

# Using Specialised Anti-Corruption Agencies to Combat Pervasive Corruption in Nigeria: A Critical Review of the ICPC and EFCC\*

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## Abstract

The use of specialised anti-corruption agencies (ACAs) to combat corruption is increasingly popular among African countries. This is no surprise considering the successes these agencies have recorded elsewhere in the world, on the strength of which they have been described as ‘the most innovative feature of the anti-corruption movement of the last two decades’. Yet while ACAs have been successful in other parts of the world, the same cannot be said of those in Africa generally and Nigeria in particular. Even with two ACAs – the Independent Corrupt Practices and Other Related Offences Commission (ICPC) and Economic and Financial Crimes Commission (EFCC) – corruption continues to soar in the country, making it necessary to examine the flaws of Nigeria’s ACAs. Focusing on a number of key characteristics of ACAs, this article analyses the role of the ICPC and EFCC in combating corruption in Nigeria. The main question the article seeks to answer is why corruption should be on the increase despite the fact that two specialised ACAs have been in existence for close to two decades.

Keywords: corruption; anti-corruption agencies; Nigeria

## 1. Introduction

Ever since the wave of democratisation swept across Africa in the 1990s, governments have been taking efforts to combat pervasive corruption through a variety of mechanisms.<sup>1</sup> The most recent reforms have involved increased use of specialised agencies established with specific, though broad, mandates to engage with corruption. These anti-corruption agencies (ACAs) have several advantages over conventional law enforcement agencies, the chief of which is their expertise.<sup>2</sup> Law enforcement agencies, lacking such expertise, have been unable to bring massive corruption under control. Recanatini notes aptly that, ‘as corruption grows more

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<sup>1</sup> CM Fombad, ‘Corruption and the Crisis in Constitutionalism in Africa’ CM Fombad & N Styetler (eds) *Corruption and constitutionalism in Africa: Revisiting control measures and containment strategies* (2019, OUP) (Forthcoming).

<sup>2</sup> A Doig and R Williams, ‘Measuring “Success” in Five African Anti-Corruption Commissions: The Cases of Ghana, Malawi, Tanzania, Uganda and Zambia’ (U4 2005) <[www.u4.no/publications/measuring-success-in-five-african-anti-corruption-commissions/pdf](http://www.u4.no/publications/measuring-success-in-five-african-anti-corruption-commissions/pdf)> accessed 25 April 2019. See also Letitia Lawson, ‘The Politics of Anti-Corruption Reforms in Africa’ (2009) 47 *Journal of Modern African Studies* 73.

sophisticated in character and method, conventional law enforcement agencies become less able to detect and prosecute complex corruption cases and to carry out prevention activities'.<sup>3</sup>

This is especially true of Nigeria. With the country's return to democracy in the late 1990s, two ACAs were established, namely the Independent Corrupt Practices and Other Related Offences Commission (ICPC) and the Economic and Financial Crimes Commission (EFCC). Both commissions are established by legal frameworks and mandated to prevent, investigate, and prosecute corrupt practices, albeit that their mandates differ in scope. This being so, one would anticipate that significant milestones would be achieved in combating corruption, considering the impressive records of similar models in other jurisdictions.<sup>4</sup> However, almost two decades after these two agencies were formed, Nigeria continues to be afflicted by corruption of an enormous scale.<sup>5</sup>

It is therefore no surprise that Transparency International (TI) and other corruption-monitoring bodies have repeatedly rated Nigeria very poorly. In the 2018 Corruption Perception Index (CPI), for example, it ranks at the 144<sup>th</sup> position among the 180 countries surveyed, having dropped from 138<sup>th</sup> out of 180 countries surveyed in 2016.<sup>6</sup> The conclusion to be drawn is that the situation, bad enough to begin with, is indeed worsening – which means at the very least that the ACAs are yet to make a clear, strong impact on corruption. This is so in spite of the publicised determination of the current administration (and previous ones) to tackle corruption in Nigeria head-on and its recognition of the ACAs as the key drivers of this agenda.<sup>7</sup>

The question, then, is: Why is corruption in Nigeria increasing despite two ACAs having been in existence for so many years? Could it be that they are, as former President Olusegun Obasanjo once put it, 'toothless bulldogs'?<sup>8</sup> This is the thesis which is interrogated more closely in the article. Section 2 briefly considers the factors that make ACAs a distinctive policy tool in combating corruption, while section 3 considers the role of the ICPC and EFCC. Section 4 examines the key challenges and prospects of the ICPC and EFCC. Section 5 concludes with some reflections on how these bodies could be made more effective using lessons from successful archetypes.

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<sup>3</sup> See Francesca Recanatini, 'Anti-Corruption Authorities: An Effective Tool to Curb Corruption?' in Susan Rose-Ackerman and Tina Søreide (eds), *International Handbook on the Economics of Corruption* (Edward Elgar 2011) vol 2, 528.

<sup>4</sup> For example, Hong Kong, through its Independent Commission against Corruption (ICAC), and Singapore, through its Corrupt Practices Investigation Bureau (CPIB).

<sup>5</sup> As indicated by the Transparency International's Corruption Perceptions Index 2018.

<sup>6</sup> Transparency International, 'Corruption Perceptions Index 2018' (Transparency International, 21 February 2018) < <https://www.transparency.org/country/NGA> > accessed 25 April 2019.

<sup>7</sup> See 'Buhari Committed to Strengthening Anti-Corruption Agencies, Says Fashola' *This Day* (Lagos, 23 January 2018).

<sup>8</sup> Former President Olusegun Obasanjo, referring to the EFCC. See Daud Olatunji, 'EFCC is a Toothless Bulldog – Obasanjo' *Vanguard* (Lagos, 5 March 2016).

## **2. ACAs as policy tools for combating corruption**

The value of ACAs as a corruption-controlling-mechanism is widely acknowledged, and they are rightly described as ‘the most innovative feature of the anti-corruption movement of the last two decades’.<sup>9</sup> A number of characteristics make them stand out.<sup>10</sup> De Sousa identifies six in all: independence; engagement in inter-institutional cooperation and networking; specialised recruitment; wide competences and special powers; an emphasis on research and durability.<sup>11</sup>

Turning to the first of these, ACAs are usually designed in such a way as to ensure operational autonomy, and their legal frameworks seek also to shield them from political interference. This does not mean total independence, however, as they are still subject to checks and balances by other institutions such as the legislature and judiciary – a feature contained in nearly all of the relevant international instruments, such as the United Nations (UN) Convention Against Corruption (UNCAC)<sup>12</sup> and the African Union Convention on Preventing and Combating Corruption.<sup>13</sup>

A further structural characteristic is that ACAs operate within an international network. There are at least two dimensions to such inter-institutional cooperation. The first is that it entails that ACAs, as the coordinators of a nation’s anti-corruption strategy, have to operate in conjunction with other agencies; the second entailment is that ACAs enter into international cooperation networks, which facilitates transfer of information and the coordination of investigations and prosecutions. This is especially relevant for asset recovery, one of the key functions of ACAs.

Another attribute of ACAs is the specialist skill and knowledge of their operational personnel. Corruption takes complex forms, so there is a need for specialists who can work effectively to detect and prevent it. The wide jurisdiction bestowed upon ACAs by their legal frameworks is yet another factor that strengthens their potential effectiveness: they usually have competences over every form of corrupt practice, as widely defined, and are also given special powers.

One of the main reasons for establishing ACAs is to ensure that corruption can be addressed in an informed manner.<sup>14</sup> As such, they are typically designed to carry out in-depth research into various aspects of corruption in order to be able to bring it under control. A final factor that serves to make ACAs effective is durability. ACAs are meant not to be ad hoc bodies but permanent institutions embedded in a country’s long-term anti-corruption strategy.

## **3. The role of the ICPC and EFCC in Nigeria**

ACAs, as we see, have added-value compared to other anti-corruption institutions. This is particularly germane in a country like Nigeria, where the challenges are great. In this regard,

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<sup>9</sup> Luis de Sousa, ‘Anticorruption Agencies: Between Empowerment and Irrelevance’ (2010) 53 *Journal of Crime, Law and Social Change* 5.

<sup>10</sup> For an in-depth analysis of the nature and structure of ACAs, see Fombad(n 1).

<sup>11</sup> *ibid.*

<sup>12</sup> UNCAC, art 36.

<sup>13</sup> African Union Convention on Preventing and Combating Corruption, art 5(3).

<sup>14</sup> De Sousa (n 10) 16.

the ability of ACAs to address such challenges depends on the legal framework in which they operate.<sup>15</sup> Accordingly, after an overview of the historical background of the ICPC and EFCC, this section examines the legal framework of the two agencies.

