

# LEGAL AND INSTITUTIONAL FRAMEWORKS IN THE CONTROL OF ECONOMIC AND FINANCIAL CRIMES IN NIGERIA: A CRITICAL APPARIASAL

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## ABSTRACT

The incidence of economic and financial crimes in Nigeria predates Nigeria's independence which happened in 1960. This is evidenced by the fact that far before independence Nigeria had through her colonial masters passed the Criminal Code and the Panel Code Laws applicable in the Southern and the Northern parts of Nigeria respectively. In those codes are provisions that prohibit most of the acts and omissions that are related to economic and financial crimes. However, Nigerians coming out of the civil war that lasted between 1966 and 1970 went into serious battle for survival resulting into all manner of criminal activities in a large scale. The early post war period therefore witnessed the perpetration of offences that were alien to Nigerian society including human trafficking, drug trafficking, money laundering, Terrorism and Terrorist funding etc. Then, there came the master monster generally known as corruption which had reared its ugly head that has earned Nigeria a failed State.

The inadequacies of the Nigeria Criminal Justice System to carter for the overwhelming sophisticated and cancerous forms of economic and financial crimes necessitated the emergence of a new regime of laws. The effect of the new laws was actually over criminalization of human activities as legislative measures of controlling these hydra-headed crimes. The whole essence was to delineate offences that should remain within the ambit of straitjacket traditional criminal justice system from those that ought to be covered by the new regime.

The product of economic crime is illicit and subversive. It undermines economic and political programmes thereby subverting honesty and integrity of the nation. Nigeria is internationally known as haven of corruption and christened as one of the most corrupt country. Nigeria economy is battered now.

The various laws passed for purposes of fighting economic and financial crimes as enumerated in this paper are basically a conscious response to the debilitating effect of these crimes and the fact of failure in finding a solution. In all this, we are of the firm view that Nigerians problem is absence of positive political will to fight corruption.

**Keywords:** Economic and Financial Crimes, Corruption, Legal Framework, Institutional Framework, Problems and Solutions

## INTRODUCTION

Controversies abound at various fora on what in real terms constitutes an economic crime. The statutes do not satisfactorily offer solution to these definitional problems.

However, that Nigeria has been branded one of the most corrupt countries in the world by Transparency International is common knowledge<sup>i</sup>. Also the fact that corruption constitutes one of the major elements of economic crime is beyond dispute. Thus, this presentation will feature on economic and financial crimes as they affect Nigeria.

The prevalence of economic and financial crimes in Nigeria transcends comprehension. Arguments are that it is transplantation or an importation of foreign norm<sup>ii</sup>. But most significantly, the Criminal Code<sup>iii</sup> and Penal Code<sup>iv</sup> (hereinafter referred to as the Codes) applicable in the Southern and Northern parts of Nigeria respectively have provisions that prohibit most of these acts or omissions that are related to economic and financial crimes even before Nigeria got her independence in 1960. The institutional framework as conceived under the Codes were the courts, police, immigration, customs & excise.

Between 1950 and 1970 the commission of economic crimes was very minimal. The situation changed since the end of the Civil War in 1970 till date. The post 1970 period has witnessed highly sophisticated and cancerous forms of economic crime like money laundering, advance

fee fraud, capital flight and large scale corruption in government circles. The inadequacies of the traditional criminal justice system became a cause for worry. Faced with the enormity of the challenges posed by the contemporary criminal activities in the country a new regime of criminal legislation emerged. The effect of the new laws was over-criminalisation of human activities as a legislative measure of controlling economic crimes. The whole essence was to delineate offences that should remain within the ambit and straitjacket of the traditional criminal justice system from those that ought to be covered by the new regime.

The myriad, of human actions which have been christened as economic and financial crimes in Nigeria include:

- ❖ Bribery, corruption and unjust enrichment
- ❖ Drug trafficking
- ❖ Human trafficking
- ❖ Advance fee fraud
- ❖ Money laundering
- ❖ Receiving contract sums without implementing the contract
- ❖ Capital flight through over-invoicing and under-invoicing
- ❖ Illegal bunkering of petroleum products
- ❖ Smuggling and Dealing on banned or prohibited goods
- ❖ Adulteration and sale of expired drugs and food items.
- ❖ Tampering with or vandalism of Government installations
- ❖ Currency trafficking and counterfeiting
- ❖ Embezzlement and criminal misappropriation
- ❖ Tax evasion
- ❖ Human trafficking
- ❖ Cheating and stealing
- ❖ Terrorist funding and activities etc.

The product of economic crime is illicit and subversive. It undermines economic and political programmes thereby subverting honesty and integrity of the nation. Its debilitating effect may be more spectacular in developing than developed economies. In most cases because of

private-regarding influence the perpetrator involves, in deviation from and perversion of the system with a callous disregard for any consequences his victims may suffer.

