

**THE LEGAL REGIME ON ANTI-CORRUPTION LEGISLATIONS IN NIGERIA: AN
EXAMINATION OF THE COMPETENCE OF THE HOUSE OF ASSEMBLY OF A
STATE TO ENACT ANTI-CORRUPTION LAWS.**

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ABSTRACT

The continuous and unabated spread of corruption across all sectors in Nigeria has refused to slow down despite various legislative and diplomatic interventions. Without mincing words, it appears that the weapon in Nigerian armory deplorable to combat the hydra headed monster referred to as corruption has since been completely exhausted. It is now a case of the more the legislative interventions in this area of law, the longer the virus of corruption spread across nooks and crannies of the Nigeria body polity and economy. The fight against corruption through legislation has been centralised. The National assembly, being the apex law making institution in Nigeria has over the years, made several legislative interventions in addressing corruption in Nigeria. Despite these numerous interventions by the National Assembly, the tide of corruption has refused to turn in Nigeria, rather, more fields and in fact, sacred sectors such as the judiciary and places of worship have surrendered flatly to the juicy overtures offered by corruption and the world's perception of Nigeria as a corrupt nation has remained the way it has always been for ages, if not worse.¹ This issue of corruption calls for a need to look at the prevailing approach by considering decentralising the fight against the social vices that all citizens claims to abhor but practices daily. A cursory look at the Constitution of Federal Republic of Nigeriareveals that corruption by design is not within the exclusive competence of the federal government hence, states and even local government should have role to play particularly as the country has adopted constitutional federalism. The size, spread and complex nature of the country coupled with limited numbers of the staff and personnel of the anti-graft agencies make States' participation in the crusade to arrest corruption a veritable venture. In this connection, the Houses of Assembly of States also have roles to play in order to tackle corruption head on and this they have started doing. This paper examines the extent to which the House of Assembly of a State is empowered to legislate on anti-corruption in Nigeria. While it has been acknowledged there has not been anyattempt to examine how the state legislature in Nigeria has fared in the performance of their responsibility in this respect. This paper therefore directs attention to the unique role of this important organ in the emerging Nigerian democracy.

¹Nigeria is the 150 least corrupt nation out of 180 countries, according to the 2022 corruption perception index reported by Transparency International <<http://tradingeconomics.com/nigeria/corruption-rank>> accessed 8November, 2023.

1.0 INRODUCTION

The power of the National Assembly in Nigeria to legislate on corruption is no longer in doubt. It is a power that has been exercised severally despite the fact that corruption is not constitutionally listed in the exclusive legislative list.² Being one of the most dreaded challenges facing the country at the inception of democratic governance in 1999 and which has robbed the country of her good image among the comity of nations. The federal government at the time agreed with other world leaders to make and ratify legislations that would arrest corruption and change the public perception of the country.³ However, paucity of political will coupled with “the insatiable greed of perpetrators who throng every rung of the public administrative arena”⁴ inaudibly points to the conclusion that corruption has defied all known diagnosis and all the legislative interventions centrally made to address the menace have failed to check its spread in Nigeria.⁵

This continuous failed battle against corruption has elicited a harder national stance and state governments are no longer comfortable with leaving the fight against graft that has perennially being raping them and leaving them in continuous poverty while the culprits roam the streets in the affected state with the ill-gotten wealth with daring impunity with or without the knowledge of the federal government. Based on the fact of the foregoing, some Houses of Assembly of States in recent times have enacted laws aimed at combating corrupt practices within their domain.⁶ For instance, the Lagos State Public Complaints and Anti-Corruption Commission Law 2021, Kano State Public Complaints and Anti-Corruption Commission and Oyo State Anti-Corruption Agency Law. The Ondo State Government has also followed suit by the enactment of Ondo State Anti-Corruption Commission without leaving Oyo State government of Nigeria among many others who are in the pipeline. Therefore, this article will examine some federal and state anti-corruption legislations and the competence of the Houses of Assembly of States to enact anti-corruption laws.

²Part 1 of the Second Schedule to the Constitution of the federal republic of Nigeria 1999 (as amended)

³Nnamdi O. Madichie: Corruption in Nigeria: How effective is the corruption perception index in highlighting the economic Malaise. *World Review of Science Technology and Sustainable Development* 2

⁴ Dr. OfonmbukEtidoAtakpa, Benson Elijah U-doms, Dr. David Titus: The Nigerian Legislature and the Fight Against Corruption: Focus on the 8th National Assembly *International Journal of Management Studies and Social Science Research IJMSSSR* 2020 (2) (6)

⁵SalihuHabeebAbdulrauf“Corruption in the Judicial System: An Overview” *Journal of Financial Crime*www.researchgate.net accessed 14 December 2023

⁶ For example, Lagos State, Kano State, Ondo State and Oyo State have enacted Anti-Corruption Laws.

The Constitution of the Federal Republic of Nigeria 1999(as amended) has delineated the legislative powers of the National Assembly and the House of Assembly of State.⁷ The role of the legislature particularly in democratic governance or under a constitutional democracy appears to be all encompassing and very important. The Constitution gives the legislature both in chamber and on-field responsibilities when it comes to the fight against corruption.⁸ The reason is not far-fetched; first, the legislature as the elected representatives of the people has the duty of protecting public funds and other resources.⁹As the controller of the purse, it has the additional duty of serving as the guardian of the public treasury particularly on behalf of the people it represents. This the legislature does mostly by making and unmaking of all laws, including those pertaining to the eradication or suppression of corrupt practices in public and private life.¹⁰

