

Economic and Financial Crimes Commission (EFCC) and the Challenges of Managing Corruption in Nigeria: a Critical Analysis

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Abstract

The present Global system is confronted with multiplicity of challenges which threaten the survival of many nation states. One of these challenges is corruption. The viral nature of this phenomenon is such that combating it is consistently proving difficult. The menace is present in varying degrees in different countries at different times. Countries in the Global North and the Global South are scourged by it differently. Nigeria is not an exception to this. The phenomenon consequently brings about economic backwardness, political instability, social insecurity, infrastructural decay, unaccountability, negation of the principle of law, etc. Efforts towards curbing it in Nigeria have suffered various setbacks. However since the emergence of the Economic and Financial Crimes Commission (EFCC) to manage it, some reasonable achievements have been recorded. Based on secondary data this paper examined the EFCC and the challenges of managing corruption in Nigeria. Bearing in mind that corruption as a complex phenomenon manifests in virtually every known social institution and has transnational as well as global web of connectivity, an integrative theoretical approach was used in this explanation. Findings reveal that the Commission is confronted with myriad of challenges which include: meddling in its activities by the power elites; unwholesome judicial process; weak anti-graft laws; job insecurity for its Chairperson etc. To enhance the smooth operation of the Commission, it is recommended that: special courts are granted the Commission; repealing of laws which hinder their operation; the Agency must be free from any form of executive and legislative influence among others.

Keywords: Challenges, Corruption, Managing Corruption, Nigeria.

I. INTRODUCTION

The EFCC is making significant efforts towards effective management and control of corruption in Nigeria. Yet it appears as if nothing is being done. It is indeed factual that the Agency is faced with multiplicity of challenges in executing this onerous task. It is on this premise that this paper attempted an examination of the EFCC and the challenges it faces in managing corruption in Nigeria. To achieve this, the paper is divided into seven sections consisting of: background; the powers of the EFCC in managing corruption in Nigeria; the coordination of the activities of the EFCC aimed at controlling corruption in Nigeria; the impact of the EFCC on the control of corruption in Nigeria; impediments against

effective control of corruption by the EFCC in Nigeria; conclusion; and recommendation.

II. BACKGROUND

The structure of the Nigerian society from its inception as a socio-political and economic entity has been shaken and is still being threatened by the phenomenon of corruption. In recognition of this, the colonial administration in fashioning out laws for the various component units (regions) which constitutes it un-mistakenly enshrined legislations against it in the constitutions of these areas. Specifically, Section 115-112 of the Penal Code which prevailed in the Northern part of the country emphasized this. This notwithstanding, the phenomenon still prevailed over the country in varying degrees, though not as serious and as systematic as it has become nowadays. This led directly or indirectly to the first Military intervention in Nigeria's politics on 15th of January 1966. The Brigadier Murtala Mohammed regime which seized power from General Yakubu Gowon in 1975 accused the regime of entertaining high handedness and various forms of corrupt practice among top military officers. Same reason was advanced by the Major General Muhammadu Buhari's military regime which overthrew the civilian government of Alhaji Shehu Shagari on 31st December 1983, as well as those of Major General Ibrahim Babangida on 27th August 1985 which ousted Buhari from office. Very importantly, Nigeria has multiple legislations for controlling corruption. These include: the provisions of the Code of Conduct Bureau and the Code of Conduct Tribunal; the provisions of the 1999 Nigeria constitution; the money laundering Act of 1995; provisions of the Criminal Code, Penal Code, Criminal Procedure Act etc; the ICPC Act of 2000; as well as the EFCC 2004 Act. There are a number of agencies and statutory bodies for managing corruption in Nigeria. These include: Code of Conduct Bureau and the Code of Conduct Tribunal; the Public Complain Commission; the Independent Corrupt Practices and other related offences Commission (ICPC); the Economic and Financial Crimes Commission (EFCC). It is equally important to note that before the emergence of the EFCC, various mechanisms have been used by various administrations in Nigeria in managing corruption. For example: the Public Officer Investigation Asset Decree No. 5 Of 1969 Of General Yakubu Gowon Military Regime; General Murtala Muhammed's 1975 Operation Purge The Nation; the Public Complain Commission established under decree 31 of 1975; the Ethical Revolution of Shehu Shagari (1979-1983); War Against Indiscipline (WAI) of Muhammadu Buhari (1984-

1985), and the National Security Organization (NSO); Mass Mobilization for self-reliance, Social Justice and Economic Recovery (MAMSER) of Ibrahim Babangida (1987-1993), and the Presidential Monitoring Committee (PMC); War Against Indiscipline and Corruption (WAIC) of Sani Abacha (1994-1998), as well as the failed Bank and Financial Malpractices Decree No.18 of 1994; and the money laundering decree No. 3 of 1995, as amended in 2003 and 2004 Money Laundering Acts. It is non arguable that the fight against corruption was never systematic and deliberate until the civilian administration of Olusegun Obasanjo with the emergence of the ICPC and the EFCC. However the inability of the former to effectively secure conviction in the law courts of individuals who Nigerians regarded as high profile corrupt individuals in its first three years of operation brought about some form of discontent among Nigerian itching for justice on these individuals regarded as sacred cows by the society, as well as the desire to redeem the country's image which was increasingly being dented in the international circle due to corruption resulting to the inclusion of Nigeria into the Financial Action Task Force (FATF) list of non-Cooperative Countries and Territories (NCCTS) in 2002 due to non-domicile of a Financial Intelligence Unit (FIU) in line with FATF laws. These conditioned the emergence of the EFCC (Enweremadu, 2011:8; Samuel., Aju.,and Elaiwu, 2014:25). Having identified the fact that the EFCC has the capacity to control corruption in Nigeria due to its wide range of power as well as support internationally, it is considered the most vibrant as far as combating corruption is concerned in Nigeria at least for the time being. Thus it is important to examine the EFCC and its role towards managing corruption in Nigeria. This is because "Nigeria cut an image in the world community as a country where no act of indiscipline would be too despicable to be imagined" (Federal Ministry of Information, 1984:16). Furthermore, "corruption in Nigeria has passed the alarming and entered the fatal stage and Nigeria will die if we keep pretending that she is only slightly indisposed" (Achebe in Agedah, 1993:67). From the foregoing, (Osoba, 1996:373-381), made a chronology of corruption development in Nigeria which he identified as: the monopoly of power by the colonialist which eventually transcended to the use of powers by politically influential Nigerians who become ministers, chairmen and members of public corporations (this power was only limited by the veto of ultimate colonial authority) over award of contracts for public projects, issuance of commodity buying agents' licenses, etc. This resulted in the emergence of ten percent "kickbacks" and other forms of corrupt practices during the period of decolonization (1952-60); During the immediate post independent era (1960-1966), the governing elites used state power and the state treasury to better their lot as well as other forms of corrupt practices which include fraudulent awards (including outright sale) of unsecured government loans, produce buying and import-licenses to cronies, inflation of contract values, etc. The intervention of the military in Nigeria's politics between 1966 and 1979 saw the foundation of kleptocracy in the nation's body polity especially the immediate post-civil-war era due to the emergence of the oil boom so that the Gowon's regime became seriously embattled with the Nigerian public over

