.

This sorry state existed, not because of lack of efforts on the part of successive governments to tackle the problem of corruption, but mainly because most measures adopted failed woefully to achieve the desired objectives. Previous failed efforts include the Ethical revolution of President Shehu Shagari in 1981 – 1983; War against Indiscipline by the Buhari government in 1984; the National Orientation Movement by the Babangida regime in 1986; Mass Mobilization for Social Justice by the

same Babangida regime in 1987; and the war against Indiscipline and Corruption by the Abacha regime in 1996.

In view of the consecutive failures of the previous anti-corruption crusades, it became evident to the Obasanjo administration that a radical approach must be fashioned out, to eradicate the culture of corruption from the moral fiber of the Nigeria nation state.

The first major step in the renewed offensive in the war against corruption was the enactment of the Corrupt Practices and Other Related Offences Act in June 2000 and the establishment of the Independent Corrupt Practices and Other related Offences Commission (ICPC) in September of the same year.

The creation of the ICPC marked a veritable watershed in the prosecution of the anti-corruption war. Ever since, the story has never been the same.

In a decisive bid to strengthen the war against corruption, the Federal Government enacted the Economic and Financial Crimes Commission (Establishment) Act, 2004. The Act established the Economic and Financial Crimes Commission. The Commission is charged with the responsibilities **inter alia**, to prevent, detect, investigate and prosecute all cases of economic and financial crimes in Nigeria.

The theme of this year's Law Week is "**Consolidating the Legacy of Democracy in Nigeria**". It is evident that with such a theme, and in

the light of current national developments, a discussion on the Legal dynamics of the enforcement of economic crimes is quite appropriate.

This presentation is coming at a time, when the new civilian administration in the country is about to launch a new offensive, which promises to break new grounds in the anti-corruption crusade. This forum affords the members of the legal profession, a veritable opportunity to articulate the legal aspects of the campaign, and to chart the way forward.

In this paper, we shall commence by defining the concept of economic crimes, in the light of our relevant local legislations. Next, we shall examine the legal machinery for the enforcement of economic crimes. Finally, we shall attempt a critical analysis of the enforcement process, and conclude with an, on the spot assessment, of the performances of the various agencies regulating this dynamic field in Nigeria.

## 2.0 **ECONOMIC CRIMES**

The term **Economic Crime** is not defined by any Nigerian statute. But the hybrid term **Economic and Financial Crimes** is defined under section 46 of the Economic and Financial Crimes (Establishment) Act, 2004, to mean “the non-violent criminal and illicit activity committed with the objectives of earning wealth illegally either individually, or in a group

or organized manner thereby violating existing legislation governing the economic activities of government and its administration and includes any form of fraud, narcotic drug trafficking, money laundering, embezzlement, bribery, looting and any form of corrupt malpractices, illegal arms deal, smuggling, human trafficking and child labour, illegal oil bunkering and illegal mining, tax evasion, foreign exchange malpractices including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic wastes and prohibited goods, etc”.

Thus economic and financial crimes are kindred offences with an extremely thin line separating them. As we shall see in the course of this paper, all economic crimes are financial crimes, but not all financial crimes are economic crimes. By and large, economic crimes are directed at devastating the economy. On the other hand, financial crimes are committed not only with the intention of getting financial benefits but they are targeted directly on funds and financial instruments. These include advance fee fraud, currency trafficking and counterfeiting etc.<sup>4</sup>

In considering the subject, apart from the general provisions in the Criminal and the Penal Codes, our focal legislations shall be:

- (i) The corrupt Practices and Other Related Offences Act 2000;

4. NUHU RIBADU ESQ: **THE ROLE OF EFCC IN SANITISING THE NIGERIAN ECONOMIC ENVIRONMENT IN A DEMOCRATIC SETTING 9-10TH DECEMBER, 2004.**

- (ii) Economic and Financial Crimes Commission (Establishment) Act 2004;
- (iii) Money Laundering Act 2003;
- (iv) Advance Fee Fraud Act, 1995;
- (v) Failed Banks (Recovery of Debt and Financial Malpractices in Banks) Act 1994;
- (vi) Banks and Other Financial Institutions Act, 1991; and
- (vii) The Code of conduct contained in the Fifth Schedule to the 1999 Constitution of the Federal Republic of Nigeria.

## **2.1 THE CORRUPT PRACTICES AND OTHER RELATED OFFENCES ACT 2000**

Essentially, the Act seeks to prohibit and prescribe punishment for corrupt practices and other related offences. It establishes an Independent Corrupt Practices and Other related Offences Commission, vesting it with the responsibility for the investigation and prosecution of offenders thereof. Section 2 of the Act defines corruption to include bribery, fraud and other related offences. Sections 8 to 26 of the Act create several of corruption related offences and their penalties. They include the offence of accepting gratification, punishable under section 8; making corrupt offers to public officers, punishable under section 9; corrupt demand by officials, punishable under section 10; section 11

deals with counseling offences relating to corruption; fraudulent acquisition of property is punishable under section 12. Fraudulent receipt of property is punishable under section 13; offences committed through the postal system comes under section 14; deliberate frustration of investigation is punishable under section 15; making false statement or return is contrary to section 16; gratification by and through agents is punishable under section 17; bribery of public officers is contrary to section 18; the offence of using an office or position for gratification is punishable under section 19; section 20 deals with the forfeiture of gratification upon conviction; section 21 deals with bribery in relation to public auctions; section 22 penalises 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 penalises the making of false statements to the commission; and section 26 creates the offences of attempts, preparations, abetments and conspiracy.