The legislature is the main institutional anchorage provided for in the Constitution for the fight against corruption. This they do by enacting, amending, deleting laws and carrying out over-sight functions as permitted by the Constitution.¹¹ The legislature is also permitted by law to create other institutions and frameworks to assist it and the government in the discharge of these onerous duties. In fact, the legislature appears sufficiently equipped under the Constitution to serve as effective check on the executive and its administrative agencies in all aspects of public administration. Yet, it appears that the legislature at all levels of government; federal, state and local, have been unable to adequately discharge the onerous duties devolved upon it by the Constitution in this regard. Aside the above, there appears to be discontentment by the various states in the way and manner the federal government has limited the policing of corruption in Nigeria to itself with state governments having little or no role to play other than being subjects of those laws to which some of them are applied without due regards to the concept of true federalism as enshrined under section 2(2) of the Constitution¹² and as well interpreted by the Supreme Court of Nigeria in the case of **Attorney General of Lagos State v. Attorney General of the**

⁷See Sections 4(1) – (4)(a) & (b) and 4(6) and (7), (a-c) of the Constitution of the Federal Republic of Nigeria 1999(as amended)

⁸ See Section 88 (1)(a) and (b) (i) and (ii) (2)(a) and (b), Section 89 (1) (a)-(d) of the Constitution of the Federal Republic of Nigeria 1999(as amended)

⁹ Ibid

¹⁰Mojeed Olujimi A. Alabi and Joseph Yinka Fashagba: The Legislature and Anticorruption Crusade Under the Forth Republic of Nigeria: Constitutional Imperatives and Practical Realities. *International Journal of Politics and Good Governance*2010(1) (1&2)

¹¹The Nigerian Legislature and Fight Against Corruption: Focus on the 8th National Assembly.

¹² Constitution of the Federal republic of Nigeria 1999 (as amended) which provides that “Nigeria shall be a Federation consisting of States and a Federal Capital Territory”

Federation & 35 Ors.¹³The whole of the federation is too wide a field for an effective policing of corruption that has attained the status of acceptability by the people thereby making all legislative intervention wasted efforts.

2.0 CORRUPTION

Corruption is simply a word that involves the misuse or abuse of office, position or status whether in public or private life. It also includes to do or refrain from doing an act in a conventional or authorised way or manner with an intention (usually implied) to derive benefit or advantage personally or through a proxy now or in the future.¹⁴ Corruption has remained a single vice that is popularly and centrally condemned by all and sundry yet practiced and embraced by all or most Nigerians. Corruption has almost become a trademark in Nigeria public and private sectors. It has gone beyond being a parasite; rather, it has now assumed the status of a host.¹⁵ It has defiled practices such as religious, tribal sentiment and racism that have stood against unity of Nigeria to unite Nigerians with its poisonous virus. The old saying that where two men are standing, Almighty God is the third is no longer correct. Corruption seemed to have displaced the God of men as love of money and materialistic tendencies of man have taken over all the places of worships in Nigeria.

Currently, corruption does not only thrive in churches but also mosques and even shrines have been captured by the tentacles of this social vice, leaving the leaderships of these place the duty to launder their images before the public as presumption of corruption against any person occupying any position whether in public or private has become the new creed in Nigeria.¹⁶ Little wonder all the legislative intercessions by successive governments have continued to fail and corruption keeps conquering territories including the chambers of judges¹⁷ and even the palace of the prosecution agencies.¹⁸ Gone are the days of going to the public office to share out of the national cake in Nigeria, now, the intention now is to take the whole of the national cake by an individual. It has

¹³(2003) FWLR (Pt. 168) 909-1120 at 945 S.C

¹⁴ See Imam-Tamim, Muahammad Kamaldeen: The Shar'iah Frameworks towards Combating Corruption and the Role of Nigerian Muslim Youth. 2022 Conference on Islam in Nigeria (COIN) Vol. 11 (November, 2022)

¹⁵S.O Jimoh 'Whistleblowing and FOIA Law: What Contribution to the Fight against Corruption' *Crescent University Law Journal* 2023(8)

¹⁶Garuba v FRN (2018)10 NWLR (pt1626)169, 183, also reported at (2018) LPELR-43637(SC)

¹⁷ Punch Editorial Board, Uprooting Corrosive Corruption in the Judiciary “

¹⁸Reducing Corruption in the Judiciary. Office of Democracy and Governance USAID program Brief

been agreed by Nigerians that majority are corrupt, it become apparent then that the legislature are just legislating against an accepted way of life of the people or passing laws to condemn an acceptable custom or cultural practices of the people. Who does this and expect compliance?

Unlike other terrible public wrong such as murder, kidnapping and rape, corruption is being treated as a federal crime leaving only the National Assembly with right and power to legislate on the vex area of law. These legislative powers as dictated by the Constitution has produced many legislations which are applied throughout Nigeria with the hope to combat the spread of this anti-social behaviors in Nigeria as if the country runs a unitary system of government. Many of these laws are applied in manners that disregard the sanctity of the power of a state as recognized by the Constitution.¹⁹ The executors of these laws often execute the law to suppress or meddle into the internal affairs of the States who has not call upon them for assistance despite the fact that corruption is not listed in the exclusive legislative list in the Constitution.²⁰ The way and manner these anti-corruption laws are executed appears to undermine the power of the state as a unit of the federal government²¹ coupled with the fact that the war against graft being single-handedly fought by the federal government has not been impactful. All these have made the state governments to considered having their own peculiar corruption laws imperatively.

3.0 CONSTITUTIONAL POWERS OF THE NATIONAL ASSEMBLY TO MAKE LAW

The competence of the National Assembly to make law for the whole or part of the Federation is well entrenched and recognised by the Constitution. This is clearly stated in section 4 of the constitution. Section 4(1) provides that “the legislative powers of the Federal Republic of Nigeria shall be vested in the National Assembly for the Federation which shall consist of a Senate and a House of Representatives.”

Section 4(2) states that “the National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution.”