wide spread corruption within the rank and file of his lieutenants. The Murtala regime's effort at sanitizing the body polity was short lived. On return to civilian government between 1979 and 1983, the country was plunged into deeper crisis of kleptocracy due to various forms of profligacy by the second republic politicians. On the second coming of the military and afterwards (1984 till date) corruption was developed to its highest possible level so that it has become what can be termed a 'viable industry' in that sense in Nigeria. On the other hand, (Ohiorhenuan, 2015:97-125), conceives corruption as the driving force for the evolution of institutions in Nigeria. It is however important to note that the various communities which were brought together to form what is presently defined as Nigeria negated the basic fundamentals of merit in one way or the other. Hence the basic characteristics of present forms of corrupt practices were present in their pristine form in these communities. All these have affected the development of the country in one way or the other. The above and more put the EFCC on the global spotlight due to its efforts at combating corruption in Nigeria.

III. THE POWERS OF THE EFCC IN MANAGING CORRUPTION IN NIGERIA

The role of EFCC in combating corruption in Nigeria lies within the legal framework relating to its powers and functions. These roles as guaranteed by the EFCC Act of 2004 are as follows:

- a. The enforcement and the due administration of the provision of the Act;
- b. The investigation of all financial crimes including advance fee fraud, money laundering, counterfeiting, illegal charge transfers, futures market fraud, fraudulent encashment of negotiable instruments, computer credit and fraud, contract scam, etc.
- c. The co-ordination and enforcement of all economic and financial crimes laws and enforcement functions conferred on any other person or authority;
- d. The adoption of measures to identify, trace, freeze, confiscate or seize proceeds derived from terrorist activities, economic and financial crime related offences or the properties the value of which corresponds to such proceeds;
- e. The adoption of measures to eradicate the commission of economic and financial crimes;
- f. The adoption of measures which include coordinate, preventive and regulatory actions, introduction and maintenance of investigative and control techniques on the prevention of economic and financial related crimes;
- g. The facilitation of rapid exchange of scientific and technical information and the conduct of joint operations geared towards the eradication of economic and financial crimes;
- h. The examination and investigation of all reported cases of economic and financial crimes with a view to identifying individuals, corporate bodies, or groups involved;
- i. The determination of the extent of financial loss and such other losses by government, private individuals or organization;

- j. Collaboration with government bodies both within and outside Nigeria carrying on functions wholly or in part analogous with those of the Commission concerning-
- I. The identification, determination of the whereabouts and activities of persons suspected of being involved in economic and financial crimes;
 - II. The movement of proceeds or properties from the commission of economic and financial and other related crimes;
 - III. The exchange of personnel or other experts;
 - IV. The establishment and maintenance of a system for monitoring international economic and financial crimes in order to identify suspicious transaction and person involved;
 - V. Maintaining data, statistics, records and reports on person, organizations, proceeds, properties, documents, or other items or assets involved in economic and financial crimes;
 - VI. Undertaking research and similar works with a view to determining the manifestation, extent, magnitude and effects of economic and financial crimes and advising government on appropriate intervention measures for combating same.
- k. Dealing with matters connected with extradition, deportation and mutual legal or other assistance between Nigeria and any other country involving economic and financial crimes;
- l. The collection of all reports relating to suspicious financial transaction, analyze and disseminate to all relevant government agencies;
- m. Taking charge of, supervising, controlling, coordinating all the responsibilities, functions and activities relating to the current investigation and prosecution of all offences connected with or relating to economic and financial crimes;
- n. The coordination of all existing, economic and financial crimes investigating units in Nigeria;
- o. Maintaining a liaison with the office of the Attorney-General of the Federation, the Nigeria Customs Services, the Immigration and Prison Service Board, the Central Bank of Nigeria, the Nigerian Deposits Insurance Corporation, the National Drug Law Enforcement Agency, all government security and law enforcement agencies and such other financial supervisory institutions involved in the eradications of economic and financial crimes;
- p. Carrying out and sustaining rigorous enlightenment campaign against economic and financial crimes within and outside Nigeria; and
- q. Carrying out such other activities as are necessary or expedient for the full discharge of all or the functions conferred on it under the 2004 Act.

Special Powers of the Commission

The Commission has power to:

- a. Cause investigations to be conducted as to whether any person, corporate body or organization has

committed an offence under the Act or other law relating to economic and financial crimes;

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

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

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

In summary, the EFCC is empowered to prevent any form of economic and financial crime in Nigeria; investigate and prosecute those involved in money laundering, embezzlement, bribery, smuggling, illegal arms transactions, oil bunkering, unauthorized mining, human trafficking, child labor, tax related offenses, cyber crimes, foreign exchange malpractices, currency counterfeiting, tracking, freezing as well as confiscation of sleaze wealth including those of terrorist outfits. Given the aforementioned functions of the EFCC as stipulated by its establishment Act 2004, the Commission would require other constitutional backing that would make it function more effectively and attain great height of success given the enormous task of controlling corruption in Nigeria, as well as the supervisory role which it is to play over other existing economic and financial crime investigating units in Nigeria. This is to avoid conflict within and between the corruption enforcement systems in Nigeria i.e. conflict between the EFCC, the Police, the Judiciary as well as the Independent Corrupt Practices and other Related Offences Commission (ICPC) in terms of reference with regards to arrest and prosecution of culprit(s) within the context of the rule of law.