### 3.1 The establishment of the ICPC and EFCC

Several rationales are given for the establishment of ACAs in general. The one most relevant in the case of Nigeria is that ACAs compensate for the weakness of conventional law enforcement and criminal justice institutions in curbing corruption.<sup>16</sup> Not only have Nigerian institutions failed abysmally in combating corruption, they themselves are so bedevilled with corruption that it seems futile to leave anti-corruption work in their hands.

In this respect, the Organization for Economic Cooperation and Development (OECD) notes that developing countries usually resort to separate, specialised ACAs due to the high level of corruption in other government agencies.<sup>17</sup> For example, the Nigeria Police Force has been named consistently as the most corrupt public agency in the country.<sup>18</sup> It is, in fact, one of the most corrupt police forces in the world.<sup>19</sup> In a recent survey by the International Police Science Association entitled the World Internal Security and Police Index (WISPI),<sup>20</sup> Nigeria was classified as the worst-performing country in the world and the one with the most corrupt police force, ranking 127<sup>th</sup> out of the 127 countries surveyed.<sup>21</sup> Successive attempts at reform of the Nigeria Police Force have not been successful.

The foregoing also reflects the position regarding public officials generally in Nigeria. In a recent survey, the Nigerian Corruption Survey 2017, conducted by the UN Office on Drugs and Crime (UNODC) in collaboration with the National Bureau of Statistics (NBS), it was estimated that every year the large sum of 400 billion Nigerian Naira is spent on bribes.<sup>22</sup> It

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<sup>15</sup> See Rotimi Suberu, 'Constitutional Design and Anti-Corruption Reform in Nigeria: Problems and Prospects' CM Fombad & N Styetler (eds) *Corruption and constitutionalism in Africa: Revisiting control measures and containment strategies* (2020, OUP) (Forthcoming).

<sup>16</sup> See generally Emilia Onyema *et al*, 'The Economic and Financial Crimes Commission and the politics of (in) effective implementation of Nigeria's anti-corruption policy' (2018) <<https://eprints.soas.ac.uk/31283/1/ACE-WorkingPaper007-EFCC-Nigeria.pdf>> accessed 22 September 2019.

<sup>17</sup> OECD, *Specialised Anti-Corruption Institutions: Review of Models* (OECD 2008) <[www.oecd.org/corruption/acn/39971975.pdf](http://www.oecd.org/corruption/acn/39971975.pdf)> accessed 25 April 2019.

<sup>18</sup> See Oluwatoyin O Oluwaniyi, 'Police and the Institution of Corruption in Nigeria' (2011) 21 *Policing and Society* 67.

<sup>19</sup> Yomi Kazeem, 'Nigeria, DR Congo, Kenya and Uganda Have the World's Worst Police Forces' (*Quartz Africa*, 11 November 2017) <<https://bit.ly/2SIExM5>> accessed 25 April 2019.

<sup>20</sup> The first of its kind, the WISPI is an international index measuring the ability of police institutions worldwide to render security services. See Mamdooh A Abdelmottlep, *World Internal Security and Police Index 2016* (International Police Science Association 2016) 35, 36 <[www.ipsa-police.org/images/uploaded/Pdf%20file/WISPI%20Report.pdf](http://www.ipsa-police.org/images/uploaded/Pdf%20file/WISPI%20Report.pdf)> accessed 25 April 2019.

<sup>21</sup> *ibid* 15 and 25. Countries ranking immediately higher than Nigeria are Pakistan, Uganda, Kenya and the Democratic Republic of the Congo.

<sup>22</sup> United Nations Office of Drugs and Crime and National Bureau of Statistics, 'Corruption in Nigeria Bribery: Public Experience and Response' (UNODC 2017) 5 <<https://drive.google.com/file/d/0B6jjulM0cLrOXFpMDh1Q111bm8/view>> accessed 25 April 2019.

was reported that public officials displayed little hesitation in asking for bribes.<sup>23</sup> More disturbing is the fact that the law enforcement agencies and the judiciary top the list of corrupt public officials.<sup>24</sup> After police officers, prosecutors are stated to be the highest bribe takers, closely followed by judges and magistrates.<sup>25</sup> The forgoing factors above necessitated the establishment of the two ACAs in Nigeria.

Nigeria's return to democracy in 1999 saw renewed vigour in combating corruption, especially that perpetrated in the military era,<sup>26</sup> with then President Olusegun Obasanjo promising to fight it head-on.<sup>27</sup> This period is described as 'the turning point in the history of Nigeria's anti-corruption campaigns', as it witnessed, inter alia, the establishment of ACAs.<sup>28</sup> Initially, the focus was on combating corruption in the public sector, especially that related to bribery.<sup>29</sup> The ICPC was created to this end, and pursuant to the Corrupt Practices and Other Related Offences Act 2000 (ICPC Act),<sup>30</sup> was established in September 2000.<sup>31</sup> According to the Act, the Commission consists of a chairperson and 12 members, appointed from different geopolitical zones to promote inclusivity in its anti-corruption mission.<sup>32</sup> To enable it to carry out its mandate effectively, the ICPC is made up of 12 departments. In 2001, the ICPC's work was put on hold when the constitutionality of the ICPC Act was challenged.<sup>33</sup> However, in September 2002, it resumed its full activities after the Supreme Court upheld the constitutionality of the Act.

With time, it was realised that whereas the ICPC Act focuses on corrupt practices generally, this was insufficient for tackling the growth of *sui generis* phenomena such as money-laundering and advanced fee fraud, forms of corruption for which Nigeria has gained international notoriety. This realisation came to the fore when the Financial Action Task Force on Money Laundering (FATF), in its 'name-and-shame process', identified Nigeria as a 'safe haven' for financial crimes and threatened to blacklist it if its recommendations on money-

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<sup>23</sup> *ibid* 6.

<sup>24</sup> *ibid* 7.

<sup>25</sup> *ibid*.

<sup>26</sup> Wale Adebani and Ebenezer Obadare, 'When Corruption Fights Back: Democracy and Elite Interest in Nigeria's Anti-Corruption War' (2011) 49 *Journal of Modern African Studies* 190.

<sup>27</sup> Nlerum S Okogbule, 'An Appraisal of the Legal and Institutional Framework for Combating Corruption in Nigeria' (2006) 13 *Journal of Financial Crime* 97. See also Osita Nnamani Ogbu, 'Combating Corruption in Nigeria: A Critical Appraisal of the Laws, Institutions, and Political Will' (2008) 14 *Annual Survey of International and Comparative Law* 99.

<sup>28</sup> EN Enwereonye and others, 'Governance, Corruption and Anti-Corruption Initiatives in Nigeria: An Assessment of the Performance of EFCC' (2017) 5 *International Journal of Advanced Studies in Business Strategies and Management* 37.

<sup>29</sup> EA Owolabi, 'Corruption and Financial Crimes in Nigeria: Genesis, Trends and Consequences' (Central Bank of Nigeria 2007) <<https://bit.ly/2FIH0bK>> accessed 26 April 2018.

<sup>30</sup> No. 5, Laws of the Federation of Nigeria 2004. See Paul D Ocheje, 'Law and Social Change: A Socio-Legal Analysis of Nigeria's Corrupt Practices and Other Related Offences Act, 2000' (2000) 45 *Journal of African Law* 173.

<sup>31</sup> ICPC, 'History of ICPC' (ICPC, undated) <<http://icpc.gov.ng/icpc-history/>> accessed 25 April 2019.

<sup>32</sup> ICPC Act, s 3(3).

<sup>33</sup> See *Attorney-General of Ondo State v Attorney-General of the Federation and 35 Others* [2002] 9 NWLR (Part 772) 222-474. See also ICPC, 'Legislative background' (ICPC, undated) <<http://icpc.gov.ng/legislative-background/>> accessed 25 April 2019.

laundering were not implemented.<sup>34</sup> The notice of the FATF in this regard was served on Nigeria in 2002. The country's enactment that same year of the Economic and Financial Crimes Commissions Act<sup>35</sup> was thus partly in response to the FATF's notice.