Substantially the period of the new regime cover 1975 to 2022 within which the following laws were enacted:

- ❖ Corrupt Practices Act No. 38 of 1975
- ❖ Freedom of Information Bill 2007
- ❖ Nigeria Extractive Industries Transparency Initiative (NEITI) Act 2007
- ❖ Fiscal Responsibility Act 2007
- ❖ Petroleum Production and Distribution (Anti-Sabotage) Act No.35 of 1975
- ❖ The Counterfeit Currency Act No. 12 1984
- ❖ Exchange Control (Anti-Sabotage) Act of 1984
- ❖ Miscellaneous Offences Act No. 20 of 1984
- ❖ The National Drug Law Enforcement Act No. 4 of 1989
- ❖ The Banks and Other Financial Institutions Act No. 25 of 1991
- ❖ The Failed Banks (Recovery of Debts and Financial Malpractices in Banks) Act No. 18 of 1994
- ❖ The Foreign Exchange Act No. 17 of 1995
- ❖ The Money Laundering Act No. 3 of 1995
- ❖ The Advance Fee Fraud and Other Related Offences Act No. 13 of 1995
- ❖ African Union Convention on Preventing and Combating 11 July 2000
- ❖ The Corrupt Practices and Other Related Offences Act 2004
- ❖ United Nations Convention against Corruption 2003.
- ❖ The Economic and Financial Crimes Commission Act, 2004
- ❖ The Money Laundering and Terrorist Financing (Amendment) Regulations 2019
- ❖ Public Procurement Act 2007
- ❖ The Money Laundering Act 2011
- ❖ The Money Laundering (Prevention x Prohibition) (Enactment) ACT 2022
- ❖ The Central Bank of Nigeria (Anti-Money Laundering and Combining the Financing of Terrorism in Banks and other Financial Institutes in Nigeria) Regulation, 2013
- ❖ Proceeds of Crime (Recovery and Management) Bill 2022

The content of some of these laws will be summarised later as it will be impossible to discuss them in detail because of lack of space. In addition to the laws catalogued above, the control of economic crimes is also a constitutional matter. There are copious provisions in the 1999 Constitution of the Federal Republic of Nigeria (herein referred to as the Constitution) that constitute checks on corrupt public officers. It is against this backdrop, that the institutional and legal framework for the control of economic crimes in Nigeria have also been articulated in this paper.

Emphasis has been made on the Corrupt Practices and Other Related Offences Act 2000, the Economic and Financial Crimes Commission Act 2004 and the Constitution. Furthermore, the paper has discussed the factors that promote economic and financial crimes in Nigeria; the effect of Economic crime and also offered solutions to the problems. The author has also examined the efforts made by Government so far in an attempt to implement and give the laws the force they are intended to achieve.

## **LEGAL FRAMEWORK AS CONTROL MEASURES**

The country has over the years adopted legal and non-legal approaches in the fight against economic crimes. However, government efforts have been outstanding in the enactment of enabling laws for the control of economic crime than administrative approaches. This is principally because the new set of economic crimes were viewed as products of the transitional socio-economic situation prevalent as endemic socio-traditional norms that are tolerable. Consequently, the operators of government considered criminalisation process as the most effective measure of control in tackling the various forms of economic crimes in the sequence they emerged.

The following trend was a conscious effort to align with the developmental process which determined the nature of crime committed at a particular time:

### **a) Counterfeit Currency Act of 1974**

In the early 70s fake currencies were largely used in Nigeria to defraud people. Government promulgated this law to suppress the production and use of counterfeit currencies.

**b) The Petroleum Production and Distribution (Anti-Sabotage) Act of 1975**

In 1975 many Nigerians were in collusion with foreigners to illegally produce and export petroleum products from Nigeria through the process known as illegal bunkering. This law was enacted to check the illegal production and distribution of petroleum products.

**c) The Corrupt Practices Act of 1975**

The Act was the first legislation specifically passed to wipe out corrupt practices in both the public and private sectors by prescribing stiffer penalties. The principal aim was to complement the existing provisions in the Codes (supra) dealing with bribery and corruption.

**d) The Exchange Control (Anti-Sabotage) Act 1977**

The period of 1977 witnessed mass racketing of foreign exchange in Banks and other financial institutions as means of making quick money. As a result many bankers were prosecuted under this law. This practice of foreign exchange racketing in Banks resulted in the sacking of many bank officials.

**e) The Dishonored Cheques (Offences) Act 1977**

Another destructive form of economic criminality that reared its ugly head in the mid-70s was the issuance of dud cheques as a mode of settling financial transactions. The law was therefore enacted to track down defendants who issued dishonoured cheques knowing that no funds or insufficient funds were standing to the credit of the drawer of the cheque.

**f) Miscellaneous Offences Act of 1984**

The Miscellaneous Offences Act has several provisions against acts and omissions ranging from arson of public buildings, tampering with or damage to public properties and installations like electricity cables, oil pipelines, telephone wires, postal matters; forgery of negotiable instruments; unlawful exportation of foodstuff; dealing in prohibited goods; dealing in cocaine and other similar drugs; illegal dealing in petroleum products etc.

These types of criminal activities reached an alarming proportion in early 80s. Penalties ranged from 5 years to life imprisonment. Originally the offence of dealing in cocaine and other hard drugs attracted death sentence by firing squad until it was subsequently reduced to life imprisonment by statutory amendment.

**g) Recovery of Public Property Act No. 3 of 1984**

Under the law, an Assets Investigation Panel was set up for the purpose of ascertaining whether any public officer has been engaged in corrupt practices. However, the law had been amended to include private persons. The result was that those who corruptly enriched themselves had their property confiscated and forfeited to Government upon conviction. In addition, fines were imposed and terms of imprisonment which may extend to 21 years.

**h) Failed Bank (Recovery of Debts and Financial Malpractice in Banks) Act 1994**

Between 1990 and 1994 Nigerians experienced high watermark of fraud in the banking and insurance industries. This led to the collapse of over 30 Banks within the period. The major penalty imposed on perpetrators was confiscation and forfeiture of their properties. The causes of action were both in rem and in persona. In other words the suspect is arrested and incarcerated in prison while the proceed of the crime is forfeited. It did not matter whether the property was moveable or immovable. Confiscated properties are usually released to the victim of the crime.