It will be observed that the definition of corruption as envisaged under the Act is broad enough to cover all economic and allied offences committed contrary to duty and the right of others.<sup>5</sup>

5. Irokalibe I. J. : Fighting Corruption in Nigeria: An Analysis of the Anti-Corruption Law – Benue State University Law – Journal 2002, 1:1, 49.



The anti-corruption law imposes penalties of fines or imprisonment or both. In addition, there are provisions under sections 47 and 48 for the forfeiture of property to the government of the assets of a convict, which is the subject matter of the prosecution.

## **2.2 THE ECONOMIC AND FINANCIAL CRIMES COMMISSION (ESTABLISHMENT) ACT 2004 (EFCC ACT)**

The EFCC Act marks a major departure from the previous statutes to combat economic and financial crimes in Nigeria. Besides, the EFCC enjoys the collaborative assistance of some international law enforcement agencies in the United States and Europe such as INTERPOL, the FBI, UNOC and FATF.

The commission is charged with the following responsibilities **inter alia**:

- (a) the enforcement and the due administration of provisions of the Act;
- (b) the investigation of all financial crimes including advance fee fraud, money laundering; and
- (c) the prevention, detection, investigation and prosecution of economic and financial crimes in Nigeria.<sup>6</sup>

6. Section 6 EFCC Act, 2004.

Furthermore, the Commission shall be the coordinating agency for the enforcement of the provisions of the following statutes:

- (a) the Money Laundering Act 2004;
- (b) the Advance Fee Fraud and Other Related Offences Act 1995;
- (c) the Failed Banks (Recovery of Debt and Financial Malpractices in Banks Act 1996;
- (d) the Banks and other Financial Institutions Act 1991;
- (e) the Miscellaneous Offences Act; and
- (f) any other law or regulation relating to economic and financial crimes, including the Criminal Code and the Penal Code.<sup>7</sup>

The EFCC Act also makes provision for certain specific offences such as offences relating to financial malpractices, punishable under section 14 of the Act; offences in relation to terrorism, punishable under section 15; offences relating to giving false information punishable under section 16; the retention of the proceeds of a criminal conduct contrary to section 17 and other economic offences punishable under section 18. There is a salient provision of the Act in relation to the power of the commission to compound offences punishable under the Act. Section 14(2) of the Act provides that:

“(2) subject to the provisions of section 174 of the Constitution of the Federal Republic of Nigeria 1999 (which relates to the power of the Attorney-General of the

7. Section 7(2) EFCC Act

Federation to institute, continue, take over or discontinue criminal proceedings against any person in any court of law), the Commission may compound any offence punishable under this Act by accepting such sums of money as it thinks fit, exceeding the maximum amount to which that person would have been liable if he had been convicted of that offence”.

On the face of the above provision it appears that the commission is empowered to negotiate out of court settlement with suspects who are willing to pay for it. This practice is already generating some controversy. We shall focus more attention on the practice in the course of this presentation. This appears to be a subtle introduction of the American practice of **plea bargain** or **negotiated plea**.

### **2.3 THE MONEY LAUNDERING ACT 2004**

Money laundering has been defined as “the conversion of illicit money, illicitly obtained money, or the proceeds of illicit transactions into clean money through a combination of supposedly legitimate transactions”<sup>8</sup> The Money Laundering Act was promulgated to detect and prevent money laundering transactions conducted through the Nigerian financial system. The Act makes provision for the prevention of

8. Prof. O. Akanle: The Legal Regulation of Money Laundering in Nigeria. Business Law & Practice Journal, Vol. 5, June, 1996, P.I.

money laundering, by among other things, limiting the cash payments that can be made or accepted, regulating over the counter exchange transactions, providing for the proper identification of customers and empowering the National Drug Law Enforcement Agency to place surveillance on certain bank accounts, and create offences for contravention of its provisions.

#### **2.4 ADVANCE FEE FRAUD ACT 1995**

The enactment of the Act represents a pragmatic attempt to tackle the notorious 419 bug which has been infesting the nation for quite a while. The Act **inter-alia** seeks to cover the loopholes inherent in the provisions of the Criminal Code in respect of the offences of fraud and obtaining by false pretences. The Act introduced some elaborate provisions on money laundering of the proceeds of fraudulent scams. This creates an additional weapon in the campaign against corruption.

#### **2.5 THE BANKING DECREES**

The deregulation of the economy under the Structural Adjustment Programme (SAP) precipitated the liberalization of banking licenses. This caused an increase in the number of Commercial Banks from 29 in 1986 to 66 in 1993 and Merchant Banks from 12 in 1986 to 53 in 1993. Consequently, it was necessary to streamline the relevant financial

legislations to effectively monitor the Banking sector. Two principal legislations were promulgated during this period to regulate banking activities. They were the **Banks and Other Financial Institutions Decree (BOFID) No. 25 of 1991** and the **Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree No. 18 of 1994**. The two statutes marked a watershed in the reformation of the Banking sector.