Adebanwi and Obadare contend that the inefficiencies of the ICPC were another motivation for the establishment of the EFCC, given the fact that '[o]ne year after the ICPC was created, Nigeria was included in the list of non-co-operating countries by the FATF'.<sup>36</sup> In April 2003, the EFCC was established in view of the ICPC's lack of success and in spite of the apparent reluctance of President Obasanjo (and, of course, that of the National Assembly).<sup>37</sup> Unlike the ICPC, which takes a 'judicial' approach to corruption, the EFCC adopts what is more of a 'law enforcement' approach, and as such has been more aggressive in its work. According to HRW, the EFCC is 'the most promising effort Nigeria's government has ever undertaken to fight corruption'.<sup>38</sup> Most of the EFCC's successes are accredited to its pioneering chairperson, Nuhu Ribadu, whom the UN described as a 'fearless crime buster'.<sup>39</sup> Thanks to Obasanjo's hesitancy when the Commission was formed, Ribadu had the onerous task of building it from scratch without any significant resources from the government.<sup>40</sup> The establishing statute of the EFCC was later repealed by the EFCC (Establishment) Act 2004 (EFCC Act), which to date remains in force.

## **3.2 The constitutional and legal framework**

### **3.2.1 The Nigerian Constitution**

Neither the ICPC nor the EFCC is explicitly constitutionally entrenched. They are not included among the independent executive bodies created by section 153 of the Nigerian Constitution. This is surprising, considering the fact that similar bodies such as the Code of Conduct Bureau and the Public Service Commission are indeed so entrenched. It is the case that both of the agencies were established only after the Constitution came into the force and that amending it to include them would certainly be cumbersome.

Be that as it may, the constitutional provisions usually cited to justify the existence and work of the ACAs is section 15(5), which makes it a 'duty and responsibility' of the government to 'abolish all corrupt practices and abuse of power'.<sup>41</sup> Although this provision is among the

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<sup>34</sup> Financial Action Task Force on Money Laundering (FATF), 'Review to Identify Non-Co-Operative Countries or Territories: Increasing the World-Wide Effectiveness of Anti-Money Laundering Measures' (FATF 2002) 2 <<https://bit.ly/2AGcyG8>> accessed 25 April 2018.

<sup>35</sup> The Act was amended in 2004.

<sup>36</sup> Adebanwi and Obadare (n 27) 192.

<sup>37</sup> Obiora C Okafor and Benson Olugbuo, 'The EFCC and Accountability of Foreign Corrupt Actors in Nigeria' (2011) 4 *Law and Development Review* 4.

<sup>38</sup> Human Rights Watch (HRW), *Corruption on Trial? The Record of Nigeria's Economic and Financial Crimes Commission* (HRW 2011) 1 <[www.hrw.org/sites/default/files/reports/nigeria0811WebPostR.pdf](http://www.hrw.org/sites/default/files/reports/nigeria0811WebPostR.pdf)> accessed 25 April 2018.

<sup>39</sup> United Nations Office on Drugs and Crime (UNODC), 'Nigeria's Corruption Busters' (UNODC, undated) <[www.unodc.org/unodc/en/frontpage/nigerias-corruption-busters.html](http://www.unodc.org/unodc/en/frontpage/nigerias-corruption-busters.html)> accessed 25 April 2019.

<sup>40</sup> Adebanwi and Obadare (n 27) 193.

<sup>41</sup> Suberu (n 16).

Fundamental Objectives and Directive Principles of State Policy, which are largely non-justiciable, Item 60, Part I of the Second Schedule of the Constitution, is relevant. The section provides that it is within the legislative competence of the federal government to establish and regulate authorities for the federation for the realisation of the fundamental objectives and directive principles of state policy. It is on the basis of these provisions that the EFCC and ICPC Acts were enacted by the federal legislature. Furthermore, in *Attorney-General of Ondo State v Attorney-General of the Federation and 35 Others*,<sup>42</sup> the Supreme Court upheld the competence of the National Assembly to enact the ICPC Act.<sup>43</sup>

### **3.2.2 The ICPC and EFCC Acts**

This section focuses on three aspects of the ICPC and EFCC Acts, namely their provisions on the composition, functions (and powers), and independence of the respective agencies.

#### ***3.2.2.1 Composition***

The ICPC and EFCC comprise a chairman and other members. In the case of the EFCC, the other members apart from the chairman are the heads (or representatives) of certain key public agencies in Nigeria such as the Corporate Affairs Commission and the Securities and Exchange Commission.<sup>44</sup> Other members include representatives of the ministries of foreign affairs, justice, and finance. It will be observed that the membership encompasses major stakeholders involved in critical aspects of the economy. Also evident is a bias towards representatives of sectors dealing directly with public finance and expenditure. While this is not unconnected with the EFCC's mandate of combating economic and financial crimes, two remarks can be made about the Commission's membership. First, the private sector seems to have been sidelined entirely. Apart from a broad requirement of four eminent Nigerians with experience in finance and banking, the private sector is nowhere represented. Secondly, there is no representation of the office of the accountant-general of the federation, who is no less than the administrative head of the treasury of Nigeria.

Turning to the ICPC Act, it has no strict requirements regarding membership. It provides that the Commission shall consist of a chairman and 12 other members.<sup>45</sup> The latter could be anyone who is a retired police officer, a legal practitioner, a retired judge, a retired public service, a woman, a youth, or a chartered accountant. The only qualification for appointment as a member is that the person must be of 'proven integrity'<sup>46</sup> – a subjective requirement it is hard to imagine being met without express guidance in the law.

#### ***3.2.2.2 Powers and functions***

Both the ICPC and EFCC Acts grant the agencies broad powers in fighting corruption, as is typical of legislation establishing specialised ACAs. Overall, the functions of each of these commissions are twofold: on the one hand, corruption prevention, and on the other, law

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<sup>42</sup> [2002] 9 NWLR (Part 772) [222]–[474].

<sup>43</sup> Based on a joint reading of ss 4, 15(5) and Item 67 of the exclusive legislative list of the Constitution.

<sup>44</sup> EFCC Act, s 2(1).

<sup>45</sup> ICPC Act, s 3(3).

<sup>46</sup> ICPC Act, s 3(6).

enforcement (through investigation and prosecution). In this regard, the elision that can be noted is that an increasingly vital part of the work of ACAs is asset recovery. Indeed, it is not enough in itself for an ACA to prevent and prosecute corrupt practices – a clear strategy should also be in place for the recovery of assets, that is to say, the proceeds of corruption.

The ICPC and EFCC Acts provide for a range of corruption prevention functions, which are tailored to operate proactively to prevent corrupt practices from occurring and to instil an ethos of integrity in the people. The preventive function includes public education and awareness,<sup>47</sup> developing and monitoring the anti-corruption strategies of public agencies, and serving other advisory roles.<sup>48</sup> Unlike the EFCC Act, the ICPC Act sets out more elaborate provisions on the Commission's corruption prevention roles. It provides, inter alia, that the ICPC is to supervise the practices that public bodies follow in their anti-corruption measures, to advise public bodies on ways to eliminate or control corruption, and to educate the public and foster public support.<sup>49</sup>

Arguably, it would seem that the ICPC has been created to serve rather more of a corruption prevention function than a law enforcement one.<sup>50</sup> This is also a reason why Arowolo contends that the ICPC can retain its continued relevance in the face of stiff competition from the EFCC only if it concentrates on its corruption prevention functions.<sup>51</sup>

With regard to the education and public awareness functions, both ACAs have a department – that of public affairs – that plays this role. The public affairs department of the EFCC is, for example, subdivided into four units: the enlightenment and reorientation unit; media and publicity unit; public interface unit; and media academy unit.<sup>52</sup> All these departmental units, except the media academy unit, are meant to use mass media, online as well as offline, to disseminate information and interact with the public on the dangers of corruption. Unlike the ICPC, the EFCC has been effective in using these channels to disseminate news about its work. For example, it has an official TV magazine programme, called *The Eagle*, which showcases the activities of the Commission.<sup>53</sup> It has used the news section of its website, along with its Facebook and Twitter presence, to carry out its work,<sup>54</sup> albeit that the content is not updated as regularly as it should be. Similarly, the ICPC also has a TV programme, *Corruption News*, by which to conduct awareness-raising.<sup>55</sup>

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<sup>47</sup> EFCC Act, s 6(e) and (f).

<sup>48</sup> *ibid* s 6(c) and (d).

<sup>49</sup> *ibid* s 6(e) and 6(p).

<sup>50</sup> Of the six duties of the Commission provided for in section 6 of the Act, five (that is, those in 6(b)-(f)) are arguably corruption-preventive duties.

<sup>51</sup> See Oluseye Foluso Arowolo, 'In the Shadows of the EFCC: Is the ICPC Still Relevant?' (2006) 9(2) *Journal of Money Laundering Control* 209.

<sup>52</sup> EFCC, 'Four Units and the Public Affairs Directorate' (EFCC, undated) <[www.efccnigeria.org/efcc/about-efcc/media-public-affairs](http://www.efccnigeria.org/efcc/about-efcc/media-public-affairs)> accessed 26 April 2018.