It is equally important to note that the task of collecting all reports relating to suspicious financial transaction, as well as analyzing the same and disseminating them to all government agencies would limit the operations of the Commission. This is owing to the fact that the Commission would confine itself only to reports of such suspicious financial transactions as forwarded to it, as much may not involve itself in cases of like manner no matter how grievous if it does not receive reports on it. Furthermore the Commission is wanting with respect to section 7(1) of the EFCC 2004 Act. This is because the lifestyle and the extent of properties of a lot of past and present public officers in Nigeria cannot be justified by their source of income. As such one wonders the effort the

Commission is making towards the investigation of these set of individuals, or better still if the Commission would require another set of legal instrument to investigate these 'power elites.' The above may not be unconnected with the fact that the emolument of especially both the federal and state executives as well as federal legislators in Nigeria which would aid the efforts of the Commission in determining whose lifestyle is averse with his/her income are not published for the public. More so, the limits of the Commission's power in line with the 2004 Act have in one time or the other been subject to controversy. This was evident in the battle of supremacy between the EFCC past leader Mrs. Farida Waziri and the former Attorney-General and Minister of Justice, Muhammed Adokie whose assertion of supervisory authority over the Commission's activities especially the issues of arrest and prosecution of suspects which Waziri vehemently resisted. This said power tussle was born out of the provision of the Act 2004, 43 which states that: *The Attorney-General of the Federation may make rules or regulations with respect to the exercise of any of the duties, functions or power of the Commission under the Act.* Therefore, to avoid a repeat of the aforementioned, the Commission needs a clearly defined and unrestricted power to function optimally. This is because the present EFCC Act leaves more questions than answers in its present form.

IV. THE COORDINATION OF THE ACTIVITIES OF THE EFCC AIMED AT CONTROLLING CORRUPTION IN NIGERIA

The EFCC as an anti-graft agency has spelt out modus operandi in terms of how it coordinates its activities with regards to the control of corruption in Nigeria. The first step towards this is the fact that for the Commission to initiate any move towards involving itself with any case of corruption, it must receive petition with regards to the said issue. Such petitions would be forwarded to the Commission by individuals or organization(s). On the receipt of the petition(s), the Commission will evaluate them to determine whether the case falls within its schedule or mandate. Where the said petition(s) falls within its schedule or mandate, it would be accepted. Take for example as revealed by a witness on allegation of corruption against the former speaker of House of Representative.

On June 16, 2010, my colleagues and I were called by our unit head and our attention was drawn to a petition written against the accused person by Mr. Dino Melaye and some other members of the House. It bordered on the procurement of capital running in 2010, where it was alleged that there was a diversion of public funds, abuse of office and of due process. (Ogundele, 2012:8)

If the said petition falls within the purview of the EFCC, the next stage would be to investigate the claims as indicated in the said petition(s). To achieve this, the Commission would send a letter of invitation to the said individual(s) with the aim of questioning with regards to the allegation(s) in the petition. According to the EFCC Act 2004 (38)

1. The Commission shall seek and receive information from any person, authority, corporation or company without let or hindrance in respect of offences it is empowered to enforce under this Act.

2. A person who-
 - a. Willfully obstructs the Commission or any authorized officer of the Commission in the exercise of any of the powers conferred on the Commission.....or
 - b. Fails to comply with any lawful enquiry or requirements made by any authorized officer in accordance with the provisions of this Act, commits an offence under the Act and liable on conviction to imprisonment for a term not exceeding five years or to a fine not below the sum of N500,000 or to both such imprisonment and fine.

The Commission may arrest the said individual(s) alleged by the petition to be corrupt, detain them in order to effectively investigate the said claims against them. In which ever situation (whether the alleged corrupt person(s) were issued letters of invitation or arrested), the Commission would

1. Detain the said person(s) for more interrogation especially where it perceives no or low level of compliances with the said individual(s).
2. Release the said individual(s) where they find no concrete evidence with regards to the petition against the person(s); or on personal worth.

The second option accounts largely for the multiple of issues reported by the national dailies which by and large ends without further information on the individual(s) concerned. These arrests and investigations are usually carried out by the general and Assets investigation unit of the Commission. According to the EFCC Act 2004, 13(1) the General and Assets Investigation Unit shall be charged with responsibility for-

- a. The prevention and detection of offences in violation of the provisions of the Act;
- b. The arrest and apprehension of economic and financial crime perpetrators;
- c. The investigation of assets and properties of persons arrested for committing any offence under the Act;
- d. The identification and trace of proceeds and properties involved in any offence under the Act and the forfeiture of such proceeds and properties to the Federal Government; and
- e. Dealing with matters connected with extradition and mutual assistance in criminal matters involving economic and financial crimes.

With regards to extraditions, the Commission works in collaboration with other FIUs globally for the extradition of person(s) either into Nigeria or out of the Country to answer corruption charges leveled against them.

3. Prosecute the said individual(s) where through investigations, concrete evidence shows that the said individual(s) were indeed corrupt as stated or otherwise by the petition. The legal and prosecution unit of the Commission files a motion of corruption in court against the said individuals(s) given the number of charges discovered by the investigation unit against the person(s).

According to the EFCC Act 2004, 13 (2a), *the Legal and Prosecution Unit shall be charged with the responsibility for prosecuting offenders under the Act.* Once a motion of corruption is filed, the Commission through this unit follows the required legal procedure until the case is concluded in the law court which may be a conviction of the accused, a discharge or striking out of the case for lack of substantial evidence. It is however important to note that once proceeding in respect of any criminal (corruption) matter brought before the court by the Commission commences, the court will not entertain an application to stay the Proceedings (appeal against interlocutory ruling) until the High Court delivers judgment on the matter(s). This fact is made clear by the EFCC act 2004, 40. "Subject to the provisions of the constitution of the Federal Republic of Nigeria 1999, an application for stay of proceedings in respect of any criminal matter brought by the Commission before the High Court shall not be entertained until judgment is delivered by the High Court."