Primarily, the provisions of BOFID were aimed at “beefing up security” around the banking industry. It placed very rigid and onerous responsibilities on directors of banks. The Decree provides for the maintenance at all times of capital funds unimpaired by loss by banks in such ratio to all or any of the assets or liabilities of the banks as may be specified by the Central Bank of Nigeria.<sup>9</sup>

Furthermore, every bank shall maintain a cash reserve, specified liquid assets, special deposits and stabilization securities in the CBN from time to time. There are several other restrictions on the granting of loans, advances and credits. The statute also created some offences and stipulated appropriate penalties in the event of default by banks and bank officials.

It was however a matter of great surprise and bewilderment, that despite the stringent provisions of BOFID to regulate the sector, a good number of banks fell victims to the deluge of distress which ravaged the

9. Sections 13,14 and 15 BOFID

banking industry in the 1990's. In a bold move to arrest the wave of distress, the Federal Government promulgated the **Failed Banks (Recovery of Debts and Financial Malpractices in Banks Decree No. 18 of 1994)**. The Failed Banks Decree has been described as “the most pervasive piece of legislation currently affecting the banking and financial system in Nigeria”.<sup>10</sup>

Under the Decree, special tribunals were established to recover debts owed such failed banks and to try offences specified in Part III thereof and under the BOFID and the Nigerian Deposit Insurance Corporation Decree as well as offences relating to banking under any enactment.<sup>11</sup>

However, upon the commencement of the provisions of the 1999 Constitution of the Federal Republic of Nigeria, the jurisdiction of the Failed Bank Tribunals was transferred to the Federal High Court see section 251 (1)(d) of the 1999 Constitution and the Tribunals (certain consequential amendments) Decree No. 62,1999.

## **2.6 THE CODE OF CONDUCT**

The provisions of section 172 and section 209 of the 1999 Nigerian Constitution stipulates that a person in the public service of the Federation and of the State respectively, shall observe and conform to

10. G.K. Olugon: Reflections on the Nigerian Financial System in 1995 – Nigerian Business Law and Practice Journal Vol. 5, June 1996, p.53.

11. See section 3 of the Decree

the Code of Conduct contained in the Fifth Schedule to the constitution. The Code contains ample provisions, which are geared towards ensuring accountability and probity in public service. For example, section 3 of the Code prohibits a public officer from maintaining a foreign account. Section 6, 8 and 9 prohibits the taking of gifts, benefits, bribes or any form of abuse of office. To give teeth to these provisions, section 18 empowers the Code of Conduct Tribunal to impose any of the following sanctions for contraventions of the provisions of the code:

- (a) vacation of office or seat in any legislature
- (b) disqualification from membership of a legislature and from holding 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.

### **3.0 ENFORCEMENT OF ECONOMIC CRIMES**

The presentation so far has revealed the fact that there are divers' shades of economic crimes in Nigeria. The mode of enforcing a particular crime will depend on a number of factors namely the particular law enforcement agency involved, the prevalence of the offence in the society, the cumulative effect of such offences on the national economy, the standing of the suspect in the society, etc, etc .....

Primarily, the Nigerian Police Force is responsible for the prevention, detection and the investigation of crimes in Nigeria. But there are certain categories of crimes, which are so technical in nature that they require some form of specialized investigation in order to unravel them. Economic crimes fall under the genus of such specialized crimes. Hence the creations of specialized agencies like the ICPC, the EFCC, the NDIC, and the Code of Conduct Bureau etc to carry out enforcements.

It will not be possible in a presentation of this nature to carry out a comprehensive examination of the enforcement mechanisms of each of the relevant specialized agencies. But it will suffice for us to note that the approach of these specialized bodies has introduced some radical and pragmatic dimensions in the system of criminal investigation and prosecution. Their approach is a major departure from the conservative, stereotyped and conventional style of investigation adopted by the Nigerian Police Force.

We shall attempt to highlight the **modus operandi** of three such agencies to wit: the ICPC, the EFCC and the Code of Conduct Bureau.



### **3.1 THE INDEPENDENT CORRUPT PRACTICES AND OTHER RELATED OFFENCES COMMISSION (I.C.P.C.)**

The ICPC is the apex body saddled by law with the responsibility to fight corruption and other related offences in Nigeria. Section 6 of the Act empowers the ICPC to receive and investigate reports of the commission of offences as created by the Act and in appropriate cases to prosecute the offenders.

The ICPC is operationally structured into a committee system, which is put in place to determine and enforce policy directives on investigation and prosecution. From the provisions of the Act, the commission has enough legal mandates to effectively combat corruption. The officers of the commission are given similar powers of arrest and prosecution as the police.<sup>12</sup>

Above the powers of the police, they are empowered to seize any property suspected to be the subject matter of an offence.