<sup>53</sup> The programme can be viewed on YouTube at <<https://bit.ly/2THtuDf>>.

<sup>54</sup> See Economic and Financial Crimes Commission's Facebook page <[https://web.facebook.com/officialefcc/?\\_rdc=1&\\_rdr](https://web.facebook.com/officialefcc/?_rdc=1&_rdr)> and <<https://twitter.com/OfficialEFCC>>.

<sup>55</sup> See ICPC, 'Corruption news around the world' <[http://icpc.gov.ng/category/corruption\\_news/page/12/](http://icpc.gov.ng/category/corruption_news/page/12/)>.



Other important manifestations of the corruption-prevention and integrity-promoting function of the two agencies are their monitoring units.<sup>56</sup> These have been established in Ministries, Departments, and Agencies (MDAs) to serve as linkages between the latter and the ACAs and facilitate coordinated effort in preventing and monitoring corruption. However, the constant conflict between the two agencies makes a mockery of this intention.<sup>57</sup> The ICPC and EFCC seek each to have separate units within the MDAs, which leads to needless duplication and lack of coordination in their work.

As for law enforcement functions, these usually entail both the investigation and prosecution of corrupt practices.<sup>58</sup> The ICPC Act stipulates that it is a duty of the Commission to receive and investigate reports of corrupt practices upon reasonable suspicion, as well as to prosecute offenders in appropriate cases.<sup>59</sup> To facilitate investigation, both agencies are granted powers similar to those of police officers, including powers of summons, search, seizure, and arrest.<sup>60</sup> In this regard, their Acts provide that the respective commissions ‘shall have all the powers and immunities of a police officer under the Police Act and any other laws’.<sup>61</sup>

Despite being endowed with these powers, the ACAs face a number of challenges in meeting their anti-corruption obligations in a sustained fashion. First, like their counterparts in other parts of Africa, they do not appear to have sufficient powers to conduct their own motion investigations.<sup>62</sup> The EFCC Act provides that it is the duty of the Commission to examine and investigate ‘all reported cases’ of economic and financial crimes, which means that only cases which are reported can be investigated.<sup>63</sup> Secondly, the agencies sometimes investigate trivial or unnecessary matters, such as debt recovery arising from simple contract. The Supreme Court had to state expressly in *Diamond Bank Plc v H.R.H Eze (Dr) Peter Opara & Ors*<sup>64</sup> that while the EFCC has a duty under section 6(b) of the EFCC Act to receive and investigate complaints of financial crimes, this does not extend to ‘investigation and/or resolution of disputes arising or resulting from simple contracts or civil transactions’.

The asset-recovery function of both the ICPC and EFCC is also critical. The EFCC Act is more explicit about it than the ICPC Act, stipulating that the Commission is to adopt measures ‘to identify, trace, freeze, confiscate or seize proceeds’ gotten from activities related to economic

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<sup>56</sup> ICPC Anti-Corruption and Transparency Monitoring Units and the EFCC Anti-Corruption and Transparency Committees.

<sup>57</sup> For example, conflicts over the establishment and running of anti-corruption units in government parastatals in Nigeria.

<sup>58</sup> See ICPC, ‘Welcome to Anti-Corruption and Transparency Unit (ACTU)’ (ICPC, undated) <<https://icpc.gov.ng/actu/>> accessed 26 April 2019.

<sup>59</sup> ICPC Act, s 6(a), and EFCC Act, s 6(b).

<sup>60</sup> ICPC Act, ss 27–42. See also EFCC Act, s 8(5), which states explicitly that they shall even have the powers to bear arms as police officers do.

<sup>61</sup> ICPC Act, s 5(1).

<sup>62</sup> This has been identified as a major design flaw in most of Africa’s ACAs. See CM Fombad and Madeleine Fombad, ‘Rethinking Anti-Corruption Strategies in Africa: Constitutional Entrenchment as Basis for Credible and Effective Anti-Corruption Clean-Ups’ in C Jalloh and O Elias (eds), *Shielding Humanity: Essays in International Law in Honour of Judge Abdul G Koroma* (Brill Nijhoff 2015).

<sup>63</sup> See ss 6(b) and (h).

<sup>64</sup> (2018) LPELR-43907(SC).

and financial crimes.<sup>65</sup> Section 22 of the Act makes provision as well for the recovery of assets located outside Nigeria: in this case the EFCC has to act through the Attorney-General of the Federation (AGF) to recover them.<sup>66</sup> The EFCC has, without doubt, recorded some notable achievements on this score, with its Chairman reporting that nearly 739 billion naira (USD 2.9 billion dollars) in stolen assets were recovered between May and October 2017.<sup>67</sup>

### **3.2.2.3 Independence and autonomy**

The ICPC and EFCC Acts contain provisions aiming to secure the agencies' independence from political interference. Independence for ACAs includes operational, political, and financial independence. The ICPC and EFCC Acts establish both agencies as separate legal entities with perpetual succession.<sup>68</sup> As is typical of ACAs, they are designed to have their own separate legal existence so as to distance them from the government. This serves the durability requirement, which is a basic characteristic of ACAs.

Many of the provisions on independence concern the status of the head of each agency – the Chairman. The ICPC Act is unequivocal in providing that only a person of 'proven integrity' can be appointed to chair the commission.<sup>69</sup> The high degree of integrity required may also be a reason why the Act states furthermore that the qualification to be appointed the Chairman of the ICPC is that the person must have held, or is qualified to hold, office as a judge of a superior court in Nigeria.<sup>70</sup> It is also provided in the ICPC Act that the Chairman and members shall not be subject to the control of any other person or authority,<sup>71</sup> especially in the discharge of their functions under the Act.<sup>72</sup>

The appointment of the heads of the agencies has been particularly controversial of late. This is especially true of the EFCC. Whereas the EFCC Act provides that the Chairman and other members of the Commission shall be appointed by the President subject to the confirmation of the Senate, the latter refused to confirm the appointment of the President's nominee, Ibrahim Magu.<sup>73</sup> Magu has remained in office and been performing his duties for more than three years despite the absence of legislative approval. Various explanations are given for the National Assembly's refusal to provide confirmation. Some contend it is due to fear of the Chairman, who is said to have commenced investigations against many of the legislators, while others argue it is because the Chairman on occasion has fraternised with corrupt politicians.

In turn, the Presidency insists on Magu's continuation in office on the ground that, in terms of section 171 of the Constitution, the EFCC Chairman needs no confirmation from the National

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<sup>65</sup> EFCC Act, s 6(d).

<sup>66</sup> *ibid* s 22(2).

<sup>67</sup> Bassey Udo, 'Recovered Loot: Why I Wrote Magu – Adeosun' *Premium Times* (Abuja, 25 March 2019).

<sup>68</sup> ICPC Act, s 3, and EFCC Act, s 1.

<sup>69</sup> ICPC Act, s 3(6).

<sup>70</sup> *ibid* s 3(4).

<sup>71</sup> *ibid* s 3(10).

<sup>72</sup> *ibid* s 3(14).

<sup>73</sup> See EFCC Act, s 2(3).

Assembly to remain in office<sup>74</sup> – a situation Suberu describes as an example of ‘presidential near-absolutism’.<sup>75</sup> The requirement of confirmation by the National Assembly is meant to preserve the Commission’s independence by serving as a check against the executive’s being the sole appointing authority. Be that as it may, it is submitted that it would be difficult for the Chairman to resist the direct control of the President when knowing full well that he remains in office at the latter’s pleasure and discretion. Again, this illustrates the extent to which independence can be compromised.

While the EFCC Act provides that the appointment of the Chairman must be subject to the approval of the Senate, it does not make a similar provision for his removal. According to the Act, a member of the Commission (including the chairman) ‘may at any time be removed by the President’ for three reasons:<sup>76</sup> inability to discharge his or her duties; misconduct; and ‘if the President is satisfied that it is not in the interest of the Commission or the interest of the public that the member should continue in office’.<sup>77</sup> While the circumstances that constitute the first reason are stated explicitly by the Act,<sup>78</sup> the second and third reasons have been left entirely to the discretion of the President.