**i) Money Laundering Act No. 3 of 1995**

Over the years, Nigeria became vulnerable to illegal transfer or conversion of money through illicit traffic in narcotic drugs or psychotropic substances. The aspiration of the perpetrators is to conceal or disguise the illicit origin of the resources or property. A person found guilty of the offences under the law may be imprisoned for 15 years or not more than 25 years.

**j) The Advance Fee Fraud and Other Related Offences Act No. 12 of 1995.**

Although the Codes had originally prohibited the offences of obtaining by false pretences and cheating respectively, this new law is more elaborate, all embracing and carries stiffer penalties. The Act was further passed to complement the provisions of

the Failed Banks Act. For instance, Section 419 of the Criminal Code Law prohibits the act of obtaining by false pretences while Section 320 of the Penal Code Law prohibits cheating. Between 1990 and 1995 Nigerians were terrorised by groups of fraudsters whose conducts were commonly nick-named "419". In fact many Nigerians now know that "419" means fraudulent practices or cheating.

**k) The Corrupt Practices and Other Related Offences Act 2000**

The Act which came into force on the 13th day of June, 2000 is in this paper referred to as the 2000 Act. This law was the brain child of Chief Olusegun Obasanjo who as President, Commander-in-Chief of the Federal Republic of Nigeria saw corruption as a challenge to his government. Obasanjo in his maiden broadcast to the nation announced that corruption was the bane of Nigeria's economy. It was his aspiration to control corruption at any cost which gave birth to the law in 2000.

That was precisely nine months after he took the oath of office as President. On the occasion of the formal signing into law of the Bill, the President unequivocally conveyed the following words to Nigerians:

*It gives me great pleasure to welcome you all to this very important and indeed historic moment in the life of our nation. It is our firm belief that the signing into law of the Anti-Corruption Bill will mark a turning point in all the major aspects of our lives, individually, collectively, economically, politically and socially. As we all know, corruption is a cankerworm that has eaten into the fabric of our society at every level. It has caused delay and dereliction within the infrastructure of government and the society in physical, social and human terms.*

Essentially the 2000 Act seeks to eradicate corruption in Nigeria. Under the law the Independent Corrupt Practices and other Related Offences Commission was established. It is important to note that seizure and forfeiture of proceeds of crime are major ingredients of punishment in the Act. The operations of the Commission have been considered in this paper under institutional framework in the control of economic crime. This author has also attempted

an appraisal of the new laws in another work<sup>v</sup>. That notwithstanding it is critical to point out that:

- a) There is no provision in the 2000 Act that repealed the Corrupt Practices Act, 1975. This is a serious oversight. Of course the natural inference is that both laws are in force. This is bound to cause implementation and enforcement problems. For instance, under the 1975 Act, it is the police who investigates and prosecutes corrupt practices. On the other hand it is the Corrupt Practices Commission that investigates offences under the 2000 ACT. The implication is that Nigerians have the discretion to lodge complaints of corrupt practices with either the Police under the 1975 Act or with the Commission under the 2000 Act. Furthermore, the manner of punishment differs under the two laws. While punishment is minimal Under the 1975 Act and the Codes it is on the other hand stiffer under the 2000 Act.
- b) Section 2 of the 2000 Act defines corruption as follows:  
“Corruption includes bribery, fraud and other related offences”

On the other hand Section 30 of the 1975 Act merely enumerates what constitutes gratification. In the face of the above disparity and in accordance with the rule of interpretation, it is suggested by this author that Nigerians should refer cases of corrupt practices to the Independent Corrupt Practices and Other Related Offences Commission.

**i) The Economic and Financial Crimes Commission Act (EFCCA) 2002**

This is an Act which provides for the establishment of a Commission for Economic and Financial Crimes and other matters connected therewith. The most outstanding new set of criminal activities introduced into the law are offences relating to terrorism.

***Section 15 provides thus:***

- (1) A person who willfully provides or collects by any means, directly or indirectly, any money by any other person with intent that the money shall be used or is in the knowledge that the money shall be for any act of terrorism, commits an offence under this Act and is liable on conviction to imprisonment for life.

- (2) Any person who commits or attempts to commit a terrorist act or participates in or facilitates the commission of a terrorist act, commits an offence under this Act and is liable on conviction to imprisonment for Life.
- (3) Any person who makes funds, financial assets or any economic resources or financial or other related services available for use of any other person to commit or attempt to commit, facilitate or participate in the commission of a terrorist act is liable on conviction to imprisonment for life.

### ***Terrorism***

Under Section 43 of the EFCC Act “terrorism” means:

- (a) Any act which is a violation of the Criminal Code or the Penal Code and which may endanger the life, physical integrity of freedom of, or cause serious injury or death to, any person, any number or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to:-
  - i) Intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act or to adopt or abandon a particular standpoint, or to act according to certain principles;Or
  - ii) Disrupt any public service, the delivery of any essential services to the public or to create a public emergency; or
  - iii) Create general insurrection in a State;
- (b) Any promotion, sponsorship of, contribution to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organisation or procurement of any person, with the intent to commit any act referred to in Paragraph (a) (i), (ii) and (iii).

The aftermath of the 11th September, 2001 terrorist activity against the United States of America was the Executive Order 13224 issued by President Bush. The order is entitled Blocking Property and Prohibiting Transactions with Persons who Commit, Threaten to Commit or Support Terrorism".

Section 3(d) of the Order provides a broad definition of terrorism as follows:

"an activity that:-

- (i) Involves a violent act or an act dangerous to human life, property, or infrastructure; and
- ii) Appears to be intended
  - a) to intimidate or coerce a civilian population; or
  - b) to influence the policy of a government by intimidation or coercion; or
  - c) to affect the conduct of a government by mass destruction, assassination, kidnapping, or hostage taking".