¹⁹ Section 4 (7) (a, b and c) of the Constitution of Federal Republic of Nigeria 1999 (as amended)

²⁰ Part 1 Second Schedule to the Constitution of the Federal Republic of Nigeria 1999 (as amended)

²¹ Section 2(2) of the Constitution of Federal Republic of Nigeria 1999 (as amended)

Section 4(3) stipulates that “the power of the National Assembly to make laws for the peace, order and good government of the Federation with respect to any matter included in the Exclusive Legislative Lists shall, save as otherwise provided in this Constitution, be to the exclusion of the Houses of Assembly of States.”²²

Flowing from the foregoing provisions, it is crystal clear that the exclusive power of the National Assembly to make laws is only limited with respect to the matters contained in the Exclusive Legislative List entrenched under Part I of the Second Schedule to the Constitution. The power of the National Assembly to so legislate has been given judicial approval in the case of Attorney General of Lagos State v. Attorney General of the Federation & 35 Ors.²³ Here in the case the Apex Court held that :-

it is only the National Assembly that is empowered to legislate on behalf of the entity known as the Federal Republic of Nigeria in regard to any of the matter under Chapter II, through items 60(a) in the exclusive Legislative List by virtue of section 4 subsection (1), (2) and (3) of the 1999 Constitution....

Furthermore, Per Uwaifo JSC, further stated in the above case that:-

“...but I do not need to repeat that Nigeria operates a federal system of government. Section 2(2) of the 1999 Constitution re-enacts the doctrine of federalism. This ensures the autonomy of each government. None of the government is subordinate to each other. This is particularly of relevant between the State Government and the Federal Government each being as said by Nwabueze in his book, The Presidential Constitution of Nigeria, pages 39-42, an autonomous entity in the sense of being able to exercise its own will in the conduct of its affairs within the Constitution, free from direction by another government. I think it is significant that shortly before and since the independence of Nigeria in 1960 all the Constitutions that have been enacted have taken the pattern of federalism. Under this system, each tier of government has its own legislative competence or functions conferred on it as the case may be. The National Assembly which legislates or the Federal Republic of Nigeria or any part thereof has power to do so in respect of matters in the exclusive

²² See Gadi v Male (2010) 7 NWLR (Pt.1193) p. 225

²³(2003) FWLR (Pt. 168) 909-1120 at 945 S.C

Legislative List set out in Part I of the Second Schedule to the 1999 Constitution: see section 4 subsection (1), (2) and (3). In addition, it has power to make laws with respect to (a) matters in the concurrent Legislative List set out in the first column of Part II of the Second Schedule to the Constitution and (b) any other matter with respect to which it is empowered to make laws: see section 4 subsection (4) paragraphs (a) and (b).

The House of Assembly of a State has power to make laws for the State or any part thereof in respect of (a) any matter not included in the Exclusive Legislative List, (b) any matter included in the concurrent Legislative List and (c) any other matter with respect to which it is empowered to make laws: see section 4 subsection (7) paragraphs (a), (b) and (c). Each of these legislative bodies exercise their powers to make laws for the peace, order and good government of their respective territories.

By this constitutional arrangement which allocates legislative jurisdiction between the National Assembly and the House of Assembly of a State, it is recognised that any matter not mentioned either in the Exclusive or concurrent Legislative List becomes a residual matter exclusively for the State House of Assembly by virtue of section 4 subsection 7(a); and similarly it is a residual matter exclusively for the National Assembly in regard to the Federal Capital Territory, as if it were a State, by virtue of section 299 of the Constitution.”

4.0 LEGISLATIVE COMPETENCE OF THE HOUSE OF ASSEMBLY TO MAKE LAW ON CORRUPTION

By virtue of section 4 (6) and (7) of the 1999 Constitution of the Federal Republic of Nigeria, the legislative powers of a State of the Federation are vested in House of Assembly of the State which has powers to make laws for the peace, order and good government of the State or any part thereof with respect to the following matters not included in the Exclusive Legislative List set out in the first column of part II of the Second Schedule to the Constitution to the extent prescribed in the second column opposite thereto and any other matter with respect to which it is empowered to make laws in accordance with the provision of the Constitution.

Therefore, the House of Assembly within its legislative competence can validly make law with respect to the items 60(a) which included promotion and enforcement of fundamental objectives and directives principles of state policy enshrined in Chapter II of the Constitution. Under this

Chapter, section 15(5) provides that “the State shall abolish all corrupt practices and abuse of power.” While it is admitted that Chapter 2 of the constitution is not justiciable and so, not enforceable, a law made in this respect could make the section justiciable and so enforceable. The big question is does the provisions of section 4(7) of the Constitution good enough to enable the State to make anti-graft laws when there many federal laws that have covered the field?.

4.1 DOCTRINE OF COVERING THE FIELD

The doctrine of covering the field is a constitutional sacrament coined to set legislative limit, by freezing excessive exercise of legislative power by a legislative arm mostly in breach of the salient provisions of the Constitution or higher laws.²⁴ Sections 1(3) and 4 (5) of the Constitution²⁵ has codified the doctrine by making declaring to be void any legislative misadventure that run violently against the provisions of the constitution as well as those of higher laws in hierarchy. This is known in the constitutional circle as inconsistency rule.²⁶ The provisions of the constitution are sacred and occupy the peak of the crest of laws²⁷ and it is closely followed by laws made by the National Assembly particularly on items mentioned in Exclusive legislative list and those on the concurrent list that permit both the federal and the States legislatures to make law. It is golden constitutional practice that where the Federal government has made law particularly on item listed in the concurrent list, the State cannot make law on the same subject matter. This does not appear to be the best interpretation of the section 4(5) of the constitution.²⁸ The said section never precludes the State Assembly from make laws or domesticating the State law on the subject matter that will apply within the State in question. The section expressly permits the State Assembly to make law on the same area. It’s only the provisions of the same law that is inconsistent with that of the federal law in case of conflict that may be declare void only to the extent of its inconsistency and not further.²⁹

To argue that the State cannot make law for good governance and orderliness within its State territorial boundary because the federal legislature has made similar law on the subject matter is