It was on the basis of this unbridled discretion that Nuhu Ribadu, the former EFCC Chairman, was so easily removed from office.<sup>79</sup> Credible sources alleged, however, that the Presidency was uncomfortable with Ribadu’s investigation of certain powerful politicians, among them the former Governor of Delta State, James Ibori.<sup>80</sup> In sharp contrast to the EFCC Act, the ICPC Act provides that the Chairman (or any member) of the Commission may be removed by the President ‘acting on an address supported by [a] two-thirds (2/3) majority of the Senate’ praying that he be removed.<sup>81</sup>

### **3.3 The relationship between the EFCC and ICPC: Unnecessary duplication?**

The nature of the relationship between the ICPC and EFCC is uncertain, which has given rise to debate about the retention of the two ACAs. Some argue that retaining both institutions is an unnecessary duplication<sup>82</sup> and waste of resources; as such, they should be merged.<sup>83</sup> In this vein, most media reports suggest that only the EFCC is active, leading people to question the continued relevance of the ICPC.<sup>84</sup> It is therefore important to gain an understanding of the actual interrelationship between these two bodies. Two issues are critical in doing so: first, the

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<sup>74</sup> See Saratu Abiola, ‘Magu Doesn’t Need Senate’s Nod as EFCC Chair, Says Osinbajo’ *The Guardian* (Lagos, 13 April 2017).

<sup>75</sup> Suberu (n 16).

<sup>76</sup> EFCC Act, s 3(2)

<sup>77</sup> *ibid.*

<sup>78</sup> Inability to discharge his or her functions for reasons arising from infirmity of mind or body or any other cause

<sup>79</sup> Suberu (n 16).

<sup>80</sup> Adebawo and Obadare (n 27)

<sup>81</sup> ICPC Act, s 3(8)

<sup>82</sup> Nnamdi Ikpeze, ‘Fusion of Anti-Corruption Agencies in Nigeria: A Critical Appraisal’ (2013) 1 *Journal of Sustainable Development Law and Policy* 148.

<sup>83</sup> *ibid.*

<sup>84</sup> See Arowolo (n 52) 203–13.

relationship between corruption and economic or financial crime; and, secondly, what the agencies' establishing statutes provide.

With regard to the first, while the ICPC is established to fight corrupt practices generally, the EFCC is created with a focus on economic and financial crimes.<sup>85</sup> Although economic crimes may be said to be part of corruption, some argue that corruption is an economic crime.<sup>86</sup> It is important to note that there are instances of corrupt practices that may not be considered economic crimes *stricto sensu*, and vice versa. Likewise, there are instances of a clear overlap between the two. Indeed, the definition of economic crime by the EFCC Act and of corruption by the ICPC Act illustrates this overlap. For example, bribery and fraud are considered offences under both Acts.<sup>87</sup> A watertight distinction, thus, cannot be maintained between the institutions, given the conceptualisation of the terms. However, one may be able to identify certain differences in the work of the agencies on the basis of the definition of the concepts. On this premise, it may be said that the ICPC focuses on the public sector only,<sup>88</sup> which is not surprising considering the common definition of corruption as the abuse of public office for private gain;<sup>89</sup> on the other hand, the EFCC covers financial crime in both the private and public sectors.<sup>90</sup>

With regard to the second issue, the Acts do not make any specific provision on the relationship between both bodies. The EFCC Act, however, provides that the Commission is to coordinate 'all existing economic and financial crimes investigating units in Nigeria'.<sup>91</sup> This means that the EFCC is the first port of call regarding any corrupt practice that also amounts to a financial crime. Although both agencies can prosecute corrupt practices, they cannot prosecute the same matter contemporaneously.

In spite of the debates, one thing which is certain is that in most cases grand corruption in Nigeria has to do with money-laundering, a key category of economic crime. This is due to the large sums of money involved and the need to conceal the source of the funds. Therefore, based on its structural design, the ICPC cannot deal effectively with economic crimes specifically. It is from this premise that one can appreciate the logic behind the establishment of the EFCC. With regard to financial crime, which is the means to grand corruption, the EFCC plays a prominent role. There is hence no overlap when considered in this light. Besides, given the scale of corruption in Nigeria, no measure is too excessive. As such, having both ACAs operate within different albeit sometimes overlapping jurisdictions arguably may not be superfluous.

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<sup>85</sup> See generally section 6 of the ICPC Act and section 6 of the EFCC Act. 'Economic crime' and 'financial crime' seem to be one and the same thing.

<sup>86</sup> See eg David E Agbibo, 'Corruption and Economic Crime in Nigeria' (2013) 22 *African Security Review* 48.

<sup>87</sup> Other examples of this overlap are fraudulent acquisition of property and the receipt of stolen property, both of which are offences under sections 12 and 13 of the ICPC Act and 18(1)(a), (b) and (c) of the EFCC Act.

<sup>88</sup> Although not expressly stated in the Act, it will be seen that in its provisions on offences (ss 8–26), the Act uses only the terms 'public servant', 'official corruption', 'public officer', 'public revenue' and 'public body', thereby indicating that the focus is on the public sector.

<sup>89</sup> Victor Dike, 'Corruption in Nigeria: A New Paradigm for Effective Control' (*Nigeria Village Square*, 17 November 17 2003) <<https://bit.ly/2RBTu5r>> accessed 25 April 2019.

<sup>90</sup> For example, section 6(h) of the Act provides that the EFCC's function is to examine and investigate 'all reported cases of economic and financial crimes with a view to identifying individuals, corporate bodies or groups involved'.

<sup>91</sup> EFCC Act, s 6(n)

What is essential is that their activities should be well coordinated to avoid unnecessary duplication. In practice, this is far from the case, giving rise to frequent power tussles between the two agencies.<sup>92</sup>

#### 4. The ICPC and EFCC: Toothless bulldogs?

Several factors are identified in the literature as influencing the effectiveness of the ICPC and EFCC.<sup>93</sup> This article focuses on the challenges the agencies have faced since the start of the current administration of President Muhammadu Buhari in 2015. The focus on this period is for two reasons. First, the administration has used its strong anti-corruption stance consistently and effectively to garner popular support in elections.<sup>94</sup> Secondly, and closely related to this, is the fact that the administration always blames the country's corruption woes on the previous administration.<sup>95</sup> It will be interesting, then, to see whether anything has changed with respect to the ACAs since the new incumbents took office, considering how important the ACAs are to the country's overall anti-corruption strategy.

It is worthwhile pointing out one overriding fact, namely that the ACAs are overwhelmed by the sheer enormity of Nigeria's grand corruption, which even top government officials have acknowledged.<sup>96</sup> Adebawo and Obadare were correct when they observed that

[t]he Nigerian case is not merely about the theft of state resources at an alarming level, it is about full-scale banditry. It is entrenched in every sector, private and public, and corruption feeds on the logic that subtends and links one sector to the other in an unending spiral of corruption.<sup>97</sup>

### 4.1 Challenges

#### 4.1.1 Weak legal framework

As noted, the two ACAs are not constitutionally entrenched. This is a design flaw, for according to Fombad and Fombad, ACAs 'will be more effective when they are specifically spelt out in the Constitution and protected from being captured and manipulated by politicians'.<sup>98</sup> In this regard, the lack of constitutional entrenchment means that the legislature can simply pass a law or amend existing laws to whittle down the ACAs' powers. This is what

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<sup>92</sup> See 'Relationship between EFCC and ICPC (Independent Corrupt Practices And Other Related Offences Commission)' (*Martins Library*, undated) <<https://martinslibrary.blogspot.com/2013/11/relationship-between-efcc-and-icpc.html>> accessed 25 April 2019.

<sup>93</sup> See Somadina Ibe-Ojiludu, 'The Failure of Nigeria's Economic and Financial Crimes Commission (Establishment etc) Act 2004 as a Development Act' (2017) 11 *Law and Development Review* 14.

<sup>94</sup> Godwin Onyeachole, 'AGF Malami, EFCC, ICPC and the Fight Against Corruption' (*Sahara Reporters*, 8 August 2017).

<sup>95</sup> The Vice-President recently said at an investors' forum, 'We can't talk of the Nigerian economy without talking about the blight that was caused years ago by people simply stealing the resources of this country.' See Sonala Olumhense, 'Microphone Champions' (*Punch*, 25 March 2018).

<sup>96</sup> The Vice President of Nigeria is always very quick to acknowledge this fact. See Augustine Ehikioya, 'Corruption Versus Economy' (*The Nation*, 27 March 2018).

<sup>97</sup> Adebawo and Obadare (n 27) 207.

<sup>98</sup> Fombad and Fombad (n 63) 765.

happened recently when the legislature enacted the Nigerian Financial Intelligence Unit (NFIU) Act which in effect will dilute the powers of the EFCC.<sup>99</sup>

Other design flaws also impact the output of the ICPC and EFCC. One such flaw is their unrealistic structure. In this regard, it seems the Nigerian government merely reproduced the legal framework of the ACAs from other jurisdictions without taking the local context into account.<sup>100</sup> Notably, the creators of the ACAs did not take cognisance of the size of the country in relation to its anti-corruption campaign. Compared to a country such as Botswana, which is widely regarded as having a successful ACA, Nigeria is large not only in geographical size but in population. This has implications for the work of the ACAs: given that their activities tend to be concentrated in large cities, it is a daunting challenge for the agencies to reach all of the country effectively.