V. THE IMPACT OF THE EFCC ON THE CONTROL OF CORRUPTION IN NIGERIA

The impact of the EFCC in combating corruption in Nigeria can be correlated to the number of arrests, prosecution and conviction of individuals, corporate bodies, etc involved in one form of corrupt practice or the other from its inception in 2004 till date in Nigeria. The EFCC operation at fighting corruption in Nigeria has resulted to a good number of arrests, detentions, trials and conviction of about 200 persons on various charges of corruption in 2007 alone, and higher with about 25% of the above figure in 2008. The Commission arrested, prosecuted and secured conviction on some past chief executives of some state and some well placed Nigerians e.g. Jolly Nyame of Taraba state, Joshua Dariye of Plateau State, Saminu Turaki of Jigawa state, Diepreye Solomon Alamiyeseigha of Bayelsa state, Oriji Uzoh Kalu of Abia state, Tafa Balogun former Inspector General of Police. Mrs. Irene Chigbue Director-General of Bureau of Public Enterprise (BPE) was also questioned by the EFCC on issues bordering on some transaction of the Privatization Agency. Other efforts include: charging of ex-US vice President- Dick Cheney in 2010 over bribery scandal involving an engineering firm, KBR, a subsidiary of Halliburton which pleaded guilty of paying 180 million dollars in bribe to Nigeria officials prior to 2006 when it was a subsidiary of Halliburton; the arrest of six top Ogun state government house officials in July 2010 over alleged N41.7billion fraud. Those affected include: Badejo Ajiola, Ganiyu Sa'id, Sola Okanlawon, Odunlami Toyin, Modupe Akinlola, and Ibrahim Aladele. All the officials were staff of the Ogun state government House Accounting Department. (Aiyetan, 2007:23-25; Adeyemo, and Yishau, 2007: 27; Onyechere, 2004:3-6); The arrest and detention of former House of Representatives speaker Dimeji Bankole in June 2011 over N10billion loan obtained by the House which was alleged grossly mismanage (Yusuf, 2011:1&2); the arrest of former governors Adebayo Aloye-Akala of Oyo state, Aliyu Akwe-Doma of Nassarawa state, and Gbenga Daniels of Ogun state in October of 2011 for allegedly misappropriating public funds amounting to about N101 billion while in office as Chief Executives of their various states (Ganagana., and Adebayo, 2011: 5); the

slamming of one time governor of Bayelsa state, chief Timipre Sylva on a six-court charge in February 2012 for alleged mismanagement of N2.45billion state fund. (Ogundele, 2012:5); seizing of six properties including a hotel and four falling stations in March 2012 from a former director of Pension Administration in the office of the Head of Civil Service of the Federation Dr. Sani Teidi Shuaibu who stood trail over N4.56billion pension scam (Yusuf, 2012:1&2). The arrest of the Ondo State Oil Producing Communities Development Commission's chairman Mr. Debo Ajimuda in march 2012 over alleged N61.63billion fraud (Yusuf, 2012:6); prosecution of one time governor of Adamawa state Muritala Nyako and his son-Senator Abdullaziz Nyako on allegation of N15 billion money laundering offences, in July of 2015 (Oyesin., and Onani 2015:6); the interrogation of former governor of Kebbi state-Saidu Dakingari over alleged mismanagement of N3.8 billion by the EFCC in October of 2015 (Yusuf, 2015:5), the investigation and prosecution of about ₦2 billion arms deal by the former National Security Adviser Sambo Dasuki and others (Obalonye, 2015: 18; Yusuf, 2015:1&6) just to mention but a few.

While the ICPC charged 4 individuals to court for various acts of corruption in its first year of operation, 23 persons by the end of its second year of operation, 49 persons towards the end of 2003, and 185 persons in 2006; by October of 2008 the figure rose to 309. Correspondingly, the ICPC recovered N212 million in 2005, N3.9 billion in 2006, and about N4.7 billion in 2007; the ICPC seized cash and assets worth about N8 billion between November 2011-october 2015, received about 4,299 petitions out of which 3,764 were referred for investigation, 899 were concluded, while 170 of these filed for prosecution for various financial crimes (Enweremadu, 2011:8; Ojo, 2015:6; Ogunesan, 2015:43). The EFCC on its own part recovered about 11 billion dollars, and prevented the loss of over 15 billion dollars through scam business proposals and contracts; The Commission secured over 650 convictions between 2008 and 2011 under Farida Waziri's leadership, prosecuted about 75 high profile cases in court. Furthermore, over 5,000 fraudulent email addresses have also been shut down by the Commission and 80 suspects with regard to the fraudulent address faced trails between 2008 and 2011 (Nanaghan, 2011:20). Under the leadership of Ibrahim Lamorde: the agency secured about 117 court convictions in 2013; secured 126 convictions in 2014; and recovered about 925,000 dollars between January 2013 and August 2015. According to (Ndujihe, 2015) most of these convictions are low profile cases or what he termed "petty thieves" due to the fact that cases involving a host of former governors, ministers and lawmakers are pending, The EFCC made enormous contribution towards controlling advance fee fraud (a.k.a. 419), illegal oil bunkering, as well as investigation of corrupt practice in both the upstream and down-stream sector of Nigeria's petroleum industry, capital market fraud, bank fraud as well as recovered over N5billion from investigation into oil subsidy fraud and prosecuted more than 40 suspects in connection with the fraud; secured at least one conviction on the pension fraud matter and recovered property worth over N1billion as at 2014. On a general note, the EFCC stopped corrupt politicians from contesting election in 2007 in Nigeria.