²⁴SebstineTar, 'Constitutional Law and Jurisprudence in Nigeria' (Pearl Publishers 2004). Also, Part II of the Second Schedule to the Constitution of Federal Republic of Nigeria 1999 (as amended)

²⁵ Constitution of Federal Republic of Nigeria 1999(as amended)

²⁶Attorney General of Abia State v Attorney General of Federation (2002) 6 NWLR (Pt. 763) 264

²⁷ ibid

²⁸ Ibid

²⁹ Director of DSS vAgbakoba(1999) 3 NWLR (Pt. 595) 314 at 357

to deny the State Assembly its power to make laws for its people as a unity of federated Nigeria. Such interpretation amounts to an affront on the sacred provisions of the Constitution and as such violates section 1(3) of the Constitution.³⁰ The power of the State House of Assembly to legislate over any other subject not included in the Exclusive Legislative list is extant and well protected by the constitution.³¹ In fact, whether such law is inconsistent with those of the federal law or even with the provisions of the constitution is a subject that it is only the court that has the vires to make such declaration where dispute arises on such³² and not by any of the two other arms.

On corruption being an item under the concurrent legislative list, the power of both the State and federal legislature to make laws in this respect has been upheld. The Apex Court of Nigeria has upheld the power of both Federal and the State legislatures to make law on it. It was the conclusion of the Court in the case of **A.G Ondo State vs. A.G Federation**³³ that when it comes to arresting and abolishing corruption in Nigeria both the federal and state legislatures are competence to make such law. The Supreme Court opined that its conclusion is in line with the provisions of sections 4, 15(5), 318, item 60(a), 67 and 68 in Part 1 of the Second Schedule and section 2 (a) of Part III of the Second Schedule to the Constitution.³⁴

It must also be mentioned that there is argument till date, the propriety or otherwise of such power of the State to make law with its state to curb corruption when the EFCC Act, ICPC Act and a host of other legislations have been legislated by the Federal Government on corruption, Particularly when various states have enacted their respective anti-corruption laws which are applicable only within their states territorial boundaries. It must be stated that most of these laws have a lot in common with some of these federal laws and some are not better than domestication of the federal law which no law frown at.

³⁰ Ibid

³¹ Section 4(7) ibid

³² Ibid. Section (1) (6) a-b

³³ (2002)9NWLR (pt772) 222

³⁴ Constitution of Federal republic of Nigeria 1999 (as amended)

5.0 APPROPRIATENESS OR OTHERWISE OF THE FEDERAL INVESTIGATING AND PROSECUTING AGENCIES TO INVESTIGATE CRIME OR BOOK OF ACCOUNTS OF STATE

On the appropriateness or otherwise of the Economic and Financial Crimes Commission (EFCC) and other federal government anti-corruption agencies to investigate and prosecute State accounts or invites former State Governors, other state functionaries current or past to render account of stewardship. The majority opinions seem to be against them. **Agbakoba**³⁵ and those in his school of thought opined that the anti-graft agency currently operates outside the purview of the provisions of the Constitution. In his opinion the EFCC is a creation of the Act of the National Assembly which does not have the power to interfere with the activities of State government.³⁶ He argued that the 1999 Constitution of the Federal Republic of Nigeria as altered only create one police force for Nigeria and since the anti-graft agency was not a branch of the police, it could not perform its functions.

The Learned Silk opined further that under Section 4 of the 1999 Constitution³⁷ the powers of the government were divided into two; the federal and the state. Therefore, by this provision, the EFCC does not have the constitutional power to prosecute state offences since it is an agency of the federal government. He cited section 46 of the EFCC Act and section 36 (12) of the 1999 Constitution as altered.

In a similar vein Shittu³⁸ stated that “in the first place, and with all due respect to Olisah Agbakoba SAN, it is contradictory to argue that EFCC should not exist and also argue that the EFCC as a creation of the National Assembly does not have power to interfere with the activities of the state government and should therefore be restricted to the Federal Capital territory. These two points of view cannot stand side by side.”

Shittu cited section “19 of the EFCC Act grants the Federal High Court, the High Court of a state and then High Court of the Federal Capital Territory jurisdiction to try offenders under the Act,

³⁵Olisha Agbakoba SAN ‘Why Efcc shouldn’t be in existence’ <<http://www.dailytrust.com/why-efcc-shouldn't-be-in-existence>> accessed 5 January 2023.

³⁶ Ibid

³⁷Constitution of the Federal Republic of Nigeria 1999 (as amended)

³⁸<<http://thenigerianlawyer.com/efcc-legally-empowered-to-prosecute-financial-crimes-in-any-of-nigerias-federating-units--wahab-shittu-san-counters-agba\koba-san>> accessed 11 January 2023

notwithstanding anything to the contrary in any other enactment. As provided for in section 1(2) of the EFCC Act, the Commission may sue and be sued in its corporate name. The provision empowers the commission to prosecute cases at the Federal High Court, the State High Court, and the High Court of the Federal Capital Territory. By implication, the commission is empowered to prosecute financial crimes committed in any of the federating units. This power of the Commission has been successfully challenged in the case of *Zamfara State Government & ors v Economic and Financial Crimes Commission and ors*³⁹ where the trial judge upholds the contention of the Zamfara State government that the EFCC lacks the vires to probe the account of the State under the principle of federalism guaranteed under the constitution. This view was shared by the Governor of Ondo State⁴⁰ where he said “that state governments too should be able to try corruption cases, particularly those perpetrated within their jurisdiction.”⁴¹

Furthermore, by the Section 125 (2) (5) and (6) of the Constitution, the only body aside the State Assembly who can audit, or examine how the state fund are expended or managed is the auditor General of the State. And the only body who can validly receive the report of the audited account of the State is the State Assembly of the affected State and no one else. The power of the Auditor General of the State under Section 125 of the Constitution cannot be impeded or sabotaged by any authority or person howsoever big or powerful it is, not even the Attorney General of Federation or the president can meddle into the way and manner such power is exercised.