In recognition of this challenge, the ICPC Act provides that the Commission ‘shall’ establish branch offices in each State of the Federation to carry out its functions.<sup>101</sup> This provision is yet to be implemented, seeing as only 13 offices (out of 36 states) have been established in the nearly 20 years since the Act came into force.<sup>102</sup> The EFCC Act does not have a similar provision, which is why it is not surprising to find that offices have been established in only ten states in the country outside the head office in the Federal Capital Territory.<sup>103</sup> A weakness of the EFCC Act is that, unlike the ICPC Act, it fails to insist on the need to establish branch offices in all the states in the country.

#### **4.1.2 Insufficient autonomy**

Both the EFCC and ICPC Acts contain measures to secure their independence. However, there are certain loopholes which could be exploited by politicians to undermine their effectiveness. For example, the ICPC Act provides that the Commission shall not, in the performance of its functions, be under ‘the direction and control of any other person or authority’.<sup>104</sup> The government itself claims that it is not interested in teleguiding any of the ACAs. The Vice-President made it clear that all the ACAs are given the independence and discretion to act, saying that ‘[y]ou don’t get any situation where the President says go get that person or back off that person’.<sup>105</sup>

Nevertheless, it is submitted that the two agencies rarely investigate top politicians without the support and approval of the presidency. According to Suberu, both agencies, in violation of the

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<sup>99</sup> Section 1(2)(c) of the EFCC Act provides that the EFCC is designated as the Financial Intelligence Unit (FIU) in Nigeria.

<sup>100</sup> See Ibe-Ojiludu (n 94) 2.

<sup>101</sup> ICPC Act, s 7(2).

<sup>102</sup> The already established offices include the headquarters in FCT, Adamawa, Akwa Ibom, Bauchi, Benue, Edo, Enugu, Imo, Kaduna, Kano, Kogi, Lagos, Osun, Oyo, Rivers and Sokoto states only. See ICPC, ‘Our Office Locations’ (ICPC, undated) <<http://icpc.gov.ng/office-locations/>> accessed 26 April 2019.

<sup>103</sup> ICPC, ‘Contact Us’ (ICPC, undated) <<https://efccnigeria.org/efcc/contact-us-2>> accessed 26 April 2019.

<sup>104</sup> ICPC Act, s 3(14).

<sup>105</sup> ‘FG Sets up National Panel for Prosecution of High-Profile Corruption Cases’ (*Channels TV*, 28 May 2016) <<https://bit.ly/2CYWX61>> accessed 26 April 2019.

law, need to obtain ‘presidential clearance’ to investigate and prosecute such persons.<sup>106</sup> Only recently, the Vice-President said that former President Jonathan corruptly gave NGN 150 billion in bribes to various persons before the 2015 polls to get re-elected.<sup>107</sup> In spite of this and other damning revelations, there is no evidence that any investigation has been opened against former President Jonathan by either the ICPC or EFCC. This shows how the absence of political will impacts on the autonomy of the agencies.

Other evidence indicating that the ACAs are under the control of the presidency is that senior politicians of the ruling All Progress Congress (APC) are rarely proceeded against for corruption. Where any such action is taken by any of the ACAs, it is done only reluctantly. For example, the former Secretary to the Government of the Federation (SGF), Babachir Lawal, and a card-carrying member of the APC, was indicted by the Senate for awarding humanitarian contracts to companies in which he had an interest, contrary to the relevant laws.<sup>108</sup> The President refused to act on the report of the senate committee, as have the ICPC and EFCC. After a public outcry, he suspended Lawal and appointed a committee, headed by the Vice-President, to investigate the allegations.<sup>109</sup>

In this case, in spite of the explicit recommendation by the senate ad hoc committee for ‘further investigation by relevant Agencies of Government’, there was no report of any investigation by either of the ACAs,<sup>110</sup> which shows some indirect influence by the presidency on their work. Another example of the ACAs’ reluctance to investigate reports of corruption by ruling-party members is the case of the current Minister of Communications and Minister of Transport.<sup>111</sup> To date, neither the ICPC nor EFCC has conducted an investigation.

The ICPC Act also weakens the independence of the Commission by making its prosecutions subject to the control and direction of the Attorney-General of the Federation.<sup>112</sup> The power of *nolle prosequi* of the Attorney-General further compromises this supposed independence.<sup>113</sup> In most cases, the Attorney-General is a senior politician from the ruling party. For instance, the current Attorney-General of the Federation has been accused of using the office to protect powerful people from investigation for corruption.<sup>114</sup> In another example, a former Attorney-General, Michael Aondoakaa, repeatedly interfered with the prosecutorial duties of the EFCC

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<sup>106</sup> Suberu (n 13).

<sup>107</sup> Fikayo Olowolagba, ‘Jonathan Shared N150 Bn Two Weeks to 2015 Election’ *Daily Post* (Lagos, 19 March 2018).

<sup>108</sup> Contrary to Part 1 of the Fifth Schedule of the 1999 Constitution and the Public Procurement Act 2007. He was also held to be in breach of the Oaths of Office as Secretary to the Government of the Federation.

<sup>109</sup> See Jude Egbas, ‘Why Has President Gone Quiet on Suspended Babachir Lawal?’ (*Pulse*, 10 October 2017) <<https://bit.ly/2H0ds5K>> accessed 26 April 2019.

<sup>110</sup> Goodness Adaoyiche, ‘12 Recommendations by Senate that Nailed SGF’ (*Pulse*, 5 March 2017) <<https://bit.ly/2QAjedN>> accessed 26 April 2019.

<sup>111</sup> Freda Okhiria, ‘Buhari Allegedly Orders Amaechi, Fashola, Abba Kyari to Resign over Corruption Allegations’ *Daily Post* (Lagos, 9 May 2017).

<sup>112</sup> ICPC Act, s 26(2).

<sup>113</sup> Nigerian Constitution, s 174.

<sup>114</sup> Onyeacholem (n 95).

for political reasons,<sup>115</sup> seeking to have the cases against some corrupt former governors dropped.

Anti-corruption efforts that depend on the office of the Attorney-General are thus unlikely to be successful. This is perhaps one of the reasons for calls for the office to be depoliticised by separating it from the Minister of Justice.<sup>116</sup> While the former must be occupied by a technocrat, the latter may be occupied by a politician or political appointee.

#### 4.1.3 Absence of genuine political support

The absence of genuine political will to combat corruption is a major challenge to anti-corruption reform in Nigeria. This certainly has implications for the work of the ACAs. In fact, one of the salient reasons that the EFCC received support from the government at its inception was the latter's need to enhance its legitimacy and credibility in the local and international community.<sup>117</sup> This is far from a genuine motive for anti-corruption reform. Heilbrunn notes in this respect that

[a]s Nigerian President Obasanjo's experience demonstrates, few political leaders are able to bind themselves effectively to anti-corruption reforms over an extended period of time. Before too long, strong entrenched interests militate against the commission, rendering it impotent or a tool to repress political opponents. In other circumstances, commissions represent little more than a perverse effort to signal commitment to international investors and donors while avoiding tough reforms that might improve transparency and accountability in the state.<sup>118</sup>

Scholars are unanimous in extolling the importance of political support for any anti-corruption reform,<sup>119</sup> noting, for instance, that 'without clear commitment and support from the top leadership, anti-corruption efforts are [likely to be] short-lived and often doomed to fail'.<sup>120</sup> However, this is not to underestimate the potential role of other levels of public office-holders. Commentators suggest that leaders must possess the highest level of credibility and integrity, given that '[o]nce the leadership itself is tainted with corruption, they will lack the will, moral authority and credibility to lead any effective fight to control corruption'.<sup>121</sup> The political support needed for an effective ACA should come from the middle as well as the top – in short, from all levels of political office.

From this perspective, while President Muhammadu Buhari and Vice-President Yemi Osinbajo themselves may well pass an integrity test with flying colours, having declared their assets and

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<sup>115</sup> Ogbu (n 28) 142. See also HRW (n 39) 29.

<sup>116</sup> Henry Umoru and Joseph Erunke, 'Ekweremadu, Falana Advocate Separation of AGF's Office from Minister of Justice's in Public Interest' *Vanguard* (Lagos, 24 July 2016).

<sup>117</sup> Adebawo and Obadare (n 27) 196.

<sup>118</sup> John R Heilbrunn, *Anti-Corruption Commissions: Panacea or Real Medicine to Fight Corruption* (World Bank Institute 2004) 2.