Furthermore, Article 2 paragraph 1(b) of the Financing of Terrorism Convention<sup>vi</sup> provides a broad general definition of terrorist activity as any act:

*Intended to cause death or serious bodily injury to a civilian or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context is to intimidate a population, or to compel a Government or an international organisation to do or to obtain from doing Any act*

From the above definitions, it does appear that the EFCC Act (Nigeria) has offered a more elaborate definition. This must have been deliberately intended to cover the common forms of terrorist activities perpetrated in Nigeria.

The above provisions relating to terrorism have been reproduced here not because terrorism is new but because of the attention it has attracted globally since the unfortunate incident of September 11, 2001 in the United States of America (U.S.A).

Furthermore, criminalisation of terrorist activities by the new laws suggests global awareness of the problem and the need for control. In Nigeria, acts of terrorism take different forms ranging from willful destruction of government properties by striking workers or students; religious conflict resulting in killing, maiming of human beings, looting and destruction of properties of rival parties. Another form is willful destruction of government properties by dubious public servants with the intention of destroying evidence needed for prosecution when being investigated for criminal activities. The most devastating act of terrorism in Nigeria is vandalism of oil pipe lines which results to colossal waste of crude oil.

Acts of terrorism do not only diminish the integrity of the nation but jeopardises developmental programmes. The damages occasioned by acts of terrorism are enormous in its entire ramification. Like its Counterparts seizure and forfeiture of proceeds of economic and financial crimes under the 2004 Act is copiously provided for<sup>vii</sup>. Where there is reasonable suspicion that the person arrested under the Act has money in a bank account the court may order that such account be frozen<sup>viii</sup>.

**m) The 1999 Constitution of the Federal Republic of Nigeria**

The Constitution ushered in democratic government in Nigeria in May 1999. By virtue of Sections 172 and 209 of the Constitution, public servants of the Federation and States respectively shall observe and conform to the Code of Conduct.

For purposes of the Code of Conduct public officers shall include:

1. The President of the Federation
2. The Vice-President of the Federation
3. The President and Deputy President of the Senate, Speaker and Deputy Speaker of the House of Representatives and Speakers and Deputy Speakers of the House of Assembly of States and all members and staff of legislative houses.
4. The Governors and Deputy Governors of States
5. Chief Justice of Nigeria, Justices of the Supreme Court, President and Justices of the Court of Appeal, all other judicial officers and all staff of courts of law.

6. Others enumerated in paragraphs 6, 40, 16 of part II to the Fifth Schedule.

The list covers all categories of public appointees and employees without exception. Part 1 of the Fifth Schedule of the Constitution contains a long list of Code of Conduct for public officers. Crucial among the items of the code are that a public officer shall not:

- i. maintain or operate a bank account in any country outside Nigeria;
- ii. accept gifts or benefits of any kind on account of anything done \ or omitted to be done by him in the discharge of his duties;
- iii. accept bribe;
- iv. abuse his power contrary to any Government policy.

Under Item II (1) (3) of the schedule it is mandatory for all public officers to declare their existing properties, assets and liabilities; immediately after taking oath of office and at the end of his term of office. Any property or assets acquired by a public officer after the declaration which is not fairly attributable to income, gift, or loan approved by the Code shall be deemed to have been acquired in breach of the Code unless the contrary is proved.

Accordingly, properties or assets illegally acquired by public servants shall be seized and forfeited to the Government.

#### **n) Treaties and Conventions**

In recognition of the fact that economic crimes may be trans- border activities affecting nations, Nigeria has adopted and domesticated some international treaties and conventions fashioned to control economic crimes. They include:

- i) The United Nations Single Convention on Narcotic Drugs, 1961 which Nigeria adopted, is on the means of controlling the manufacture and trafficking in drugs like opium.
- ii). Nigeria is also a signatory to the 1988 United Nations Convention against Illicit traffic in Narcotic Drugs and Psychotropic Substances, to fight against drug abuse and the menace of money laundering. The Convention was domesticated in Nigeria by the enactment of the National Drug Law Enforcement Agency Act of 1989. The Act

established the Agency charged with the responsibility of controlling drug related crimes.

- iii) Between 1985 — 1988 treaties on Mutual Assistance in Criminal Matters within the Commonwealth were made with a view to tackling drug trafficking and other related crimes. Member countries sought co-operation in conducting searches, training, seizure, forfeiture of proceeds and of course judicial proceedings. These were also domesticated by Nigeria into a single law called "Mutual Assistance in Criminal Matters within the Commonwealth (Enactment and Enforcement) Act No. 13 of 1988.
- iv) In 1989 Nigeria went into Agreement with Government of United Kingdom and Northern Ireland concerning investigation, prosecution and the confiscation of proceeds of crime.

## **INSTITUTIONAL FRAMEWORK**

As an effective measure in the furtherance of Government aspirations to minimise the high incidence of economic crime various institutions have been established for the implementation of the above laws.

They are:

**i) The National Drug Law Enforcement Agency (NDLEA):**

It is the responsibility of this Agency to detect, investigate, arrest, detain and prosecute suspected drug traffickers. The Agency has done a lot since its establishment and it has offices in nearly all the 36 States of Nigeria. Its powers include to counter the magnitude and extent of illicit traffic in narcotic drugs and to strengthen international cooperation in that area.