The Section 125(6) provides “in the exercise of his functions under this Constitution, the Auditor-General of the State shall not be subject to the direction or control of any other authority or person” the implication of this sacred provision of the Constitution is that not even the court of law can question the way and manner the power is exercised including the outcome of performance of his function except the State Assembly. Where the State Assembly finds any irregularity there in, in the spirit of the provision of section 15 of the Constitution, it should have an agency of the State to investigate the affected person, hence the justification for the creation of State anti-corruption agency.

³⁹ Suit No FHC/GS/CS/30/2021.

⁴⁰ Arakunrin Rotimi Akeredolu SAN the sitting governor of Ondo State.

⁴¹ Peter Dada, ‘Akeredolu floats anti-graft agency to tackle corruption’ (Punch Newspaper, Lagos 8th March 2023) <<https://punchng.com/cdn.ampproject.org/v/s/punchng.com/akeredolu-floats-anti-graft-agency-to-tackle-corruption/?amp>> accessed 30 October 2023

In harmony with the above is the effect of the decision of the Supreme Court in *Joseph Nwobike v FRN the Apex*⁴² in this case the Court divested the Economic and Financial Crimes Commission of its power to investigate and prosecute in any court in Nigeria certain class of acts and omissions that though infringed on the act that created the Commission or any other anti-graft legislations under the management and control of the Commission, the court prohibited the Commission from meddling with small acts of corruption as those should be left for other agencies and concentrate on corruption with wealth make in view,⁴³ other agencies mention by the Apex court here could include the State anti-corruption agencies who know the nooks and crannies of their respective States very well.

This is more likely to be so as the Supreme Court in the case of *AG Ondo State v AG Federation*⁴⁴ that opined that both the Federal and State legislatures have concurrent power to legislate on corruption.⁴⁵ While the Federal anti-graft agencies are busy pursuing the wealth make corruption, the State Anti-graft agencies will be the one threatening their respective state treasuries.

Another fact that supports the call for the creation of State anti-graft agencies is the barring of the Economic and Financial Crimes Commission; the leading prosecuting institution in Nigeria by Apex Court of Nigeria in the case of *FRN v Nganjiwa*⁴⁶ from embarking or entertaining the investigation or prosecution of any judicial officer accused of corruption in any party of Nigeria. Though the bar from prosecution of judicial officers accused of corruption is not total but suspensory until the National Judicial Council carries out its disciplinary measure as conferred on it by section 158 of the Constitution⁴⁷ and returned with a finding of dismissal. Before this the President of Federal Republic of Nigeria not even the Governor has acted on the recommendation.

Since the Supreme Court affirmed the decision of the lower court, investigating and subsequently divested of the EFCC of jurisdiction to investigate or prosecute any sitting judges in Nigeria even of the State that are not within the federal territorial jurisdiction in federal democratic settings. With the State anti-corruption bodies in place, such can take charge of investigation of corrupt

⁴² (2021) LPELR-56670(SC)

⁴³ Ibid.

⁴⁴ (2002)9 NWLR (pt772) pg 222 @308

⁴⁵ Ibid.

⁴⁶ Suit No SC/230/2018 delivered on the 25th of May 2022.

⁴⁷ Constitution of Federal Republic of Nigeria 1999 (as amended)

judges of the State High court. More importantly, when the order of the Supreme Court appears to be directed against EFCC and not corruption prosecution agencies. State having their respective anti-corruption agencies will fill the vacuum left by the hammering on EFCC by the Apex court. It must be stated that the ban is life-long hammering being a decision of the Supreme Court and has no executor limitation. Therefore, allowing State created anti-corruption agencies may be one of these ways to get round the effectiveness of the decision of the court that has the tendencies of hijacking the constitution in a way that will affect negative the rule of law and fair access to justice as well of equality of all before the law.

Finally, there is no law against domestication of federal laws by the state. The Federal government upon passage of the Child Right Act⁴⁸ and the Administration of Criminal Justice Act⁴⁹ had prevailed on the State Assemblies to domesticate these laws for optimal effectiveness of these laws. Just like corruption right of the children and efficient administration of justice are very essential to the overall well-being of the citizens and the country as a whole. Therefore, what is good for gender is also good for goose. Encouraging State assemblies to domesticate anti-corruption laws will aid in no measure an effective and efficient investigation and prevention of corruption across board. It will also promote easy of detection and prosecution of culprits without needs to wait till when the EFCC or ICPC has the time to investigate and prospective when tenure offices in Nigeria are generally not permanent. Delay the say defeat equity. From the few states that now have State Anti-corruption laws, there provisions are not too dissimilar to that of EFCC Act or too strange to the provisions of ICPC Act and other anti-corruption legislations as can be seen bellow.

6.0 SOME STATES ANTI-CORRUPTION LEGISLATIONS

Some States have enacted their own anti-corruption law. For example, Lagos State Public Complaints and Anti-Corruption Commission Law 2021, Kano State Public Complaints and Anti-Corruption Commission, Oyo State Anti-Corruption Agency Law and recently, Ondo State Public Complaint Commission and Anti-corruption Law.⁵⁰ These laws shall be examined in brief.

⁴⁸ Cap C 50 Laws of Federal Republic of Nigeria 2010.

⁴⁹ Laws of federal republic of Nigeria 2015

⁵⁰ Laws of Ondo State 2022

6.1 LAGOS STATE PUBLIC COMPLAINTS AND ANTI-CORRUPTION COMMISSION LAW 2021.

The Lagos State House of Assembly has enacted the Lagos State Public Complaints and Anti-Corruption Commission Law 2021.⁵¹ The controversial Law empowers the Lagos State Anti-Corruption Commission to take over “all Anti-Corruption and Financial Crime cases” involving the finances and assets of the Lagos State Government being investigated by any other agency.⁵² The Public Complaints and Anti-Corruption Commission Law sponsored by the executive arm of the Government were signed into law by the Governor of Lagos State Babajide Sanwo-Olu on the 19th of April, 2021.⁵³

By Section 13(3) of the Law “the commission shall upon the commencement of this law take over all the investigation of Anti-Corruption and Financial Crimes cases involving the assets and finances of the Lagos State Government being investigated by any other agency. According to Section 13(5), “the Commission shall have power to the exclusion of any other agency or body to investigate and co-ordinate the investigation of corruption and financial crime cases involving finances and assets of the State Government.”