(League for Human Rights, 2007:1; Ewerenmadu, 2010:10; Ojo, 2012:7), and recorded over 1000 convictions in its first 10 years of operation as well as recovered about \$2trillion in 12 years (2004-2016) as revealed by the Attorney-General of the Federation and Minister of Justice Abubakar Malami, SAN in February of 2016 (Nochiri 2016:1 and 5). The effort of the Commission helped greatly in banking consolidation as well as guaranteeing of depositors' monies in the bank due to its check on failed banks (Zero Tolerance, 2008:26; Our Milestone, 2010:6) The Commission was instrumental in the restoration of foreign direct investment (FDI) in Nigeria. The activities of the EFCC was critical in securing the extraordinary 18 billion dollars debt forgiveness to Nigeria by the Paris Club in 2005, and the subsequent payment of 12 billion dollars to upset the remaining. The Commission was also instrumental to the removal of Nigeria from the Financial Times –Financial Action Task Force (FT- FATF) list of non – Cooperative countries and Territories (NCCTS), and the admission of Nigeria's Financial Unit (NFIU) into the Elite Egmont groups of Financial Intelligence Unit (FIUs) in 2007 (Zero Tolerance, 2009:51). The Commission's effort assisted in the improvement of Nigeria's rating by the transparency international from a rock bottom no. 2 listing in 2007 to the modest rise of no. 143 out of 183 countries on a global scale of integrity profile in 2011. In 2012, the country was ranked 139th out of 176 countries surveyed with 2.7 points; in 2013 it ranked 136th out of 144 with 2.5 out of 10 points; in 2014, the nation was ranked 136th out of 174 countries surveyed with 2.7 out of 10 points; while in 2015, it ranked 136th out of 168 countries surveyed with 2.6 points out of 10 (The TI rating considers scores below 5 out of 10 points as corruption area; from 5 to 10 out of 10 points as non-corrupt area. This means the more a country is rated below 5 points down to 0 point determines how corrupt the country is, and the closer to 10 points from 5 points determine how corrupt free the country is. However, 10 points out 10 means absolutely free from corruption, while 0 out of 10 points means absolutely corrupt) more so, factors which accounts for the rating of countries as either corrupt or non-corrupt include: level of press freedom; access to budgetary information including proper public accountability; level of integrity among public office holders; level of judicial independence as well as proper dispensation of justice between and among the classes in the country otherwise referred to as *equality before the law*. (Transparency International: 2012; 2013; 2014 and 2015). The same can be said of the Fitch rating of Nigeria's economic outlook from negative to stable in 2011 and beyond. In August of 2015, the UK established the International Corruption Unit (ICU) under the UK National Crime Agency (NCA) to investigate incidences of bribery as well as money laundering by corrupt foreign officials (particularly involving the Global South countries) and their associates; trace and recover these sleaze wealth in any part of the world; as well as assist foreign anti-corruption Commissions investigate incidences of graft involving their nationals in the UK and other places. This is aimed at making the UK unsafe for these power elites who maybe above the laws of their countries, hence cannot be touched. However the ICU acts on the basis of information provided to it by the foreign government(s) and the NCA. The

EFCC is enjoying a great deal of collaboration and support from this agency with the aim of tracking stolen monies from the country over the years.

On the issue of accountability by public office holders and bureaucrats as a result of the operations of the EFCC on the control of corruption, evidence shows that:

since the founding of the EFCC till date there are more than enough examples to illustrate the Culpability of public officials who abused the process, there are cases of serving ministers offering bribes to pass budgets, cases of permanent secretaries who compromise themselves through outright theft, cases of ministries where deals were made of salaries and numerous abuses at state level of the ecology fund, fertilizer scams and other examples of sleazy practices in government. (Ribadu, 2004:5-8).

The aforementioned result was achieved due to improvement in accountability by public officials and bureaucrats to avoid indictment by the EFCC. Further evidences show that:

Before 1999, there were laws, regulations, constitutional provisions that addressed issues of accountability in public service and by extension corruption.... but these provisions and institutions were weak or rendered weak especially by military interventions in governance. But the texture of our focus on combating corruption changed after 1999 with establishment of... the economic and financial crimes commission (EFCC). The focus has been to bring to book those who contravene the law against corruption by diverting public resources into private pockets. Good results have been achieved and are being achieved. (Hambagba, 2007:2-3)

Furthermore the EFCC's operation is enhanced by:

1. The Code of Conduct Act which demands an obligation on assets declaration which is somewhat functioning now;
2. Financial intelligence Unit (FIU) which is now actively in place monitoring and implementing the money laundering laws of the country. Its membership of the Egmont group of global FIUs means that no unwholesome deal by Nigerians anywhere in the world is total hidden
3. Money laundering prohibition Act 2004, (1) and 2(1) i.e., no person or body corporate shall, except in a transaction through a financial institution, make or accept cash payment of a sum exceeding

a. N500, 000 or its equivalent, in the case of an individual, or

b. N2, 000,000 or its equivalent in the case of a body corporate

The transfer to or from a foreign country of funds or securities of a sum exceeding US 10,000 dollars or its equivalent by any person or body corporate shall be reported to the Central Bank Of Nigeria or Security and Exchange Commission.

4. Money laundering prohibition Acts 2004: 10(1) which says a financial institution or designated non-financial institution shall report to the Commission and Agency in writing within 7 days any single transaction, lodgment or transfer of funds in excess of

a. N1, 000,000 or its equivalent in the case of an individual or

b. N5, 000,000 or its equivalent in the case of a body corporate

Given the issues discussed, one cannot but appreciate the impact of the EFCC in controlling corruption in Nigeria so far. Notably: the arrests; detention; arraignment; and conviction of some ex-chief executives of states, and other highly placed Nigerians. However, these can be said to be pseudo-results or partial success owing to the fact that the Commission's operations towards corruption control appears to be selective if placed on revelation by Lai Mohammed in January of 2016 that 55 Nigerians stole 1.34 trillion naira between 2006 and 2013 from the national treasury. Those involved include: 15 former governors, alleged with 146.84 billion; 4 former ministers, alleged for 7 billion; 12 former public servants at federal and state levels, said to have stolen over 14 billion; 8 persons in the banking sector, alleged to have stolen 524 billion; and 11 businessmen alleged with 653 billion. According to (Fayose in Balogun 2016:11),

...the publicized arrest of president Buhari's associate and All Progressive Congress (APC) chieftain, Jafaru Isa, and the reported refund of N100 million to the EFCC as the first trick used by the federal government in its attempt to deceive Nigerians into believing that the fight against corruption was not selective.

