

Anti-Corruption Conventions in Nigeria: Legal and Administrative Challenges

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Abstract—There is a trend in development discourse to understand and explain the level of corruption in Nigeria, its anti-corruption crusade and why it is failing, as well as its level of compliance with International standards of United Nations Convention against Corruption (UNCAC) & African Union Convention on Preventing and Combating Corruption) to which Nigeria is a signatory. This paper discusses the legal and Constitutional provisions relating to corrupt practices and safeguards in Nigeria, as well as the obstacles to the implementation of these Conventions.

The paper highlights the challenges posed to the Anti-Corruption crusade by analysing the loopholes that exist both in administrative structure and in scope of the relevant laws. The paper argues that Nigerian Constitution did not make adequate provisions for the implementation of the conventions, hence a proposal which will ensure adequate provision for implementing the conventions to better the lives of Nigerians. The paper concludes that there is the need to build institutional parameters, adequate constitutional and structural safeguards, as well as to synergise strategies, collaborations and alliances to facilitate the timely domestication and implementation of the conventions.

Keywords—Anti-Corruption, Corruption, Convention, domestication, poverty, State Parties.

I. INTRODUCTION

NIGERIA is a country located in West African sub region with a total Land area of about 923,768 sq km. The country takes its name from its chief river Niger [12] and gained its independence in 1960 from Britain. It has an estimated population of about 170 million people and more than 250 ethnic groups. It is estimated that around half of the population are Muslims and just under half are Christians. Traditional religions are practiced by a smaller minority [10]. As the leading oil producer in Africa and the 10th largest global producer, Nigeria exports some 2.5 million barrels of crude oil per day. Revenue from oil exports account for approximately 95% of foreign exchange earnings and around one third of GDP. Despite abundance of natural resources, the United Nations ranks Nigeria low as number 152 out of 187 countries in the world and 22 out of the 52 African countries and it is estimated that 70% of the population live below the UN poverty indicator of US\$1 per day [17].

The country practices a federal system of government with a three tier structure: the Federal Government; the State Governments; and the Local Governments [15]. There is an executive president at the centre who is elected through a

universal adult suffrage and similarly elected executive governors in the 36 states of the federation. There are also elected chairpersons and councillors in the 774 local government areas. The President governs the country and exercises executive powers in accordance with the Constitution [15]. He is assisted in the conduct of government affairs by ministers appointed by him, with the approval of the legislature. The governors and chairpersons exercise similar powers at the state and Local Government levels respectively.

The Federal legislature, called the National Assembly is bicameral and comprises of an upper chamber- the Senate and a lower chamber, the House of Representatives whose members are elected every four years by universal adult suffrage. Each of the 36 states has State houses of assembly whose members are also elected by universal adult suffrage. The legislature has the responsibility of law making in accordance with powers granted by the constitution. The legislature also has constitutional powers to carry out oversight functions on the executive arm of government. The country's judiciary has a multi-tier structure with the Supreme Court at the apex and the customary and Islamic courts at the base. The judges of the superior courts have security of tenure guaranteed by the constitution. The country has a mixed legal system comprising the received English Law and Customary and Islamic laws. The Customary and Islamic legal systems are mainly restricted to issues of personal law such as inheritance, marriages and divorce [15] etc.

This paper focuses on highlighting gaps within the legal and administrative frame work which impedes compliance with the African Union Convention on Preventing and Combating Corruption-(the AU Convention), and the United Nations Convention Against Corruption (UNCAC). The paper examined some of the existing structures and laws and assesses their degree of compliance with the Conventions. It also identified practical obstacles to the ratification of the Conventions. The paper also suggested necessary changes to the laws and structures to bring them into compliance with the Conventions. It also identified areas of total absence of legal and administrative structures and made recommendations on possible solutions.

Finally the paper made recommendations on the strategies, collaborations and alliances which will facilitate the timely domestication and implementation of the Conventions.

II. CORRUPTION IN NIGERIA

The break-down of law and order in Nigeria, triggered by official corrupt practices has brought about socio-economic discontent, political instability and was thus marked by wide

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spread and longstanding violence, over time and space. These trends were partly and directly the results of corruption, communication break-down and collaborative gap. It is therefore suggested that one of the most valuable mechanisms of combating corruption and the attainment of national objectives lies in the effective communication and collaborative devices. In other words, effective communication and collaboration are sine qua non for a successful war against corruption as well as mobilization of human and material resources to attain stated national objectives and focused direction [11].