The Anti-Corruption Commission is further empowered to investigate any offence under criminal law of Lagos State particularly as it relates to corruption and financial crimes, abuse of office, obtaining property by false pretenses, receiving stolen property or fraudulently obtaining properties and similar offences, fraudulent dealing with properties by debtor and offences relating to administration of justice.⁵⁴

The Anti-Corruption Law, if functions well and fully utilized, will have the ability to drive in culture of transparency, accountability and prudence in the running of affairs of government in the state and its numerous local government areas, increase public trust, improve investors’ confidence

⁵¹ Laws of Lagos State 2021

⁵²<https://lagosstate.gov.ng/blog/2021/04/19/lagos-to-establish-anti-corruption-agency-as-sanwo-olu-signs-bill-deepening-accountability-in-governance/> accessed on 1 November 2021

⁵³<https://lagosstate.gov.ng/blog/2021/04/19/lagos-to-establish-anti-corruption-agency-as-sanwo-olu-signs-bill-deepening-accountability-in-governance/> accessed 1 November 2021

⁵⁴Section 13(1) & (2) of the Lagos State Public Complaints and Anti-Corruption Commission Law (2021) (“Anti-Corruption Law”)

with the positive consequences of inducing foreign investment and expand the growth in the economy of the state.⁵⁵

By introducing this law, the Lagos State has followed suit as Kano State has since established its own anti-corruption law known as **Kano State Public Complaints and Anti-Corruption Commission**.⁵⁶ The Lagos and Kano State Governments are not alone in the fight against corruption among comity of states owing to the fact that recently the Oyo State Government also set up its own anti-corruption agency known as “**Oyo State Anti-Corruption Agency**”.⁵⁷

The Commission

The Law establishes the *Lagos State Public Complaints and Anti-Corruption Commission (the “commission”)* which shall be responsible for the administration of the law as it relates to the investigation and prosecution of allegation of financial crimes and corrupt practices in Lagos State, especially where the finances and/or assets of the Lagos State Government are affected.⁵⁸ The Commission has the exclusive power to prosecute, investigate and/or co-ordinate the investigation of corruption and financial crimes involving the finances and assets of the Lagos State Government.⁵⁹ However, when a matter is pending before the court, the Commission lacks the power to investigate such matter.⁶⁰ The law specifically prohibits other investigative agencies and anti-corruption agencies from investigating and prosecuting financial crimes involving finances and assets of Lagos State.

Furthermore, the Commission is also empowered to investigate any offence either on its own initiatives or following complaints lodged before it by any person on any administrative action taken by any public institution or statutory corporation and its staff, owned by the state. But where the Commission decides not to investigate any complaint, the Commission is mandated by law to state its reasons for not investigating such complaints in writing **within 7 days** of its receipt of the

⁵⁵ ‘Decentralization of the Anti-corruption fight in Nigeria: A review of the Lagos State public complaint and anti-corruption commission law’ <<https://www.templars-law.com/decentralization-of-the-anti-corruption-fight-in-nigeria-a-review-of-the-lagos-state-public-complaints-and-anti-corruption-commission-law>> accessed 1 November 2021.

⁵⁶ See <https://www.pcacc.org.ng/pdf/law1.pdf> accessed on the 1st November 2021.

⁵⁷ Editorial, ‘Makinde inaugurates Oyo State Anti-corruption agency’ (Tribune Ibadan 16 October 2020) <<https://tribuneonline.ng/makinde-inaugurates-oyo-state-anti-corruption-agency/>> accessed 1 November 2021.

⁵⁸ See Section 14 of the Lagos State Anti-Corruption Law 2021.

⁵⁹ Ibid section 13(5)

⁶⁰ Ibid section 17(1)

complaint.⁶¹ In the exercise of its powers, the Commission is empowered to invite and/or arrest any accused person, seize assets, search properties of accused persons, trace and attach assets, to aid its investigation or prosecution of the alleged offence(s).

The Commission also has power to accept gifts, donations, grants, endowments and testamentary disposition in aid of its objectives, except where the condition attached to the receipt of such gift are inconsistency with the aid of the Commission.⁶²

6.2 Lagos State Anti-corruption Law and the Fight against Corruption

Under the Lagos State Anti-Corruption Law 2021, corruption is defined as encompassing “the giving, demand, receipt, conferment or procurement of any property or benefit to a public officer or the mere offer to give, confer or procure any property or benefit to a public officer in return for the act, omission, benefit or detriment to be done or granted by a public officer”.⁶³

Any person in contravention of this law is liable on conviction to a term of two years custodial sentence and shall forfeit to the Lagos State Government any such benefit, money or property which was received as a result of the corrupt act.⁶⁴

The corruption of a public officer under the Lagos State Anti-Corruption Law extends to anyone who promises to/or gives any property, benefit to a public officer while holding or seeking to obtain an interest in a contract, license, permit, employment or anything whatsoever from a government department, public body organization or institution in which the public officer serves.⁶⁵ Any found in breach of this provision is liable upon conviction to imprisonment for a term of one (1) year and a refund of current market value of the obtained property and/or a fine of not less than One Million Naira.⁶⁶

The law also criminalizes the gratification of a public officer using third party or an agent as such agent(s) is/are liable to prosecution and possible imprisonment upon conviction for term of one (1) year. Furthermore, Anti-Corruption law of Lagos State also empowers the Commission to

⁶¹Ibid Section 17(2)

⁶² Ibid Section 24

⁶³ Ibid Section 29(1)

⁶⁴Ibid.