**ii) The National Agency for Food and Drug Administration and Control (NAFDAC)**

The powers of NAFDAC extend to the identification, arrest and detention of fake drug dealers. The Agency has powers to impound and destroy counterfeit drugs and food which may be fake, prohibited or expired. The volume of counterfeit drugs and foods

in circulation in Nigeria rose to an alarming stage that Government had to establish the Agency. Happily, under the able leadership of Late Dr. (Mrs.) Dora Akunyili, the Agency has caused the 'crooks' to be on the run. Between the year 2000 and 2003 the Agency has confiscated and publicly destroyed large quantities of counterfeit drugs and foods in the course of executing its functions. Right thinking Nigerians are happy with the performance of the Agency.

**iii) The Code of Conduct Bureau**

This is one of the executive bodies created under the Constitution and charged with the responsibility of ensuring that the Code of Conduct for public officers is observed. In the event of breach the erring public servant shall be arraigned before the Code of Conduct Tribunal and where found guilty appropriate sanctions are meted including confiscation and forfeiture of property.

**iv) Corrupt Practices and Other Related Offences Commission (ICPC)**

The Commission was created under the Corrupt Practices and Other Related Offences Act 2000. It has the powers to investigate and causes to be prosecuted, persons suspected to have been involved in corrupt practice. Although the Commission has investigated several allegations of corrupt enrichment against top and middle cadre public officers it however has limitations. For instance, under section 308 of the Constitution no civil or criminal proceedings shall be instituted or continued against the President or Vice President of Nigeria, the Governor or Deputy Governor of any State of Nigeria. With such Constitutional immunity, the Commission has no powers to commence civil or criminal proceedings against the above persons. That is whether or not they are involved in corrupt practices while in office. This author is of the view that the Constitution should be amended to expunge the immunity section without delay. Other suggestions that will make the Commission effective include proper definition of "Corruption" and absolute independence.

**v) Economic and Financial Crimes Commission (EFCC)**

The Commission was established under the Economic and Financial Crimes Commission Act, 2002. Under section 6 (2) of the Act the Commission is charged with the responsibility of enforcing the provisions of:

- (a) The Money Laundering Act, 1995;
- (b) The Advance Fee Fraud and Other Related Offences Act, 1995;
- (c) The Failed Banks (Recovery of Debts and Financial Malpractices in Banks) Act 1994, as amended;
- (d) The Banks and Other Financial Institutions Act 1991, as amended; and
- (e) Miscellaneous Offences Act Cap 410 Laws of the Federation of Nigeria;
- (f) any other law or regulations relating to economic and financial crimes.

It is this author's view that by virtue of sub-section 2(f) (underlined for emphasis) the Commission also has the responsibility of enforcing the provisions of the Corrupt Practices and Other Related Offences Act 2000. We are comfortable with this position on the ground that corruption is in all intents and purposes a form of economic crime.

Furthermore, the Economic and Financial Crimes Commission Act has defined economic crime in Section 43 as follows:

"economic crime" means the non-violent criminal and illicit activity committed with the objective of earning wealth illegally either individually or in a group or organised 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, 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.

From the foregoing, it is obvious that both the Corrupt Practices and Other Related Offences Commission (ICPC) and the Economic and Financial Crimes Commission have concurrent powers to handle all forms of corrupt practices. This is an area Nigerian policy makers must as

a matter of urgency critically examine with a view to ensuring that there is no conflict otherwise leaving the laws as they are may create enforcement problems. For instance the former chairman of the Economic Financial Crimes Commission, Alhaji Nuhu Ribadu had pledged to rid Nigerians of Advance fee fraud, corruption and related crimes<sup>ix</sup>.

It is significant to note that the Economic and Financial Crime Commission has an added responsibility to control terrorism.

The glaring prominence and concern terrorism has attained in the world history in recent times gives credence to the need for effective legislative as well as non-legislative control measures.

However, the Economic and Financial Crimes Commission was inaugurated in April 2003 by the President, Commander-In- Chief of the Federal Republic of Nigeria. It is hoped that the Commission would always be given all the logistic support to enable it discharge its duties.

**vi) Regulatory Bodies**

a) The Corporate Affairs Commission incorporates (CAC) and regulates the operations of companies in Nigeria. In the furtherance to that responsibility the Commission ensures that no company whose objects are dubious is registered. This may not be a simple exercise to identify bad companies at the point of registration with CAC. As a regulatory body the Commission also ensures that companies operating in Nigeria are legally of good standing. In that regard searches are conducted at the CAC by individuals and organisations from within and outside Nigeria to ascertain the existence or otherwise of companies for purposes of business transactions.

**b) Securities and Exchange Commission (SEC)**

The role of the Commission is to regulate investments and securities business in Nigeria. Thus, it has to prevent fraudulent and unfair trade practices relating to the securities industry; register and regulate securities; derivatives; commodities and other investment exchanges.

In fact the Investment and Securities Tribunal has been established to handle the above malpractices and other related matters. The objective is also to regulate the activities of Capital Market Operators like solicitors, accountants, surveyors, engineers, etc.

**c) Central Bank of Nigeria (CBN)**

Principally, through periodic checks and reporting on the performance of banks, the activities of banks are controlled. The CBN has recently alerted members of public that criminals are now using banks to lodge illicit monies. Any bank found wanting would be sanctioned.

**d) Nigeria Deposit Insurance Corporation (NDIC)**

This is another regulatory body that deals mostly with banks and other financial institutions. Its principal responsibility is to take all necessary measures that will to a high extent restore confidence and hope to the financial system. In the process the corporation identifies frauds in banks and other financial institutions and deal as appropriate.

**e) Anti-Corruption Units**

By a Government circular, all Ministries and Government Parastatals in Nigeria have been directed to establish anti-corruption units within their organisations. The units have the duty to report corrupt practices to the Corrupt Practices and Other Related Offences Commission.