However, in its efforts to investigate cases of corruption and to prosecute suspects, the ICPC has faced a lot of challenges. The early endeavours of the commission to enforce the provisions of the Act were seriously resisted. In the celebrated case of **ATTORNEY GENERAL OF ONDO STATE & ORS V ATTORNEY GENERAL OF THE FEDERATION & ORS**<sup>13</sup>, the government of Ondo State challenged the

12. Section 5(1) of the Act

13. (2002) 9 NWLR Pt. 772, p.222; 2002. 99 LRCN p.1329

power of the Federal Government to legislate on corruption. In a landmark judgment, the Supreme Court upheld the constitutionality of the Act. In the said judgment, the court held **inter alia** that “the ICPC Act is an enactment for the peace, order and good government of the Federal Republic of Nigeria. Any legislation on corruption and abuse of power must be of concern to every Nigerian notwithstanding that its operation will affect property and civil rights of citizens in a State. Such an enactment like all enactments of the National Assembly will be of paramount force”.<sup>14</sup>

In spite of the landmark judgment of the Supreme Court, some counsel to accused persons in other matters have continued to inundate the courts with applications for injunctive orders to prevent the commission from conducting some investigations, and sometimes, to stop prosecution of cases in court. All sorts of legal antics and delay tactics are being adopted to frustrate trials in court. Worse still, the ICPC was not spared the wrath of the erstwhile National Assembly, which sought to scrap the Commission for daring to investigate its leadership. In a drastic move against the commission, the National Assembly passed a new law repealing the Act and substituting a new one in its place. The President vetoed the new Bill on the ground that there was a subsisting order of a Federal High Court which restrained him from giving assent to the Bill.

14. at p. 1338 supra

Indeed a Federal High Court sitting in Abuja had restrained the National Assembly from passing the new Bill into Law, pending the hearing of the suit instituted by some aggrieved members of the National Assembly. The National Assembly however went ahead to override the President's veto, in spite of the subsisting order of injunction against them.

Expectedly, the Federal High Court declared the new Act a nullity since it was passed in violation of a subsisting court order, thus saving the original Act. Also, in another suit, another Federal High Court presided by Ukeji C. J., declared the new Act a nullity, on the ground that the two-third majority required overriding the President's veto was lacking. The court held that the two-thirds majority required under the constitution is the two-thirds majority of the whole house and not that of those present at the sitting.

In spite of these obstacles the commission has so far filed a number of criminal cases in various courts in the country. So far, the ICPC has investigated over 3,200 petitions relating to its mandate, while referring other matters to the EFCC and the Code of Conduct Bureau. Currently, they are prosecuting 187 Nigerians in 90 cases nationwide. Among the cases being prosecuted is that involving the N55 million-bribery scandal, which rocked the leadership of the former National Assembly. The Accused persons include former Senate President

Adolphus Wabara, some former Senators and members of the House of Representatives and the prime suspect, the former Education Minister Prof. Fabian Osuji. The matter is pending at the Court of Appeal on an interlocutory appeal.

Other sensational matters on trial include Charge No. KN/ANTI/CR.3/2002 Federal Republic of Nigeria Vs. Hon. Justice Garba Abdullahi; a case of bribery pending against a serving Judge of Kano State High Court. He was discharged and acquitted but the matter is on appeal.

Also in charge No. AK/ICPC/1/2002 F.R.N. Vs Chief Alfred Bamidele Ogedengbe & Anor, the former Attorney General of Ondo State and the Finance Commissioner are standing trial for corrupt offences. In charge No. KG/ICPC/1/2002 FRN Vs Hon. Emmanuel Egwaba, a former Local Government Chairman in Kogi State was convicted but the matter is on appeal to the Supreme Court. In charge No. B/ICPC/1/2003 FRN Vs Prof. Austine Obasohan & 3 ors, the former Medical Director of the UBTH and three others are on trial in the Benin High Court for corruption charges. There is an interlocutory appeal in the matter at the Court of Appeal. Also in charge No. B/ICPC/2003 FRN Vs. DR. Mustapha Mohammed Nadoma, the Former Director of the Rubber Research Institute, Benin is on trial for conferring corrupt advantage upon

himself<sup>15</sup>

15. Reports were accessed from the ICPC website at [www.icpcnigeria.com](http://www.icpcnigeria.com) on 20/07/07

The ICPC has been quite focused in the prosecution of the anti-corruption war. According to Justice Emmanuel Ayoola, the current Chairman of the Commission, “Apart from the Police the only body that should be dealing with corruption in Nigeria is the ICPC. We believe that we remain faithful and guided by our mandate. That is why we remain focused on what the law enjoins us to do”<sup>16</sup>

### **3.2 THE ECONOMIC AND FINANCIAL CRIMES COMMISSION**

As has been observed the EFCC has a wider mandate than the ICPC. The commission has an enforcement dragnet, which embraces a host of economic and financial crimes. There is even an omnibus provision which empowers the commission to enforce “any other law or regulation relating to economic and financial crimes”<sup>17</sup>

Unlike the ICPC, which has witnessed a change of its leadership since its inception, the EFCC has enjoyed the singular advantage of having the same person at the helm of its affairs since its creation. This has infused some measure of stability and consistency in their enforcement approach. Moreover the EFCC Act has conferred enormous powers on the commission to enable it discharge its assignment with utmost dispatch. For instance the commission can by an **exparte** application, freeze funds in any account in the course of their investigations even, before trial.<sup>18</sup>