The point being made is that what is good for the goose is good for the gander. The fact remains that for the EFCC to perform beyond average, and deliver excellent and efficient anti-graft crusade, Nigeria needs a Federal Chief Executive (President) who will be ready to commit class suicide i.e. Damn all consequences and negate all the ethics and principles which sustain the power elites groups in the country. It is not out of place to note that this is the direction the current anti-corruption war in Nigeria is directed towards, but more needs to be done. One question which needs to be addressed is, if the 'strong General' Sani Abacha was alive, would there be anything referred to, or termed the 'Abacha loot?' which the Federal Government and the EFCC pursued with so much vigor and professionalism to recover (about 1 trillion dollars in sum) from Switzerland (Akano, 2015:1). This question is important because a good number of past political leaders at both the Federal and State levels have not been questioned with regards to their stewardship let alone attaching the concept 'loot' to their names. Therefore, one would be tempted to ask what action(s) the EFCC has taken with regards to section 7(1) of the EFCC Act 2004 especially with regards to: the excess oil revenue which the country immersed during the gulf-war (1990-1991) during Babangida regime which about N12billion oil wind fall was not accounted for during the period as revealed by the Okigbo Panel which was submitted to late General Sani Abacha on August 29, 1994; the allegation of over 900 billion dollars which was contained in a petition by the Conference of Nigeria Political Parties (CNPP) to the EFCC against on time president of Nigeria, (Ogundele, 2007) just to mention but a few. Therefore, for the EFCC to be free from bias and the accusation of being biased there must be no sacred cow in its operations towards real or imagined corrupt individuals in Nigeria. Their operations should be void of favoritism and respect for power elites. As such all past public office holders should be invited for questioning by the Commission to determine the level of

their uprightness while in office, whoever is found to have enriched him/her self through corrupt means should not be spared the full wrath of the law. This is the only way the Commission would free Nigeria from the hands of assumed or real power elites who divert public funds into their pockets and turn around to make policies or sponsor policy makers in Nigeria. This is important because according to (Dewey in Guerin, 1993:10), "because response is in effect a classification of stimulus, the organism is in effect confronted with the problem of an indeterminate stimulus. How the conflict is resolved will shape how the organism responds to future stimulus." The import of this statement is that, the measure(s) taken in response to corruption, would determine the extent to which the particular corrupt act(s) reduce(s) or otherwise in the given society as well as shape the general outlook of the agency in charge of its management and control. Therefore being selective in fighting corruption would in no way bring about its reduction let alone elimination in any society and Nigeria will not be an exception.

VI. IMPEDIMENTS AGAINST EFFECTIVE CONTROL OF CORRUPTION BY THE EFCC IN NIGERIA

Given the impact of the operations of the EFCC in controlling corruption in Nigeria, one would be tempted to assume that the Commission is not confronted with challenges. However, on the contrary, the EFCC in its bid to regulate or combat corruption in Nigeria is faced with Hercules challenges. One of the challenges confronting the EFCC as such stands as impediment against effective control of corruption by the Commission is the unfriendly judicial process in the country. The legal tools of stay/delay of proceedings in the prosecution of corruption cases has resulted in about 2,000 unfinished cases of the Commission outstanding in courts spread across the country as at 2011 (Nanaghan, 2011:20). This is an impediment to effective control of corruption by the EFCC in Nigeria. This is so because the Commission's duties end with the arrest investigation and prosecution of offenders. While on the other hand the trial (delayed or speedily) as well as passing of judgment on persons on corruption charges, is the exclusive reserve of the judiciary. The dragging of feet by the judiciary in the execution or dispensing of justice concerning corruption cases brought before it by the EFCC is a challenge to effective control of corruption by the EFCC. To overcome some of these judicial encumbrances faced by the EFCC in its effort towards combating corruption in Nigeria, establishing special courts for the Commission have been suggested a number of times by concerned Nigerians and indeed the Commission itself. However, the judicial reform panel kicked against this idea in 2012. Closely related to this is the weak legal instrument which guides the functions of the agency. It is pertinent to note that the inadequacy of anti-graft laws which works hand in hand with the judicial process in Nigeria grossly hampers the activities of the Commission. Perhaps the most challenging within the context of judicial process and legal provision is the attempt of placing the Commission's activities (arrest and prosecution) under the supervisory authority of the Attorney-General of the Federation. If this move succeeds, it means that the Commission has been turned into a toothless bulldog – since their operations would be

conditioned by the dictate of the Attorney General. According to section 43 of the EFCC Act 2004, "the Attorney-General of the Federation may make rules or regulations with respect to the exercise of any of the duties, functions or power of the Commission under the Act."

Another impediment to the effective control of corruption by the EFCC in Nigeria is the issue of meddling in the Commission's activities by politicians interested in the cases of arrested persons suspected to be corrupt by the EFCC especially if the individual(s) in question are high profiled individuals in the country. For example,

...controversies may have offered the government a rare opportunity to re-assess its war against corruption crusade and take real steps at building a real institution that is free from the encumbrance of political interference which has been the bane of the commission.....it was a common knowledge that Ribadu's achievements were impaired by the undue interference from his principal, former president Olusegun Obasanjo. (Agbaje, 2011: 7)

There are evidences that the EFCC was constantly under pressure from formidable political interests which cut across political lines from both the executive and legislative arms of government, especially at the National Assembly and the Governor's forum most importantly where one of their own is involved. A good example is the outright condemnation by Olusegun Obasanjo of the report of the investigation of corruption against Chief Olabode George, the Chairman of the Nigerian Ports Authority (NPA) which indicted him (George) and other management members of the NPA over violations of government rules and regulations with regards to award of contracts and as such should be sanctioned for contract splitting and inflation of the prices of contracts (ibid), even though (him) chief Bode George was later arrested in August 2008 and arraigned on a 163 count-charge which include conspiracy, disobedience to lawful order, abuse of office and illegal award of contracts to the tune of 84 billion with regards to the aforementioned report which the former president Obasanjo had earlier rejected. Chief George was found guilty and sentenced to 30 months imprisonment in October 2009. Ribadu the foremost EFCC chairman put this succinctly by commenting that there are other criminals walking Nigeria streets free because of either their smartness or connection to certain or some influential individuals. In his view, the efforts made by the Commission in its first five years of operation in stamping out corruption in Nigeria was deliberately weakened by corrupt individuals (power elites) in high places who handed the Commission to those it had brought to justice in time past. To him, corruption is fighting back and one of the ways it hopes to succeed is to have a weak or completely compromised Commission.