In examining the concept of corruption, two major perspectives may be explored: the moralistic/ethical and scientific. Corruption is described as an activity or behaviour that is debased or perverse. In moral angle, the concept does not actually explain the instrumentality of corruption as of personal aggrandizement or sectional benefits. Thus, there is inadequate analysis of the structural and contextual basis of corrupt activities and relationships.

Scientifically, corruption is identified as a social problem. A scientific study of corruption leads one into very slippery conceptual problems. These problems arise largely from moral angles. Political, economic and sociological issues are usually diverted and therefore ignored or not given critical analysis. Whereas the prevalence of corruption in Nigeria is locally and internationally acknowledged, its magnitude and character are however conceptualized by various cultural perspectives.

Corruption is a global problem. This social problem was part of colonialism and therefore a by-product of industrial revolution of Western Europe. The West (including the USA) is invariably the home, the nerve centre and the originator of the contemporary social problems in Nigeria. Various governments in Nigeria established panels, tribunals, institutions, commissions etc to probe affairs of government and officers as well as check the socio-economic and political decay of the entire society. This was perhaps why Abdullahi Smith succinctly depicted Nigeria as a country where human society is plunging compulsively into greater depth of corruption and decay [2].

Corruption is the mother of the entire contemporary social problems in Nigeria. It is the mother of all crimes in all societies. Corruption diverts materials wealth of societies into private individuals. The accumulated ill-gotten wealth in the private hands is not used in the provision of the basic needs of the people. In essence, the driving force of corruption is centred on materialistic individualism albeit with exploitative objective. Thus, at the expense of the community, very few private individuals gain, and more often than not, cannot make use of the wealth productively. A corrupt society invariably breeds all social problems due to deprivation and exploitation [11].

Corruption in Nigeria is a (cancer worm) pervasive and corrosive problem which over time has been perceived as capable of threatening the very existence of the nation. The need to combat and contain corruption has long been identified by successive governments, international organizations and the people of Nigeria [10]. As a result, since

independence, there have been several initiatives and laws to combat diverse manifestations of corruption. Nigeria has experienced prolonged periods of military rule and numerous military coups. Even successive military administrations which are generally credited with instituting and institutionalizing the cultures of impunity had one anti-corruption initiative or the other. For instance, between 1993 and 1998 General Sani Abacha is estimated to have stolen US \$3.6 billion of state funds [10]. The Federal Government in recent years has taken increasing measures to combat corruption by establishing the Independent Corrupt Practices Commission (ICPC), the Code of Conduct Bureau (CCB) and Economic and Financial Crimes Commission (EFCC) in addition to the Nigeria Police Force.

At present Nigeria has put in place some impressive structures, institutions and laws aimed at combating corruption. The aforementioned are (supposed to be) dedicated anti-corruption bodies or agencies with broad powers to investigate, prosecute, sanction and educate on issues relating to corruption in both public and private arena. The Constitution of the Federal Republic of Nigeria also creates several structures and bodies mandated to combat various types of corruption. There are laws to regulate issues such as Party Financing and Audit of Public Accounts.

Despite the existence of these laws and institutions, Nigeria still falls short of the standards and requirements of an effective anti-corruption regimen as embodied in the international anti-corruption conventions. The unprecedented corruption in Nigerian government is very visible particularly involving the President of the Republic, members of the National Assembly, the law enforcement agencies, State Governors and their Legislators as well as the Chairmen and Councillors of Local Governments. The Judiciary is not also exempted from such corrupt practices. It is the whole system that has been engulfed by corruption. The accusations and counter accusations between the then President Obasanjo and Vice President Atiku (2003-2007) over corrupt practice are cases of undisputed prevalence of official corruption in Nigeria, right inside the Presidency [11].

There is no section or segment of the political, economic, social or moral life of Nigeria or Nigerians which corruption has not debased. Corruption therefore accounts for the most fundamental contemporary social problem in Nigeria. Corruption, over time has taken several forms and manifestations in the routine government practice and life of Nigerians. This practice of corruption in Nigeria has inevitably battered its image and citizens internationally. This is because not only officials of government are corrupt but corruption is official at all levels and organs of government [11]. This prevalence of corruption in the country has placed Nigeria in a top position amongst the world's most corrupt nations [9]. The horrendous looting of the Nigerian treasury, particularly since 1999, has taken a complete new form and dimension. The amount of wealth and funds being looted by the Nigerian leaders down to the Local Government level and kept secretly either abroad or in the country has been unprecedented in the recorded history of Nigeria. The kind of miseries and