16. ICPC Newsletter Vol. II, No. 1, January, 2007, p.2.

17. Section 7(2) (f) EFCC Act 2004.

18. Section 34(1) EFCC Act

Emboldened by the strong statutory mandate, the EFCC under Mallam Nuhu Ribadu has introduced a revolution in the enforcement of economic and financial crimes in Nigeria. His approach has been radical, pragmatic and highly result oriented. In the course of his tenure, which is still under four years, the EFCC has become the nemesis of corrupt politicians, fraudulent public officers, advance fee fraudsters and other financial criminals. The EFCC has brought many sacred cows before the courts for trials. In 2005, the commission brought to trial the notorious and evasive Amaka Anajemba, the undisputed queen of advance fee fraud in Nigeria. The said Anajemba, Emmanuel Nwude and some others between 1995 and 1998, defrauded a Brazilian Bank, Branco Noroestes to the tune of \$242 million, through one Nelson Sakaguchi, a Director of the Bank. In his judgment delivered on the 15<sup>th</sup> of July 2005, Hon. Justice Olubunmi Oyewole of the Lagos High Court convicted the accused persons. Anajemba was ordered to forfeit the sum of \$25 million, her property worth N3.185 billion in Nigeria as well as her property in England, Switzerland and the United States worth millions of dollars. The court ordered that all the proceeds be paid to the Brazilian bank.

Another landmark prosecution was that of the former Inspector General of Police Tafa Balogun who in the face of the armada of evidence against him, promptly pleaded guilty to the eight count charge

of stealing and laundering funds amounting to about N17 billion. The Abuja High Court ordered Balogun's six companies to be de-listed and their assets forfeited to the Federal Government. Some of his personal assets were also confiscated.

Also in 2005, the EFCC successfully prosecuted Kingsley Ikpe, the former Chairman of Fidelity Bank and Thomas Kingsley Securities Ltd. He was sentenced to 163 years in prison by a Lagos High Court upon conviction for stealing the sum of N61 million and for swindling the Chairman of Orange Drugs Ltd.

Very recently, the EFCC took the bull by the horns when it commenced the much-awaited prosecution of some former Governors. Among the former Governors who have been put on trial are Jolly Nyame of Taraba State, Orji Uzor Kalu of Abia State, Joshua Dariye of Plateau State, Saminu Turaki of Jigawa State and Chimaroke Nnamani of Enugu State. The trial of these Ex-Governors promises to be quite sensational and revealing. The charges against them are quite alarming.

In an interview with the Tell Magazine sometime last year, Mallam Nuhu Ribadu, the EFCC Chairman, disclosed that the Commission generates the sum of N2 billion as revenue to the Government every week, from money recovered from suspects.<sup>19</sup> This speaks volumes of the impact of the commission on the nations economy.

19. See Tell Magazine of January 16, 2006, p.22

### **3.3 THE CODE OF CONDUCT BUREAU**

The constitution has created special agencies to enforce the provisions of the Code of Conduct for public officers as enshrined in the Fifth Schedule to the 1999 Nigerian Constitution. The Code of Conduct Bureau is established as the administrative agency while the Code of Conduct Tribunal is the adjudicatory organ for the enforcement of the Code.<sup>20</sup>

The powers of the Bureau are set out in paragraph 3 of the Third Schedule to the Constitution. They include the power to receive and examine declarations by public officers, retain custody of such declarations, ensure compliance with the provisions of the Code, investigate cases of breach of the provisions of the Code and where appropriate, refer such matters to the Code of Conduct Tribunal.

Essentially, the provisions of the Code of Conduct are to prevent corruption among public servants. The functions of the Code of Conduct Bureau are mainly concerned with the actual operation of the provisions of the Code. With the establishment of the Bureau no other body has the right to receive complaints about non-compliance or breach of the Code.<sup>21</sup>

The mandatory provisions of the Code should be a strategic weapon by the Bureau in the campaign against corruption. But unfortunately, the

20. See Code of Conduct Bureau and Tribunal Act, Cap. C.15, Laws of the Federation of Nigeria, 2004.

21. See OGBUAGU V OGBUAGU (1981) 2 N.C.L.R. 680



declarations are hardly verified. No wonder there has not been any reported conviction for the more substantial violations of the Code, such as bribery and abuse of office. The Bureau has not been proactive in its approach. Their approach has been to sit and await petitions from members of the public, about breaches by public officers. They should be more investigative and result oriented. In recent times, the Bureau has made some moves to prosecute some political heavy weights. The former governor of Kogi State, Abubakar Audu has been charged to the Tribunal for illegally amassing wealth while in office and for failure to declare his assets while he was a governor. But the ex-governor has refused to appear before the Tribunal. This prompted the Chairman of the Tribunal, Hon. Justice Constance Momoh to issue a warrant for his arrest. Also the former Vice President Alhaji Atiku Abubakar is to face charges at the Tribunal for breach of the Code while in office

It has been suggested that one of the proactive measures which the Bureau can adopt in order to achieve its objectives is to publish the assets declaration forms of prominent public officers in some national newspapers or in the Bureau's website on the internet. This will attract the response of the public in order to verify the declarations.<sup>22</sup> It is in this vein that one must commend the President for publicly declaring his

22. Ekpu O.O.: Curbing Corruption in Nigeria: The Role of the Code of Conduct Bureau – Benin Journal of Public Law 2004, p.73

assets from the outset. This is a signal that the Bureau may play a more active role in the crusade against corruption in this dispensation.