**Vii. Courts, Tribunals, Panels of Inquiry**

Suspected economic criminal are usually prosecuted in either the courts or tribunals as may be required by law. In some cases Judicial Commissions of Inquiry are set up to handle and in other cases administrative panels are constituted on a preliminary fact finding mission. Under the 2000 Anti- Corruption Act and the Economic and Financial Crimes Act, 2002 suspects are prosecuted in the Federal or State High Courts.

**viii) Law Enforcement Agents**

In Nigeria, the police occupies a pivotal position in the enforcement of criminal legislation. Others are the Department of Immigration, National Drug Law Enforcement Agency (NDLEA) and the Customs and Excise who operate mostly at the border between Nigeria and other countries, the seaports and airports.

They are charged with the responsibility of detecting fake drugs, fake foods, currency traffickers, smugglers etc. A lot is expected to be done by the men and officers of the Immigration and Customs & Excise in view of the increasing rate of transborder criminal activities.

## **EVALUATION OF THE IMPLEMENTATION OF THE LAWS**

Before the enactment of the new laws critics were of the view that the provisions of the Codes were inadequate to take care of economic and financial crimes. Admittedly, the provisions of the new laws are more encompassing and comprehensive to cover the new forms of economic crimes. One major advantage of the new laws is the fact that many Nigerians are now aware of the various forms of human activities that constitute economic crimes. However, only few people are aware that such activities are prohibited by laws and that violation attracts stiff punishment. This author, therefore, calls on government to embark on intensive awareness campaign to complement other measures suggested herein.

With the legal and institutional framework so far put in place, Government has further set out implementation programmes that will enhance the realisation of her dreams to eradicate economic crimes.

The measures include the following:

**a) National Seminar on Economic Crimes:**

The seminar which has become an annual event since 2001 was initiated and organised by the major regulatory agencies of the Nigeria economy. The main objective is to articulate the nature, causes, effects of, and workable solutions to economic crimes<sup>x</sup>.

The forum affords stakeholders within and outside the country the opportunity to share their views on how best to control economic crimes. At the end of every seminar a communique is issued for purposes of guiding government in the implementation of her policies on the subject.

**b) The Independent Corrupt Practices and Other Related Offences Commission (ICPC)**

The ICPC had received reports alleging corrupt practices against more than 9 (nine) Governors, Legislators, Ministers, Judges, Commissioners and Chief Executives of Parastatals at Federal and State levels. Accordingly, investigations into the allegations have been going on. It is hoped that such investigations would signal danger to those with the propensity to unjustly enrich them.

**c) Economic and Financial Crimes Commission (EFCC)**

As earlier stated in this paper the Commission was inaugurated in April 2003. It is therefore not too early to appraise its performance. However, it is interesting to note that a lot has been done by the Commission in the fight against economic crime. For instance, the Commission has been collaborating with the Central Bank of Nigeria (CBN) to handle fraudulent practices perpetrated in some Banks recently. Furthermore, the Commission has recently identified and arrested suspected fraudsters and had in fact confiscated properties suspected to be proceeds of crime. It is hoped that the Commission will perform creditably if given both the moral and financial support by Government and members of the public.

**d) Control of Fraud in Banks**

The hitherto high watermark of fraud that led to the collapse of Over 30 banks between 1996 and 2002 has been minimised. Bank officials were prosecuted under the Failed Bank (Recovery of Debts) and Financial Malpractices in Banks Act and the Advance Fee Fraud and Other Related Offences Act. The mass prosecution of purveyors of economic crimes and their cohorts in the Banking industry within the period did a lot to sanitise the industry. The exercise was effectively executed by the Nigerian Deposit Insurance Corporation (NDIC) with the full support of Government at the time.

**e) Bureau for Public Procurement**

The Bureau has been set up by Government within the Presidency. The Bureau whose responsibility is to check over-invoicing, under-invoicing, contract splitting and other forms of financial indiscipline in the award of contracts by Government agencies has

been well focused. Circulars regarding the activities of the Bureau have been sent to Universities, Government Parastatals and agencies for strict compliance. It is the responsibility of the Bureau to ensure that the provisions of the Public procurement Act 2007 is implemented to the letter.

**f) Administrative Panels:**

Administrative Panels and Disciplinary Committees have been set up by Ministries and other Government agencies to investigate and where appropriate report fraudsters to law enforcement agents for prosecution.

**g) International Arrangements:**

Nigeria has been involved in international arrangements that provide the enabling environment needed for the control of economic crimes at the border areas. For instance, Nigeria is a member of the International Maritime Organisation (IMO) whose primary responsibility is to ensure maritime security. The IMO had recently organised training in Calabar, Nigeria for sub-regional port handlers on anti-terrorism strategies. The programme is expected to educate participants on maritime security. The efficacy and potency of the code for maritime security operators in the control of terrorist activities is crucial in safeguarding the global transport infrastructure. The step is in the right direction. Nigeria is also a member of the Maritime Organisation of the West and Central Africa (MOWCA) which consist of more than 15 maritime nations in the West and Central Africa. Its interest is to fashion out measures to combat terrorism in the maritime corridors of member countries.

However, while safety of life at sea is seriously addressed by government, safety of life at the hinterland needs to be more seriously tackled. The common forms of acts of terrorism exhibited in Nigeria have been mentioned earlier in this paper.

**h) Public Enlightenment Campaign:**

Public awareness is increasing daily through participation at workshops, conferences and seminars organised by both private and public institutions on the menace of economic crime. It is however this author's suggestion that more of such awareness sessions should be organised by government at little or no cost on participants.

Adequate facilities should be provided by government to enhance awareness on the matter.