⁶⁵ Ibid Section 29(2)

⁶⁶Ibid Section 34

ascertain the source of income of public officer upon a reasonable suspicion that such public officer's lifestyle and assets are not justified by his or her legitimate source of income.⁶⁷ This is what the incumbent President is being urged to make Executive Order to achieve.⁶⁸

The Commission is donated with power to invite or arrest a suspect for the purpose of investigating allegation of financial crimes, corrupt practices and any other offence under the law or Criminal Law of Lagos State. Therefore, any person invited by the Commission shall appear in person for examination and shall produce any book, documents or any information that he believes would assists the, investigation of the offence for which he was given notice to produce.⁶⁹ Refusal to comply with the invitation of the Commission or to produce of such book, document or disclose the requested information is an offence under the law which could lead to imposition of a maximum of 6 months imprisonment on the offender upon conviction.⁷⁰

However, being a recently enacted law, it is doubtful whether the commission has recorded any arrest or prosecution for violation or contravention of the provisions of the law.

6.3 KANO STATE PUBLIC COMPLAINTS AND ANTI CORRUPTION COMMISSION LAW 2009⁷¹

The Kano State Public Complaints Commission was established in 2008 and initially vested with the power to hear complaints against public officers in the State. However, the Law was subsequently amended in 2010 to incorporate “**anti-corruption**” as part of its area of coverage.⁷² Since the amendment and incorporation of anti-corruption drive of the State, little has been heard of the activities of the Commission. However, it blasts to fame under the current administration of Governor Abdullahi Ganduje.⁷³

⁶⁷Section 13(4) of the Lagos State Anti-Corruption Law 2021.

⁶⁸ Senator Ali Ndume, Tinubu Should Sign Executive Order on Unexplained Wealth, Says Ndume,(Channel News Lagos 29 October 2023)

<<https://www.channelstv.com.cdn.ampproject.org/v/s/www.channelstv.com/2023/10/29/tinubu-should-sign-executive-order-on-unexplained-wealth-says-ndume/>>accessed 30October 2023

⁶⁹Section 38(2) of the Lagos State Anti-Corruption Law 2021.

⁷⁰ Ibid section38(3)

⁷¹ Law No. 2 2009.

⁷²Kunle Sanni, ‘Analysis How replicating anti-graft agencies in states may affect war against corruption’ (Premium Times Abuja) <<https://www.premiumtimesng.com/new/headlines/48741>> 5November 2021.

⁷³ ibid

The law gives the Commission autonomy and independence from interference from the both the legislature and the executive in the performance and discharge of its statutory functions. Section 8 of the law provides **“in exercising its powers under this law, the Commission shall not be subjected to the direction and control of any authority.”** A close look at this provision will show that it was borrowed from Section 158(1) of the Constitution of the Federal republic of Nigeria which has been interpreted whether right or wrong in the case of **Nganjiwa vs. Federal Republic of Nigeria**⁷⁴ to ensure that not even the Court of law can meddle into how the commission discharges it function under the law or can any authority veto the exercise of its discretion.

6.4 FUNCTIONALITY AND CHALLENGES OF THE COMMISSION

Despite these laudable provisions in the law, the Commission has not been allowed to function maximally particularly under the present administration. Of recent, the Chairman of the Commission was suspended by the State House of Assembly for refusing an imposition of an accountant on the Commission by the House of Assembly despite the provision of the Law establishing the Commission which gives it absolute power in the appoint, promotion and discipline its staff where necessary.⁷⁵

It is reported that the determination of the Commission to get rid of corruption in the State has not gone down well with both the Executive and Legislative Arms of government of Kano State who are so determined to get rid of the performing Chairman of the Commission who wanted to bring back the old glory of the Commission in the State⁷⁶ when the fear of the Commission was the beginning of wisdom by civil servants in the State.⁷⁷

The Commission may face two major challenges in discharge of the function of its office. One is interference by the sitting governor or the leadership of the legislative house on who to do where,

⁷⁴ Hon Justice Hyeladzira Ajiya Nganjiwa v Federal Republic of Nigeria (2017) LPELR-43391 (CA)

⁷⁵ Section 8 of the Kano State Public Complaint and Anti-Corruption Law No 2 of 2009.

⁷⁶Being part of the Press Release by Olanrewaju Suraju, the Chairman of Human Right and Environmental Development published by (Premium times Lagos July 5 2021) <<https://www.premiumtimesng.com/regional/nwest/471794-suspension-of-kano-anti-corruption-commission-illegal-group-html>> accessed 31 December 2021

⁷⁷KPCAC v Baba Saliu 2009) LPELR-47107 CA.

when and how. The investigation and eventual dethronement of the Sanusi Lamido and the role played by the Commission is still fresh at mind.⁷⁸

To buttress the above assertion, recently, the eldest son of Governor Abdullahi Ganduje, in person of Abdulazeez Ganduje reported his mother and the governor's wife to the Economic and Financial Crimes Commission EFCC alleging fraud. Abdulazeez claimed to have paid his mother for the acquisition of a property on behalf of third party only to discover that the same property had been allocated to other buyers. Abdulazeez's decision to approach the EFCC instead of the Kano State Public Complaints and Anti-Corruption Commission underscore a major concern of possible and clear lack of independence of the Kano anti-graft commission and the likely emergence of bitter rivalry in the nearest future if nothing is done by way of an amendment or strategic engagement between the two agencies to make both laws workable⁷⁹.

The second is the likely jurisdictional competence rift between it and other Federal Anti-Corruption agencies particularly the Economic and financial Crimes Commission. Corruption is not on the Exclusive Legislative list in the Constitution⁸⁰ therefore permits of the State to legislate on it. And since the passage of this law by Kano State, the Federal Government has not taken of a suit in court to challenge this.