#### **4.0 REVIEW OF THE ENFORCEMENT PROCESS**

A pragmatic review of the process of the enforcement of economic crimes in Nigeria must take cognizance of the impact of the entire exercise in the nation's economy. Nigeria is presumably the second largest economy in Africa, with a population of over 120 million people. Oil revenue accounts for 90% of our foreign exchange earnings. There are untapped potentials in the solid minerals and agricultural sector, the tourism sector is being positioned as a great foreign exchange earner.

The capital market is one of the fastest in terms of growth. The banking sector has become fully stabilized and dependable. The telecommunications sector is no doubt one of the fastest growing in the emerging world markets. From the foregoing, it is evident that the nation's economy has great potentials. Despite these bright prospects, the Country ranks among one of the poorest countries in the world. This is an irony. The bane of the nation's problems has been attributed to corruption, economic mismanagement, lack of accountability and gross abuse of office. The rejuvenation of the war against economic crimes is a step in the right direction.

A pivotal issue at this stage is whether the current spirited efforts by the enforcement agencies have achieved the desired objectives to arrest the surge in the wave of economic crimes in the country.

Expectedly, support for the current efforts has not been overwhelming. There have been pockets of resistance from some groups of people who see the campaign as a live threat against their ill-gotten fortunes. Some have openly castigated the ICPC and the EFCC and branded them as political tools of the ruling government. Sometimes they have used the instrumentality of the courts to stall trials. This approach is not novel; it is a common reaction from the historical antecedents in other countries.

In Sri Lanka, in the 1960s, the problem of corruption reached a crisis point, the government made a bold move to tackle the problem. They appointed a special commissioner called the Bribery Commissioner. He was given a special mandate to investigate and prosecute matters of corruption. A Bribery Tribunal was set up to try such matters. The corrupt officials rose up to the challenge. They formed a coalition and mandated one of their ilks to file an action. The case was *BRIBERY COMMISSIONER V RANASINGHE* 1965 A.C p.172. In a final judgment, the Privy Council dealt a fatal blow on the entire process. They declared that the Bribery Tribunal was not set up to according to the special legislative procedure stipulated by the constitution. The

judgment was a major set back in the campaign against corruption in Sri Lanka.

In Nigeria, we have been more fortunate. In spite of all the Legal gymnastics in several courts, our enforcement agencies have been weathering the storm. They are waxing stronger and stronger. The war against corruption appears to be a winning war.

Some critics of the war against economic crimes have maintained that the agencies are political tools of the ruling government to witch hunt their political opponents. They accuse the agencies of selective prosecutions. They maintain that in so far as the President can appoint and remove the heads of these agencies, the agencies are an appendage of the Federal Government. According to critics, even the Independent Corrupt Practices Commission, is only independent in name; it is not free from the interference and control of government. But if the power of appointment being vested in the President is the determinant of the independence of these bodies, then it is doubtful if we have an independent judiciary in Nigeria. The President is the final appointor of the Chief Justice of Nigeria, the President of the Court of Appeal and the Chief Judge of the Federal High Court <sup>23</sup>

Thus, the question of independence of the agencies is a moot point.

In the enforcement of economic crimes the issue of the constitutional immunity of some political office holders has generated

some controversy. In a nutshell, section 308 of the constitution provides that in the course of their tenure of office no criminal proceedings may be brought against the President, the Vice President, Governors and Deputy Governors, nor may any civil proceedings be instituted against them in their private capacity, nor may they be arrested, or imprisoned during that same period. However, to preserve the right of a plaintiff to sue, the statute of limitations will not run against the clamant until the expiration of the term of office.

In several attempts to prosecute some corrupt governors in the face of overwhelming evidence, the **immunity clause** posed an insurmountable hurdle. Even when former Governor Joshua Dariye and Dipriye Alemiesigha escaped from the United Kingdom where they were facing charges, they found a safe haven in Nigeria under the cover of executive immunity.

These ignoble consequences have called to question the justification for such sweeping cover for such category of political office holders. In America, in the classical case of **NIXON V FITZGERLD (1982)**, one Ernest Fitzgerald filed an action for wrongful dismissal from the American Air force. He tried to add President Nixon as a defendant in the suit. The President claimed immunity. In a split decision of 5-4, the U.S Supreme Court held that the President was entitled to **absolute immunity** from liability for damages based on his official acts. The court

maintained that the immunity of the President cannot be limited or qualified and that the scope of the President's authority and responsibility is so broad that it is not realistic to restrict his immunity.