**i) Co-operation between Nigeria and Other States:**

International Co-operation and collaboration between Nigeria and other countries has not yielded significant result. That the desired dividend has not been met is due to a legion of problems which include illiteracy, poor funding, ineffective security network, disparity in legal system, tardiness of local unenforceability of treaties, general apathy etc. It is suggested here that all member countries should take treaties they sign as binding on them. This can be done through domestication of all treaties and conventions. In doing that it will be important to have a common model of law. For instance, Section 12 of the 1999 Constitution of the Federal Republic of Nigeria is apposite in the circumstances. It provides thus:

- j) No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.

The above constitutional provision can always be utilised to give treaties and conventions the necessary force. It is recommended that similar provisions should be entrenched in the Constitutions of countries where treaties and conventions are not automatically part of the domestic law.

## **PROBLEMS AND SOLUTIONS**

While we admit that effort is being made by Government and some right thinking Nigerians to tackle the menace of economic crime some factors impede the realisation of any meaningful success. The factors which are legion can be summarised as follows:

**i) Socio-economic Issues**

Failure on the part of Government to adequately address the socio-economic issues at play in the country. Nigeria has a population of over 120 million out of which the youth (between age bracket of 20 — 40) constitute about 50%. The statistics may not, be too

correct but the point being made here is that majority of the young school leavers have no job.

Joblessness leads people into crime. In consequence, some young graduates are often tempted to involve in armed robbery, fraudulent practices, drug trafficking, currency racketing (faking and counterfeiting), smuggling, human trafficking etc. This is largely due to unemployment for young university graduates who for many years have no jobs after graduation. Some people may argue that joblessness is not sufficient reason for people to take to criminality. Such argument is far from being realistic. Hunger leads people to steal and do other funny things. It is not everybody who have the capacity and clean heart to survive the temptation of perpetrating crime.

This author advocates that adequate budgetary provisions should be made yearly by Government for the establishment of economic programmes that will create employment opportunities for Nigerians.

**ii. Greed Encourages Corruption**

People have developed the culture of limitless acquisition of wealth. It does not matter to them whether the means is legitimate or not. The propensity is to acquire more and more. It is greed that makes the victims of fraud to succumb and play out their ignorance to the advantage of the fraudsters. It is the exhibition of greed that gives the rest of the world the impetus to believe that every Nigerian is a potential suspect and potential criminal.

**iii. Constitutional Immunity for Top Public Officers**

In this paper reference has been made to section 308 of the Constitution which gives immunity to the President and Vice- President, Governors and Deputy Governors. Pursuant to that provision no criminal action can be brought against them for corrupt practices committed while in office. Since the Constitution is superior to any other law, we suggest that section 308 should be expunged. On the other hand, if it must remain, there should be a proviso that the provision does not apply in corruption and other related offences. We say so because the therapy for economic crimes is needed in larger doses by those in higher positions than others. The basic factors that make corruption

to thrive are availability, custody and control of the fund or resources being stolen. The top Officers are in control.

**iv) Diminished Value System**

The old moral standards of probity, honesty, integrity, hard work, good name etc. have been ignored by many Nigerians. Emphasis is being placed on materialism above sterling virtues. Fraudsters, armed robbers, corruptees are accorded more recognition than decent people. Chieftaincy titles and Honourary Doctorate degrees are conferred on corruptees because of their ability to dole out money to the conferors. Many Nigerians are less concerned about how money is acquired but the fact of its acquisition. The country needs to raise her moral values once more and this can be done through campaign and teaching of moral codes in schools.

**V) Poor Leadership**

Nigerians have for years found themselves in the hands of most leaders who are themselves corrupt. President Obasanjo made useful effort to sanitise the country. But the President cannot fight corruption alone. His aides have to follow him in the crusade. The fact that some Governors, Ministers, Legislators, Heads of Parastatals etc. are being investigated for corrupt practices is indicative that no substantial progress has been made. The systemic posture corruption has assumed in Nigeria calls for collective effort.

In fact, the leaders should lead by example. Like we said earlier, the upper cadre requires the therapy more than the middle and lower cadre. Corrupt leaders inculcate bad behaviour into their subordinates who see illicit money making as an acceptable culture. A corrupt leader lacks the capacity to supervise and control junior officers.

**vi) Lack of Effective Internal Control**

The malaise is also caused by inadequate internal control systems and poor supervision. This scenario is more pronounced in banks and other financial institutions where insider criminality is uppermost. The temptation to perpetrate fraud cannot materialise unless the opportunity presents itself in the form of defective internal control. The thief always looks for an opportunity before he strikes.

**Vii) Problem of Illiteracy**

Most Nigerians are illiterate and that places them at a disadvantage position in society. They are easily vulnerable to deceitful proposals made by the crooks. Money is easily extorted from the unsuspecting and ignorant members of the public due to poor level of education.

**viii) Reckless Disregard for Rules and Regulations**

There is the show of reckless violation of rules and regulations by Nigerians. Breaking of rules and regulations is regarded by many Nigerians as hallmarks of greatness. Some are sacred cows who claim to be untouchables. Nothing can happen to them because of their position in society, the wealth they have acquired and to such people, they enjoy disorderly society.

**ix) Poverty**

It is common knowledge that per capita income in Nigeria is low. In some cases some workers are owed salaries and allowances for months thereby exposing them to the risk of perpetrating fraud at the least opportunity. Many have no jobs and cannot fend for themselves through legitimate means. Poverty level in Nigeria is itself criminal and dehumanising.