Effective control of corruption by the EFCC in Nigeria is hampered by the non-security of job of the EFCC chair person. Take for instance, the EFCC Act 2004, 2(3), and 3(2) states that:

The chairman and members of the commission other than ex-officer members shall be appointed by the president and the appointment shall be subject to confirmation of the senate. A member of the committee may at any time be removed by the president for inability to discharge the function of his office

(whether arising from infirmity of mind or body or any other cause) or for misconduct or if the president is satisfied that it is not for the interest of the commission or the interest of the public that the member should continue in office.

The implication of the aforementioned is that the Commissioner's high ranking officials are by extension part of the executive arm and as such expected to walk and work in line to the expectation of their boss (the president) as well as trade with caution on issues which concerns the legislative arm in order not to be seen or perceived as being ungrateful to those that sanctioned their appointment. This is an impediment to the effective control of corruption by the EFCC. This is so because if in any case, the president or members of the legislature places a demand on the Commission to, for example stay off a particular case of corruption and it acts otherwise, the possibility of someone losing his/her job is very high. The removal of Farida Waziri as the EFCC chairman is a typical example. *....there had been intense lobby especially from the House of Representatives and some highly Influential politicians to get her out of office. The ex-speaker Dimeji Bankole case actually gave her a lot of trouble and at a point, she was in a dilemma. (Murphy., and Adetutu 2011:6).* The case cannot be said to be different with the laying off of Ibrahim Lamorde as the EFCC boss by the Buhari government in November of 2015 without any stated reason thus bringing in Ibrahim Mustafa Magu as the Commission's new boss even though "the EFCC went into slumber under Lamorde. All the things you are seeing today are mere cosmetics to show to get the attention of President Buhari" (Abdullahi., Wakili., and Mudashiru, 2015:1 and 6). The point being made is that in so far as the Commission's high ranking officials are at risk of being fired by those that employed them, or better still by the Commander in-Chief, they (the EFCC officials) would be tempted to act in accordance with the dictates of their boss in order to stay on their job. The possible outcome would be the agency acting swiftly and with full vigor in any case of corruption, which their employers give their blessings to and acting slowly or completely inactive in any case of corruption which is not sanctioned by their employers. Closely related to the aforementioned is the issue of constitutional immunity which guarantees that certain public office holders in Nigeria are not justiciable while in office. Simple put that no matter the degree of their action(s) which may generally be defined as corrupt, the EFCC do not have the constitutional backing to investigate, arrest or prosecute these set of public office holders (power elite) while they are still serving. This immunity is an impediment to the effective control of corruption by the EFCC in Nigeria. It is clearly states that:

- (1) Notwithstanding anything to the contrary in this Constitution, but subject to subsection (2) of this section-
 - a. No civil or criminal proceedings shall be instituted or continued against a person to whom this section applies during his period of office:
 - b. A person to whom this section applies shall not be arrested or imprisoned during that period either in pursuance of the process of any court or otherwise; and

- c. No process of any court requiring or compelling the appearance of a person to whom this section applies, shall be applied for or issued;

Provided that in ascertaining whether any period of limitation has expired for the purposes of any proceedings against a person to whom this section applies, no account shall be taken of his period of office.

- (2) The provision of subsection (1) of this section shall not apply to civil proceedings against a person to whom this section applies in his official capacity or to civil or criminal proceedings in which such a person is only a nominal party.
- (3) This section applies to a person holding the office of President or Vice President, Governor or Deputy Governor, and the reference in this section to "period of office" is a reference to the period during which the person holding such office is required to perform the functions of the office.

Section (308) of 1999's Constitution of the Federal Republic of Nigeria.

Despite the efforts being made at controlling corruption in Nigeria by the EFCC, the fight against corruption in the country is still a long one. This can be attributed to the impediments which stands against the effective control of the phenomenon by the EFCC which cannot be pushed aside just by mere wave of the hand or wishful thinking. Take for instance if the president and his vice, state governors and their deputies are corrupt and the anti-graft agency is incapacitated at the face of such actions due to constitutional provision(s) which compels them to stay action, this is more than enough impediment to the effective control of corruption, according to (Yusuf, 2012:1&4) "Is this not why the country's anti-corruption efforts have not achieved anything? Can the EFCC... Honestly and boldly fight corruption when the president is knee-deep in the mud of corruption." The point being made is that "Nobody in Nigeria deserves the right to be protected by law when looting public funds" (Fabi, 2008).

Another impediment to the smooth operation of the Commission's activities is lack of financial autonomy. It is important to note that whoso pays the bills largely determines what or what ought not to be. For instance in 2013, out of the N10.32billion approved for the Commission, N10.21billion which represents 99 percent was utilized by it. On the other hand, the 2014 fiscal year indicates that the agency proposed N21.058billion while N10.245billion was proposed by the Budget office for the same period for it. It is important to note that insufficient funding of the agency pose great challenge to its operations as such may make its staff vulnerable. The point being made is that if the Commission has an independent means of generating its finances and not reliance on government, it will make adequate budget on the basis of its requirement for effective operations. Furthermore, no power elite would use any form of influence or conspiracy to weaken it due to reliance on government for its funding or insufficient funds. This may not be unconnected with the allegation that corruption occurs within confide of the Commission itself. The EFCC was accused of diverting proceeds realized from