But in a more recent case the U.S. Supreme Court whittled down the Principle of **absolute immunity**. In the case of **CLINTON V JONES (1997)**, one Paula Jones sued President Bill Clinton accusing him of sexual misconduct when he was Governor of the State of Arkansas. The President raised the plea of absolute immunity. The Supreme Court held that the plea of absolute immunity did not apply to actions that were clearly outside the scope of his presidential duties. Finally, the court acknowledged that the trial court has discretion to schedule the various aspects of the case to minimize disruption of the President's official duties. The court ruled that it is not appropriate, to require the plaintiff to wait until the end of the President's term in office. So the plaintiff should be allowed to bring her case. It is my candid view that the decision in **CLINTON V JONES** is more in line with justice and fair play and I seriously commend the decision to our courts in their consideration of the plea of executive immunity, particularly where the actions of the defendant was clearly outside the scope of his official duties. Where a Chief Executive in government, embarks on acts of brigandage to loot the state treasury with reckless and savage impunity, the courts should be prompt to reject the plea of executive immunity, on the ground that

such acts were clearly outside the scope of his duties. Although some have openly advocated the outright repeal of the immunity clause, I will strongly advocate the amendment of the provision to cover acts within the constitutional scope of duty of the executive. Also the courts should be more proactive; they should construe the immunity clause in line with the original intendment of the framers of the constitution. The current posture of the courts has unwittingly elevated the immunity clause to the level of the notorious ouster clause. Litigants are constrained to wait until the occupant vacates the office before they can sue.

In the recent case of **ALAMIEYESEIGHA V FRN**<sup>24</sup> the Court of Appeal sitting in Lagos held that the immunity of a State Governor from criminal proceedings under section 308 of the 1999 constitution is only valid when the person is occupying the office. It terminates when the person ceases to hold the office.

But there is a curious provision in the ICPC Act which appears to whittle down the doctrine of executive immunity. Section 52(1) of the Act provides that when an allegation of corruption is made against the President, Vice President, Governor or Deputy Governor, the Chief Justice, if satisfied by an application supported by an affidavit, shall authorize an Independent counsel to investigate the allegation and make

24. (2006) 16 NWLR Pt. 1004, p. 1 at p 41

a report to the National Assembly or the relevant State House of Assembly for the respective officials.

The idea is perhaps to enable the legislature to proceed against the Chief executive on the basis of the investigation report. I wish to observe that the introduction of an independent counsel to investigate under section 52 raises some pertinent questions. It appears to validate the views of those who maintain that the ICPC **per se** is not an independent body. Moreover, what is the guarantee that the so-called independent counsel will actually be independent? The concept of an **independent counsel** is not entirely new. In America, in the heat of the Watergate scandal involving the government of President Richard Nixon, the U.S. Attorney General acting pursuant to powers vested in him by the Constitution, appointed one Professor Archibald Cox of the Harvard University as a special investigator. Prof. Cox was given unprecedented authority and independence to investigate the alleged Watergate scandal. In the course of his investigations, Prof. Cox requested the President to produce the secret tape recordings for his inspection. The President refused to turn them in, citing executive privilege. The matter went to court. The U.S. court of Appeal rejected the plea of executive privilege and ordered the President to produce the tapes. At the peak of the investigation, the Congress was about to commence impeachment proceedings against President Nixon, when on the 9<sup>th</sup> of August 1974,



the president resigned from office. In a democratic setting, that is how the system works. The President is not above the law. In the immortal words of Henry Bracton, ***“the king himself ought to be subject to no man but unto God and to the Law, for it is the law that makes him king”***<sup>25</sup>

The efficacy of our section 52 has not been put to test.

There is a practice, which is fast becoming a common feature in our criminal justice system, particularly in relation to the prosecution of economic crimes. It is the practice of negotiating settlement out of court between the prosecution and the defence. Ordinarily, it is unlawful to compound a criminal offence, more so, where the offence is a felony. Our Criminal Code makes it an offence for any person to compound a felony<sup>26</sup>

However, in relation to economic crimes the objective of the law **inter alia**, is to generate revenue through prosecution. Hence it is usual to permit negotiations on economic terms between the prosecution and the accused person. In legal parlance, the procedure is referred to as **plea bargain** or **plea agreement**, or **negotiated plea**. It has been defined as a negotiated agreement between a prosecutor and a criminal defendant, whereby the defendant pleads guilty in exchange for some concession by the prosecutor, usually a more lenient or convenient sentence.<sup>27</sup>

25. Treatise on the Laws and Customs of England

26. See section 127 of the Criminal Code, Cap. 48, Vol. II, Laws of Bendel State, 1976 now applicable to Edo State.

27. Black’s Law Dictionary, 7th Edition, p.1173.

The practice of plea bargaining has been more rampant in the matters involving the EFCC. Many suspects being interrogated or prosecuted by the EFCC have opted for negotiated pleas by forfeiting large sums of looted funds to the government. Incidentally, section 14(2) of the EFCC Act 2004, has incorporated the practice. It stipulates that: “Subject to the provisions of section 174 of the constitution of the Federal Republic of Nigeria 1999 (which relates to the power of the Attorney General of the Federation to institute, continue, take over or discontinue criminal proceedings against any person in any court of law), the commission may compound any offence punishable under this Act by accepting such sums of money as it thinks fit, exceeding the maximum amount to which that person would have been liable if he had been convicted of that offence”.