**x) Lack of Social Security**

One of the problems that Nigerians need to urgently address is social insecurity. Injustice in social and economic issues occur daily in Nigeria. People are not fairly nor equally treated. Ethnicity or tribal and religions sentiments influence treatment techniques in the distribution of resources as well as job opportunities. People are not sure of adequate source of livelihood upon retirement. Social insecurity abound at all levels. Retirees stay years without receiving their benefits. In the process they get frustrated and resort to various act of criminality. To attain a new order of existence where social justice is a parametre for measuring good governance the anchor point would be social security. Unfortunately one can say without fear or favour that no Government in Nigeria has properly addressed the need for social security. It is naturally an enabling factor for upholding the dignity of man. It is also the

superstructure on which fundamental human rights provided in the constitution should rest.

**xi. Over-criminalization Process**

Earlier in this paper we have catalogued the existing laws enacted as legislative measures for the control of economic crimes. The multiplicity of these laws complicate enforcement process. For instance, the Penal Code Law of 1963, Criminal Code of 1916, the Corrupt Practices Act 1975, the Corrupt Practices and Other Related Offence Act 2000 and the Economic and Financial Crimes Act 2002 contain provisions dealing with corrupt practices. They are all in force till date save that the National Assembly has passed a new anti- corruption law titled: The Corrupt Practices and Other Related Offences Bill, 2003. Its legality and application is being challenged in court. The matter is therefore sub-judice and accordingly, reference here is made to the 2000 Act.

The implication of the parallel existence of these laws are as Follows:

- a) The police has the powers under section 4 of the Police Act to defect, arrest, detain and prosecute persons alleged to be involved in corrupt practices.
- b) In the same vein the police has the discretion to decide which law has been breached. The punishment stipulated in the laws are not the same. Punishment under the Codes and the Corrupt Practices Act 1975 are minimal. On the other hand similar offences under the 2000 and 2002 Acts attract stiffer punishment. Anyone who bribes the police will be arraigned under the old regime of laws with lesser punishment. Something has to be done on that.
- c) The powers and functions of the Independent Corrupt Practices Commission (ICPC) and the Economic and Financial Crimes Commission (EFCC) are the same. Their main function is to investigate and of course where necessary prosecute persons accused of corrupt practices. reports of corrupt practices are filed before either of them. The issue of discretion also prevails in favour of complainants.

Although the situation may provoke competition between the two Commissions, on the other hand there may be Operational conflict if things are not properly handled. In this regard, it is this author's view that the ICPC and EFCC laws should be harmonised into

one law with one body established to handle all matters related to body By the same token the Corrupt Economic crimes. By practices Act, 1975 as well as the relevant provisions in the Penal Code and Criminal Code laws should be either repealed or amended to attune with recent development. That will be tidier than the current position of things.

**xii) Government Interference**

In the history of Nigeria the yearnings of Nigerians have been centered on the need for an independent judiciary. This is because of allegations of Government interference on judicial officers. Government officials should not influence the courts no matter the circumstances they may find themselves. The principle of staying clear should also apply to any institution charged with the responsibility of investigation and prosecution of corrupt practitioners. Internal and external auditors at all Levels of government and agencies should be allowed to do their work without any form of intimidation or threat to their work and life. In the same vein, audited reports should be made public within Ministries, Local government councils and government agencies. People should therefore, be given the opportunity to reasonably comment on public accounts without any hindrance.

**CONCLUSION**

It is believed that the issues canvassed in this paper have chronologically given a fair representation of the effort of Government and Nigerians in the war against economic crimes. It is also hoped that government will critically examine the recommendations contained herein with a view to tackling the problem positively. Effort will be made by the author to circulate this paper to the appropriate government authorities in Nigeria for their information and necessary action. Furthermore recommendation have been made at intervals in the course of the paper and in another breath suggesting possible solutions to the problems. A lot ought to be done in ensuring that political will of government functionaries is upheld. This will be as opposed to neglect or docility on the part of government in matters concerning economic and financial crime giving the impression that government is not bothered about the devastating

effect of corruption on the various facets of government. International co-operation in the fight against economic and financial crimes should be strengthened to achieve results.

## ENDNOTES

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<sup>i</sup> This revelation by Transparency International has taken the form of an annual report and published in the newspapers, magazines, radios and television

<sup>ii</sup> Adeyemi, A.A. Corruption in Nigeria: The Criminological Perspective (In B. Ajibola (ed) Perspectives on Corruption and other Economic Crimes in Nigeria 1991 p.6

<sup>iii</sup> Criminal Code Act Cap. 77 Laws of the Federation of Nigeria applicable since 1916

<sup>iv</sup> Penal Code Law Cap. 89, Laws of Northern Nigeria.

<sup>v</sup> See Ekumankama, D.U.: Law, Corruption and Other Economic Crimes in Nigeria

Today: Problems and Solutions, 2002, Chapter 6 New World Publishers Ltd. No. 47, Yakubu Gowon Vway, P.M.B. 2077, Jos, Plateau State, Nigeria.

<sup>vi</sup> The Financing of Terrorism Convention was signed by 132 nations on 9th December 1999 even before the September 11 event but it came into force on 10th April, 2002. See also Calvin E. Davis: Legislation against the Financing of Terrorism: Pitfalls and prospects in Journal of Financial Crime Vol. 10 Nos. 3 (Institute of Advance Level Studies) January 2003, at 269

<sup>vii</sup> See Sections 20 - 35 of the Act.

<sup>viii</sup> See Section 35 of the Act.

<sup>ix</sup> See Ribadu N. "I'll wipe out 419, Corruption and Related Offences" published in This Day Newspaper, Vol. 9, No. 2939, Pg. 3 of May 10, 2003

<sup>x</sup> This author was privileged to chair the plenary session of the 2002 National Seminar on Economic Crime held at Abuja, Nigeria.