convicted corrupt individuals. For example a onetime Inspector General of Police, Tafa Balogun and onetime governor of Bayelsa state, Chief Diepreye Solomon Alamiyeseigha for which the Federal Government okayed the probe of the then Commission's chairman- Ibrahim Lamorde based on a petition written by a whistle blower, one George Uboh which accused the Commission of diverting about N1trillion of recovered loot (Nnochiri, 2015); and the allegation of the Agency being used as witch hunting instrument for settling of political scores by the powers that be. Simply put that the Commission sometimes misuse its powers. This view is held by some sections of the Nigerian public especially those within the legal profession (some lawyers and human right activist). Some journalist and academicians who perceive the impact of the operations of the EFCC in its control of corruption in Nigerian as not a success story even though they recognize the fact that some reasonable achievements have been recorded by the EFCC since its inception especially in such cases like advance fee fraud, money laundering and other related offences. Their argument is premised on the fact that dread and not reverence for the Commission is what seems to make the Commission successful i.e., it is not because of thoroughness by the Commission in its operations such that suspects cannot successfully defend the allegations leveled against them, rather, the manner in which the Commission carry out its operations – exercise of its powers over issues of corruption. It is revealed that the Commission engages in unlawful arrest, or acts beyond its powers as indicated by Keyamo (2007, August 12) open letter to Yar'adua on EFCC Sunday Sun pp.15. For example, the EFCC was asked by the Federal High Court in Lagos to pay N5million damages to Hair Prestige Manufacturing Nigeria limited and Prestige Hair Fashion Nigerian limited as well as their directors Gnanhoue Nazaire and Senou Modesta for sealing up their companies and freezing their bank accounts without a court order (Jibueze, 2015:7). The above may not be unconnected with the Steve Orosanye Report of Nation's enquiry in 2012 which recommended the scrapping of both the EFCC and the ICPC (Yishau, 2012:10), or better still, merging the two Agencies as have been further suggested.

VII. CONCLUSION

Corruption is a viral ailment which hinders the socio-political and economic development of the entire global system. Efforts have been made and still ongoing in different parts of the world to at least bring it to a bearable minimum. Nigeria after various attempts with little or no success in managing the menace, established the EFCC. The agency has recorded significant achievements toward this end but these are not void of various challenges. These challenges stand as impediments to the smooth operation of the Commission towards making Nigeria corruption free. This paper holds that if the impediments against the EFCC in controlling corruption are addressed, the Commission's effort would go a long way in addressing corruption in the country.

VIII. RECOMMENDATIONS

The Commission must be deliberately freed from the shackles of the hindering judicial process of the country by establishing

special courts for it to prosecute corruption cases. This will go a long way in reducing the number of awaiting cases and trials on account of corruption. There should be live coverage of the Commission's cases in these special courts. This is to clear any form of doubt or otherwise of the public with regards to the merit /demerit of conviction(s) or acquittal(s) of individuals indicted for corruption. This way, the general public will directly or indirectly become active players with regards to decisions on corruption matters.

The present legalist approach of the Commission in combating corruption must be augmented with intelligence gathering approach in order to build and establish strong substantial evidence(s) against those alleged to be corrupt as well as crowned with social justice approach which requires individual members of the public and indeed various communities and groups, to not only volunteer information on suspected corrupt individuals in their midst, but also desist from conferring award(s) on these individuals and also withdraw the privileges and primordial protection they enjoy from the said community or group (the importance of intelligence and social approach will transform the Commission's operation from reactive to proactive one. This will nip corruption in the bud-since the awareness that some unidentified individual are undercover agents in ministries, agencies, etc would force compliance to work ethics directly or indirectly as well as the prevalence of the rule of law. This we believe will bring about drastic reduction on incidences of corruption). This will provide these power elites with no place to hide especially now that the international community is taking the fight against corruption seriously and as such no longer provide safe haven for these corrupt individuals and their sleazy wealth.

According to section 23 of the 1999 constitution of the Federal Republic of Nigeria, the national ethics shall be discipline, integrity, dignity of labor, social justice, religious tolerance, self-reliance and patriotism. Section 24(F) stipulates that, it shall be the duty of every citizen to declare his income honestly to appropriate and lawful agencies and pay his tax promptly. The aforementioned need to be translated into practical reality by Nigerians, that is, reorientation of our daily conducts in line with these constitutional demands. If this is achieved, corruption will gradually fade in Nigeria and become history.

The Commission must be completely independent of both the executive and legislative influences (power elite influences) which militate against their smooth operations. To achieve this, the Commission's funding must be independent of government budgetary allocation. We advocate for the retention of between 5-10 percent of proceeds recovered from looters by the Commission as well as support from international agencies of repute.

Convicted corrupt individuals shall not only refund the said sums of stolen monies and assets acquired, but must pay calculated interest on this sleaze wealth as well as serve stipulated number of prison term(s). This we believe will serve as deterrence to others. The import of the above is that the country's anti-graft laws must be re-evaluated on the basis of its adequacy and inadequacy as such amended to repeal all forms of obstacle against the activities of the agency as well as

make penalty for corrupt practices to reflect the above recommendation. This will make the agency very effective and efficient in pursuing its objectives. Therefore to effectively control corruption in Nigeria, there shall not be sacred cows. This means that the constitution of the Federal Republic shall be above. As such, section 308 of the 1999 Nigerian constitution which shields Chief Executives in Nigeria through its immunity clause should be repealed if any meaningful progress is to be made towards reducing or eventual elimination of corrupt practices among public office holders. If federal and state chief executives (the president, vice president, state governors, and deputy state governors), are arraigned before the law court while still in office on account of corruption and convicted, then other private and public office holders would know that there are no sacred cows and as such, no place to hide when it comes to fighting corruption. This would help in no small measure in removing impediments on the path of the EFCC; as well drastically reduce corruption to the barest minimum in the country.

The emolument of political office holders at all tiers of government should be publicly published. This way the public and indeed the EFCC would not be in doubt of those living above their means. This we believe will translate section 7(1) of the EFCC 2004 Act to success it empirical evidences would abound with regards to property acquisition and amount of monies at one's disposal.

There should be continuous collaboration between the Commission and other Financial Intelligence Units (FTUs) across the globe, as well as exchange of ideas and continuous training of staff of the agency to meet with current technological changes brought about by the neoliberal telecommunication age. This is one of the ways in which the Commission can succeed in tackling cyber crimes and other transnational economic and financial crimes

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