<sup>119</sup> See Fombad and Fombad (n 63) 747.

<sup>120</sup> Recanatini (n 4) 530.

<sup>121</sup> Fombad and Fombad (n 63) 747.



being free so far of any credible allegations of corruption, the same can hardly be said of most other senior office-holders. For example, until the Supreme Court recently dismissed the matter, the former Nigerian Senate president has been in and out of the Code of Conduct Tribunal (CCT) for falsely declaring his assets and other graft-related offences.<sup>122</sup> This is also the case with numerous other public officers, legislators in particular. It therefore is not surprising that the Nigerian Senate has still refused to confirm the appointment of Chairperson of the EFCC, who is seen as having an uncompromising attitude towards corruption.

#### **4.1.4 Ineffective inter-agency coordination and cooperation strategy**

Effective coordination – both between the two ACAs as well as between them and other government departments and agencies – is currently lacking, and this poses a challenge to their effectiveness. In terms of inter-agency cooperation, one institution of paramount importance to the effective functioning of the ACAs is the Ministry of Justice. However, relations between them are far from harmonious – indeed, it is very much a cat-and-mouse affair. The President recently waded into one of the numerous conflicts between the EFCC and Attorney-General, in this instance regarding the prosecution of a suspect involved in the Malabu scandal.<sup>123</sup> The Attorney-General had advised the President earlier that the suspects should not be prosecuted. However, the Acting EFCC Chairman disagreed in a strongly-worded counter-memorandum to the President. The President overruled the Attorney-General and ordered the EFCC to proceed with the prosecution of all those involved in the scandal, including former top government functionaries.<sup>124</sup> Friction between the ACA and a key agency like the Ministry of Justice is unhealthy but unfortunately it occurs all too often.

Apart from the lack of effective coordination and cooperation among the ACAs and other government departments, there is also the wider issue of ineffective coordination of anti-corruption work in Nigeria. The result is a duplication of functions not only between the EFCC and ICPC but so too among other institutions with a direct or indirect role in the anti-corruption campaign. For example, the federal government recently established a National Prosecuting Co-ordinating Committee (NPCC) headed by the Attorney-General of the Federation to complement the ACAs' prosecutorial functions.<sup>125</sup> The Committee's purpose, according to the Attorney-General, 'is to ensure effective investigation and prosecution of high-profile criminal cases in Nigeria'.<sup>126</sup>

This action by the federal government appears to suggest that the ACAs are not competent to handle high-profile corruption cases, though it is difficult to imagine how a 'mere' committee would step into the breach to rectify matters. The action may also be seen as a move by the

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<sup>122</sup> Evelyn Okakwu, 'Saraki Storms Code of Conduct Tribunal with 90 Lawyers' *Premium Times* (Abuja, 6 April 2016).

<sup>123</sup> The Malabu Scandal involved a former Nigerian oil minister, Dan Etete, who when in office corruptly awarded himself an oil block through a company, Malabu Oil, in which he had a stake.

<sup>124</sup> 'President Buhari Disagrees with Attorney-General Malami, Orders EFCC to Ensure Prosecution of Diezani, Adoke, Others Involved in Malabu Scam' *Sahara Reporters* <<https://bit.ly/2si11YN>> accessed 26 April 2019.

<sup>125</sup> *Channels TV* (n 106).

<sup>126</sup> *ibid.*

Attorney-General (and Federal Government) to strip the ACAs gradually of their prosecutorial powers,<sup>127</sup> a claim the Committee denies.<sup>128</sup> As a matter of fact, this vindicates the contention of the president of the Nigerian Bar Association (NBA) who, while calling for the removal of the prosecuting powers of the ACAs, opined that ‘an independent, highly resourced prosecution agency’ should be created.<sup>129</sup> Yet, it would seem that this amounts to a duplication of functions and a waste of resources. Even the Attorney-General realised as much, being quick to declare that the NPCC ‘was not a duplication of the existing anti-corruption agencies but would collaborate with such agencies for effective service delivery’.<sup>130</sup>

How such collaboration would take place remains to be seen, given that there seems to be no clear strategy to streamline the work of the Committee *vis-à-vis* the prosecutorial role of the ACAs. This will undoubtedly lead to confusion about responsibilities and be a source of frequent conflict between the ACAs and the Committee, a situation likely to have an adverse effect on the work of the ACAs. Moreover, as noted, the relationship between the Attorney-General of the Federation and the ACAs (especially the EFCC) is not a particularly cordial one.

#### 4.1.5 Inadequate resources

Fighting corruption with seriousness is a resource-intensive venture, but the two agencies lack resources commensurate with the task of addressing the enormous scale of corruption in Nigeria. According to Ibe-Ojiludu, ‘lack of funding for proper investigation and prosecution has been declared as partly responsible for the ineffectiveness of the implementing agencies established by most anti-corruption acts in Nigeria’.<sup>131</sup> Indeed, the Acting Chairman of the EFCC complained in the agency’s 2017 budget proposal presentation of insufficient funding and urged the National Assembly to increase its budgetary allocation.<sup>132</sup> Some have argued, though, that starving the ACAs of funds is a means for politicians to weaken their work.<sup>133</sup> A further repercussion of their lack of adequate funding is that the ACAs rely extensively on funds from donors, which may taint the anti-corruption campaign.

Having adequate financial resources entails not only that the agencies cover their operational overhead costs but, more specifically, that their personnel are appropriately remunerated. This is crucial for at least two reasons, the first of which is that it makes them more committed to the job. The second is that it serves as a deterrent to corruption by preventing employees from falling into temptation. This is critical for the effective operation of the ACAs.

Human resources are equally critical for the ICPC and the EFCC, especially in regard to the two key aspects of the work of a typical ACA. First, there is a need to recruit and provide ongoing training to technical staff specialising in investigating graft and financial crimes – this is complex work, especially when it comes to money-laundering and advanced fee fraud.

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<sup>127</sup> Ramon Oladimeji, ‘NBA vs EFCC: A Dog and Cat Affair’ *Punch* (1 September 2016).

<sup>128</sup> Sunday Oguntola, ‘EFCC Battles NBA over Prosecutorial Power’ *The Nation*, 4 September 2016).

<sup>129</sup> Eric Ikhilae, ‘Dust over EFCC’s Power to Prosecute’ *The Nation*, 6 September 2016).

<sup>130</sup> *Channels TV* (n 106).

<sup>131</sup> Ibe-Ojiludu (n 94) 14.

<sup>132</sup> Wale Odunsi, ‘Magu Gives Breakdown of Loot EFCC Recovered in 2017’ *Daily Post* (Lagos, 8 February 2018).

<sup>133</sup> Ibe-Ojiludu (n 94) 16.

Secondly, experienced litigators are required for prosecuting corruption cases. One of the reasons that both commissions have a low rate of success in the prosecution of graft is their lack of such personnel; they rely instead on in-house lawyers who in most cases do not have the experience to match defence counsels who will employ all and any means to frustrate the proceedings. Moreover, those who embezzle large amounts of money are usually able to hire the best lawyers to help keep them out of prison.

## 4.2 Prospects

As scandal after scandal unfolds, seemingly daily, questions arise about the chances of success of any anti-corruption reform. Do the ACAs have any prospect of curbing Nigeria's pervasive corruption? The future outlook is not entirely bleak, though, seeing as the ACAs have made some modest gains. For example, it was reported that the EFCC obtained a total of 603 convictions in the last three years,<sup>134</sup> in addition to recovering more than NGN 500 billion in the same period.<sup>135</sup> This suggests there is still a possibility that the ACAs can become key drivers in the national anti-corruption strategy.

The issue, then, is how they could be more effective and what it would take for them to achieve greater success in controlling corruption. The answers are not hard to find – stronger political will and public support. The political will and commitment of the country's leadership must be singled out as crucial. According to Ogbu, 'No anti-corruption mechanism or strategy will succeed without strong leadership and political will. Political leadership is required to both set an example and to demonstrate that no one is above the law.'<sup>136</sup>

Public support aside, another important, and related, factor impacting on ACAs in Nigeria is the extent of the international support there is for the country's anti-corruption mission. Ribadu enjoyed a great deal of this, which was one of the reasons that he was able to record such huge successes.<sup>137</sup> The EFCC and ICPC can match this only when they mobilise comparable levels of support from the international community, especially in relation to assets recovery. It is noteworthy here that Nigeria has run into difficulties when engaging with foreign governments and their bureaucracies to repatriate funds corruptly taken out of the country, particularly so in regard to the return of Abacha's loot and that of the former Minister of Petroleum, Diezani Alison-Madueke.<sup>138</sup>

Apart from international support and cooperation, Nigeria's ACAs can also benefit from the experiences of successful ACAs. Because of the widely quoted successes of the Hong Kong Independent Commission Against Corruption (ICAC), critical lessons can be learnt from its experience. In this regard, Hui has succinctly captured the experiences of the ICAC and more importantly, the reasons for its success. According, four key success factors have been

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<sup>134</sup> Yusuf Alli, 'EFCC Secures 603 Convictions in Three Years' (*The Nation*, 29 May 2018).