The practice of plea bargain featured prominently in the celebrated cases of **Amaka Anajemba** and that of **Tafa Balogun**. The convicts were given light sentences on account of the colossal sums, which they returned to the government. It was like purchasing their freedom for a ransom. The practice has been the subject of controversy in recent times. It is being speculated that the trial of some of the ex-governors is being stalled because the suspects have been refunding colossal sums to the government. The members of the public are not very satisfied with this approach of justice. Some people feel it may send some wrong

signals in the prosecution of the anti-corruption war. Political office holders may believe that they can loot the treasury and buy their way out of a trial. A critical appraisal of the practice of plea bargain will reveal some obvious flaws. In the first place the procedure to be adopted in the exercise is not set out in any statute. Section 14(2) does not stipulate any procedure to be adopted in the exercise. It appears the exercise is at the absolute discretion of the prosecutor. Such an uncertain and unpredictable approach is liable to abuses. Moreover, the negotiations are done behind closed doors. No body knows the terms and conditions of such arrangements. It is not likely that such terms are reduced into writing. This can lead to questionable deals been brokered under the guise of plea bargain. The procedure for a plea bargain should be regulated by set down rules to prevent arbitrariness and abuses.

Another controversial issue is that of the distribution of the proceeds recovered from suspects. Section 14(3) of the EFCC Act provides that “all moneys received by the commission under the provisions of subsection (2) of this section shall be paid into the Consolidated Revenue Fund of the Federation”. But it is evident that the ownership of such funds may sometimes be traced to an individual, corporate body or the other tiers of government such as a State or Local Government Council. Should the proceeds of funds recovered from suspects who looted state treasuries not be returned to the relevant

State government? In a federal structure, will it not be contrary to the principles of true federalism for the funds, which rightly belong to a state to be returned to the federal government? Is this not a case of robbing Peter to pay Paul? This kind of provision is bound to provide a spate of litigation to recover such funds. This will be inimical and counter-productive. One of the modern developments in penology is that the punishment should not only fit the crime and the criminal, it should also be geared towards compensating the victim of the crime. It will be more in consonance with the dictates of justice if the relevant statutes on forfeiture of proceeds can be amended to direct such sums to be returned to the actual victims of the crimes. The blanket provision that such recovered funds be paid into the consolidated Revenue Fund of the Federation is not only arbitrary but it is based on the misconception that the Federal Government is always the victim of all economic and financial crimes.

## **5.0 CONCLUSION**

On the whole, we have tried to examine the salient legal principles involved in the enforcement of economic crimes in Nigeria. Some particular offences have been spotlighted in the context of the relevant statutes creating them. We have critically analyzed the activities of some principal enforcement agencies. We commenced from the basic premise

that in order to consolidate the legacy of democracy in Nigeria, the problem of corruption must be tackled headlong. We traced the collapse of the First and the Second Republics to the malaise of national corruption. It is in this vein that the current process of the enforcement of economic crimes must be regarded as a strategic bulwark to safeguard our nascent democratic structures.

Naturally, opinions are divergent on the activities of the relevant enforcement agencies. Some members of the public have applauded the dynamic and pragmatic initiatives of the agencies in recent times. They believe the steps are in the right direction, and the overall interest of the nation. But a few individuals have been highly critical of the activities of the agencies. They have accused them of selective justice. They have expressed skepticism about the sincerity of the entire process. They believe it is all a witch hunting exercise.

In the landmark case of **ATTORNEY GENERAL OF ONDO STATE VS ATTORNEY GENERAL OF THE FEDERATION**, Ogwuegbu J.S.C. summed up the views of the populace in a notable pronouncement: "I must point out that all Nigerians except perhaps those who benefit from it are unhappy with the level of corruption in the country. The main opposition to the ICPC Act is, I believe, borne out of fear and suspicion. These will be allayed if appointment to the membership of the Commission is devoid of political considerations and

members are allowed to discharge their duties freely without interference”.<sup>28</sup>

Commenting on the developments one of our revered jurists, Hon. Justice Kayode Eso J.S.C. (Rtd) stated that “the greatest thing that has happened to Nigeria since independence, 46 years ago, is the establishment of the Independent Corrupt Practices and Other Related Offences Commission (ICPC) and the Economic and Financial Crimes Commission (EFCC), to detect corrupt tendencies in the country”.<sup>29</sup>

Also speaking on the attitude of the Nigerian society to the menace of corruption, the current Chairman of the ICPC, Hon. Justice Emmanuel Ayoola (Rtd), maintained that ‘the society tolerates widespread lack of knowledge and understanding of integrity issues. For instance only very few understand how graft and corrupt practices adversely affect everybody, the rich and the poor, the sick and the healthy and even generations yet unborn. To take a sample: for every ‘ghost worker’ one person has been denied employment; for every corrupt practice in the health sector, a life is put in jeopardy; lives are ruined. The examples are endless, but only few have paused to think about them”<sup>30</sup>

On a final note it must be observed that the effectiveness of any framework for the enforcement of economic crimes depends largely

28. (2002) 9 NWLR Pt. 772, p.222; 2002. 1999 LRCN, 1329 at 1339.

29. ICPC Newsletter Vol. 1, No. 11, November, 2006 p. 1

30. [www.icpcnigeria.com](http://www.icpcnigeria.com)

more on the political will of the government rather than the legal framework. The present administration should demonstrate their commitment to the exercise by expediting the prosecution of principal political functionaries who have been indicted in the course of the investigations of the enforcement agencies. There should be no 'sacred cows'. A cardinal principle of the rule of law is the principle of equality before the law. The great English scholar **Thomas Fuller** summed it up, over 300 years ago that: "**be you ever so high, the law is above you**".