Kano State Public Complaints and Anti-Corruption Commission vs. Sanusi Lamido

Another eminent high-profile corruption case the Commission has also handled was the one involving the former Emir of Kano State, **Sanusi Lamido Sanusi** who was accused of misappropriating **N3.4 billion Naira** from the emirate's vault among other allegations.

The ousted Emir was an ardent critic of the Ganduje led administration. He however, refuted the allegations. But the Commission in the end found him guilty of the offences levied against him. The Commission first recommended his suspension before being eventually dethroned. It seems

⁷⁸Editorial EFCC was not involved in the Kano State Emirate probe <<https://www.blueprint.ng/efcc-not-involved-in-kano-emirate-probe-commission/>>accessed 31 December 2021.

⁷⁹EFCC set to partner with Kano State Anti-corruption Agency <<https://www.efcc.gov.ng/news/892-ant-graft-war-efcc-set-to-partner-kano-anti-corruption-agency>>accessed 31 December 2021.

⁸⁰ Second Schedule, Legislative Powers, Part 1, Exclusive Legislative List to the Constitution of the Federal Republic of Nigeria 1999 (as amended)

the Commission was being used by the Governor Ganduje to witch-hunt his political opponents as the court did not find Sanusi guilty.

6.5 OYO STATE ANTI CORRUPTION AGENCY LAW

The Oyo State House of Assembly has recently passed a Law called Oyo State Anti-Corruption Law 2019 (the “Law”). The Law was later assented to on the 10th of December, 2019, by His Excellency, Governor Oluseyi Makinde. The purpose of the law is to establish Oyo State Anti-Corruption Agency (the “Agency”) to check corruption in the state and other related matters.

The meaning of corruption in the context of that law is unlawful gratification given or promised to any person in the performance of his duty. The law in clear terms frowns at moneys, fees, donations, loans, gifts, reward, office, dignity, value security, property, or interest in property (being property of any description, whether movable or immovable), given or promised to be given for the performance of a public administrative duty.

6.6 MAJOR PROVISIONS OF THE LAW TO COMBAT CORRUPTION

The Law provides for the establishment of Agency to investigate and prosecute matters of corruption in the State. It makes the following provisions:

- (a). The target of the law is on “Public Officers” defined in the law to mean a person elected, employed or engaged in any capacity in the public or civil service of the State or Local Government and includes officers of the judiciary. It means that the provisions of the law do not directly affect private persons in their private capacities.
- (b). The Law further provides that the Agency shall have power to investigate the administrative acts by any Ministry, Department or Agency of the State or Local Government or such other organisations or any statutory corporation, public institution or company set up or owned by the Government or any officer or servant of any of the aforementioned bodies.
- (c). The Law creates corruption offences, including the offence of obtaining property, procuring property, obstruction of investigation, mismanagement of government revenue,

inducement of public officer, bribery for giving assistance regarding contract, official corruption and unlawful gratification.

- (d). The Law gives power to the Agency to collaborate and synergize with any law enforcement agency within the stating questioning, investigation or interrogating any person whose conduct or affairs are under investigation and to partner with the Federal Anti-Corruption Agencies such as EFCC, ICPC in tracking corruption cases in the state and training the Agency's staff on Anti-Corruption related matters.
- (e). The Law further provides that the Agency make issue an invitation directed to any suspected persons or any other person who may have valuable information to aid and facilitate investigation of a claim. It paces a legal obligation on persons required by the Agency to furnish relevant information to give the information requested.
- (f). Where the Agency intends to prosecute a corruption matter, the Law provides that the Agency shall, after investigation, refer the matter to the Attorney General of the State for prosecution in the High Court of Oyo State. The Attorney General has the power to delegate the power to prosecute to another person or authority.
- (g). The Law also provides for the seizure of any movable property which is the subject of an ongoing investigation. However, in certain circumstances when any movable property has been seized, it may be temporarily returned to the owner subject to terms and conditions stipulated in the Law to constitute sufficient security, as well as an undertaking to ensure that the property shall be surrendered on demand being made by the officer who authorize the release in the first place.

6.7 ONDO STATE PUBLIC COMPLAINT, FINANCIAL CRIMES AND ANTI CORRUPTION LAW

The Ondo State Government under the leadership of Arakunrin Oluwarotimi Akeredolu, on the 8th of March, 2023 inaugurated members of the Ondo State Public Complaints, Financial Crimes and Anti-corruption Commission. The commission is chaired by the immediate Former Chief Judge of the State Hon. Justice Williams Akintoroye. The commission is expected to combat crime effectively, checkmate sharp practices, promote probity and accountability in the conduct of

governance business. There is yet to be any serious contribution due to the fact that it has just been set up.

7.0 RECOMMENDATION

The following recommendations are made in order to reduce corruption to the bearest minimum possible.

1. State House of Assembly should also enact law to establish their own anti-corruption agencies to give state ample opportunity to prosecute corruption existing in the state.
2. The National Assembly should amend the Economic and Financial Crimes Commission Act to delimit its prosecutorial powers on some offences best handled by state.
3. The EFCC, ICPC and other prosecutorial agencies should remain a Federal agency and not dabble into state affairs.
4. The state government should appoint special investigators at the end of every fiscal year before the passage of next budget to carryout forensic auditing of state accounts with a view to prosecuting whoever is found guilty of corrupt practices.
5. Establishment of special court whose lone jurisdiction should be adjudication of criminal matters arising from corrupt practices.

8.0 CONCLUSION

It is a lone wolf that losses the battle to the monkeys. The success of the Federal Government of Nigeria in the isolated fight against corruption is serious doubtful. To conquer the war against corruption, all hands must be on deck. It must involve the collusion of all state and non state actors. This also entails the complimentary efforts of the State House of Assembly in enacting or legislating on their own anti-corruption laws to combat corrupt practices in the state.