<sup>135</sup> *ibid.*

<sup>136</sup> Ogbu (n 28) 135.

<sup>137</sup> For example, the UN described him as a fearless 'crime-buster'. See UNODC (n 40).

<sup>138</sup> See eg 'Switzerland Returned \$322.5m Abacha Loot with Interest – Envoy' *Vanguard* (Lagos, 25 April 2018).

identified. They factors are independent status; a comprehensive long-term strategy; adequate resources; and community support.<sup>139</sup>

With regard to independent status, more needs to be done to ensure that Nigeria's ACAs are free from interference, especially by politicians. The country could thus take a leaf out of South Africa's book in relation to the Chapter 9 institutions in its constitution, which are designed and constitutionally entrenched to guarantee their independence.<sup>140</sup> Similarly, steps should be taken to avoid the situation in which ACAs are merely 'used as a political weapon against the opponents of the government'.<sup>141</sup> The Hong Kong ICAC is established as an independent agency where the head of the agency is directly accountable to the Hong Kong Chief Executive.

The integrity, courage, and resilience of the head of the ACA are crucial for the success of the body. This is so because, in Adebawale and Oludare's apt description, it is in the nature of corruption in Nigeria that it 'fights back',<sup>142</sup> as is apparent from the disagreements between the National Assembly and current Chairperson of the EFCC. Even its former Chairperson, said to have been successful in this role, fell victim to 'fighting back' when he was unceremoniously dismissed from office before the end of his term.<sup>143</sup>

The second success factor is, as mentioned, a comprehensive long-term strategy. According to Hui, this entails having an effective legal framework, a three-pronged approach, and checks and balances.<sup>144</sup> The three prongs in question are the main activities of the ACA: law enforcement, prevention, and education. Arguably, the EFCC and ICPC would have greater impact if they made a paradigm shift from law enforcement and to paying closer attention to their prevention and education functions: what seems required is a deliberate effort to help build a culture of honesty and integrity not impelled by the insane drive to amass wealth. Larger numbers of creative educative and public awareness-raising projects should be initiated in the school system, while courses related to integrity and moral values should be introduced in tertiary education. The two agencies should coordinate these interventions and ensure that they are sustained, working more closely with civil society organisations (CSOs) towards the realisation of this objective. This means an adequate budget should be allocated to corruption-prevention functions and not solely to law enforcement.

With regard to checks and balances, oversight of ACAs is vital to their success. It is crucial, in other words, that the commissions are subjected to scrutiny. While the laws make certain provisions in this regard, an important check that cannot easily be ignored is that by members of the public; however, this can be effective only if the public is kept duly informed about the activities of the ACAs. Anti-corruption CSOs also serve as very useful checks.

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<sup>139</sup> Wing-chi Hui, 'Combating Corruption: The Hong Kong Experience' (2013) 6 *Tsinghua China Law Review* 239.

<sup>140</sup> See CM Fombad, 'The Role of Emerging Hybrid Institutions of Accountability in the Separation of Powers Scheme in Africa' in CM Fombad (ed), *Separation of Powers in African Constitutionalism* (OUP 2016) 325.

<sup>141</sup> See Jon ST Quah, 'Benchmarking for Excellence: A Comparative Analysis of Seven Asian Anti-Corruption Agencies' (2009) 31 *Asia Pacific Journal of Public Administration* 184.

<sup>142</sup> Adebawale and Obadare (n 27).

<sup>143</sup> *ibid.*

<sup>144</sup> Hui (n 140) 251.

A further safeguard is the judiciary: no anti-corruption effort can succeed without its support and oversight.<sup>145</sup> Given that the judiciary itself is deeply enmeshed in corruption, a practical solution perhaps lies in identifying specific judges to handle corruption matters (especially those brought by the ACAs). This solution is contained in the ICPC and EFCC Acts but is not being implemented.<sup>146</sup>

In terms of section 61(3) of the ICPC Act, the Chief Judge shall designate a court or judge to handle *only* corruption matters.<sup>147</sup> Full implementation of this provision serves three purposes. First, it ensures that only judges with a proven record of integrity are allowed to handle corruption matters. Secondly, it permits for specialisation in the matters the court hears and facilitates the development of judicial expertise in corruption matters. Thirdly, noting that matters brought by the ACAs have been criticised as unduly lengthy, section 61(3) enables them to be dispensed with more rapidly. The provision, in short, confers advantages similar to those afforded by a special criminal court.<sup>148</sup>

A further success factor Nigeria should incorporate in its ACA-related practices is ensuring the availability of adequate resources.<sup>149</sup> As Hui observes, '[F]ighting corruption is a prolonged war and resource-intensive.'<sup>150</sup> Resourcing is closely linked to a country's level of support for anti-corruption efforts. For example, what the Hong Kong ACA spends on fighting corruption is said to be 'amongst the highest amount anywhere in the world'.<sup>151</sup> With a population of about seven million, it spends roughly USD 15 per capita in combating corruption.<sup>152</sup> One can only imagine the sum that would be needed in a country like Nigeria with a population of more than 180 million. Nonetheless, this would be a worthwhile investment, particularly when considered alongside the billions that are siphoned off into private pockets. Human resources are also critical for both agencies, especially from the perspective of training and retraining of staff.

Finally, an ACA can be successful if it has adequate community support. Securing the cooperation and trust of the public would ensure that corrupt practices are duly reported, albeit that this involves 'a slow and painstaking process of transforming the public's attitudes from resigned tolerance to zero tolerance of corruption, winning the citizens' trust, and enlisting public support'.<sup>153</sup>

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<sup>145</sup> Bright Bazuayea and Desmond Oriakhogba, 'Combating Corruption and the Role of the Judiciary in Nigeria: Beyond Rhetoric and Crassness' (2016) 42 *Commonwealth Law Bulletin* 125.

<sup>146</sup> HRW reported that, as at 2011, only Lagos state had partly implemented the provision. Nevertheless, the judges so designated still have to hear other matters. See HRW (n 39) 32.

<sup>147</sup> See also EFCC Act, s 19(3).

<sup>148</sup> See Serges Djoyou Kanga and CM Fombad, 'The Cameroonian Special Criminal Court: The Futility of Combating Corruption When the Basics of Constitutionalism are Absent' in CM Fombad & N Styetler (eds) *Corruption and constitutionalism in Africa: Revisiting control measures and containment strategies* (2019, OUP) (Forthcoming).

<sup>149</sup> Hui (n 140) 255.

<sup>150</sup> *ibid.*

<sup>151</sup> *ibid.*

<sup>152</sup> *ibid.*

<sup>153</sup> *ibid.*

## 5. Conclusion

A critical question has always been how the ACAs could be made more effective. As a first step, what is necessary is a more explicit constitutional entrenchment of the anti-corruption principles as well as an explicit recognition of the ACAs as critical for the project. This would create a clearer legally enforceable obligation on the government with regard to the vision and mission of the ACAs. It would also strengthen political will, for 'once there is a legally enforceable constitutional obligation on the government to take effective measures to combat corruption, the political will must necessarily follow'.<sup>154</sup> The Hong Kong ICAC, for example, is constitutionally entrenched in the Basic Law of the Hong Kong Special Administrative Region.

Secondly, Nigeria can draw useful lessons from the operation of ACA's in countries like Hong Kong and Singapore. As shown in the preceding part of this paper, the Hong Kong ACA has been quite successful in controlling corruption due to factors such as: independent status; a comprehensive long-term strategy; adequate resources; and community support. The independent status can be achieved if the ACAs are designed in a manner that insulates them from political interference. Comprehensive long-time strategy entails that the anti-corruption strategy of the country must be sustainable and considered as a long term strategy of successive governments. This means such a strategy should be encompassed in the basic legal documents of the country. We have also shown, using the Hong Kong ACA's experience, that ACAs need sufficient resources to fight corruption seriously. The funding of the ACAs in Nigeria leaves much to be desired and this may have an impact on their independence. Finally, Nigerians must support the work of the ACAs, for greater community support translates into greater chances of success for ACAs.

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<sup>154</sup> Fombad and Fombad (n 63) 757.