deprivations these activities have caused on Nigerians and the polity cannot be quantified for now. This is one of the most heinous forms of corrupt practices accounting for hundreds of billions of dollars. The corrupt political and military leaders and their hangers-on staked their bank accounts aboard and at home. In additional, they spend the looted or stolen money in buying or building mansions aboard and at home. They also purchase other landed properties as well as shares in banks and other financial or commercial institutions [11]. Such misappropriation of public funds by the leadership, through embezzlement of the treasury, had continued to transform the recklessness of the political leaders into money laundering, drug pushing, illegal arms deals and other illicit or nefarious activities. Through all sorts of gratification and other forms of abuse of office, the political leaders have illegally legitimized corruption to, more than anything else, influence official decision or behaviour; violate all legal processes and procedures for their vested interest or advantages.

Permit me to observe that any effort at addressing corruption in Nigeria must take seriously the issue of reform of the judicial system. This is a system that has been intimidated and therefore corrupted, first by the military, and now by the politicians. Political corruption and the police constitute the other two leprous legs of the tripod of corruption in Nigeria. Very little has been done in terms of carrying the anti-corruption war to the judiciary, except maybe for efforts at strengthening it [6]. To say that corruption in the police still persists, is to put it mildly. It is still endemic and almost always appears incurable. It is indeed ironical that those institutions of society that are supposed to uphold or maintain the law, that is, the judiciary and the police, are two of the most corrupt. It suffices to note that the police is still generally perceived, not as a friend of the public, but as a foremost enemy for various reasons, least of which include the harassment, extortion and brutalization of innocent citizens and road users [5]. The police also easily serve as a tool to be used by politicians in denying the citizenry their right to vote and their rightful votes during elections [6].

III. ANTI CORRUPTION CONVENTIONS

Nigeria is among 140 countries that signed the United Nations Convention against corruption. Nigeria became signatory to the convention on December 9th 2003 but among 83 countries with ratification, acceptance, approval, accession on December 14th 2004.

The purposes of this Convention UNCAC are: (a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively; (b) To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery; (c) To promote integrity, accountability and proper management of public affairs and public property [13].

The African Union on its decision of the 37th ordinary session of the Assembly of Heads of State and Government of the OAU held in Lusaka, Zambia, in July 2001 as well as the Declaration adopted by the first session of the Assembly of the

Union held in Durban, South Africa in July 2002, relating to the New Partnership for Africa's Development (NEPAD) which calls for the setting up of a coordinated mechanism to combat corruption effectively, thus, the establishment of AU Convention.

IV. STATUS OF THE CONVENTIONS

Nigeria has signed both the African Union Convention on Preventing and Combating Corruption and the United Nations Convention against Corruption. Nigeria has also ratified the United Nations Convention against Corruption but is yet to ratify the African Union Convention on Preventing and Combating Corruption. Both Conventions are not operative in Nigeria because of the legal provision which requires the National Assembly to enact a law formally incorporating Treaties and Conventions into the domestic legal framework or 'domesticating' the Treaties and Convention [15].

V. ANTICORRUPTION CONVENTIONS VS. 1999 CONSTITUTION

However, the 1999 Constitution stipulates that no "*treaty shall have the force of Law except to the extent such treaties have been enacted into law by the National Assembly*". This means that the National Assembly may not only refuse to enact a law "domesticating" treaties but can also give partial consent by excising part of the provisions of the treaties and conventions. In that event, only the part approved by the National Assembly becomes part of the domestic law [10].

The Constitution defines the scope of powers of the National and State Assemblies to make laws [15]. The National Assembly has the exclusive right to make laws in respect of matters listed in the Exclusive Legislative List, and shares legislative powers with State Assemblies in respect of matters in the Concurrent Legislative List, while only the State Assemblies have legislative powers in respect of matters in the Residual Legislative List. However, the Constitution extends the scope of powers of the National Assembly, by giving them powers to make laws in respect of matters not included in the Exclusive Legislative List, in cases where such laws are necessary to give effect to Treaties. This in effect means that the National Assemblies may legally delve into the Residual Legislative List to give effect to Treaties. However, in such cases, the Bill for domestication of the treaty must be ratified by a majority of all the Houses of Assembly in the Federation [15].

The domestication process commences with the signing of the instrument by the designated official. The Instrument then goes through some administrative review aimed at identifying any areas of incompatibility with the Constitution or other laws. This task is usually undertaken by the Department of International Law and Treaties at the Federal Ministry of Justice. Thereafter, the document may pass through several ministries and government departments whose mandate and activities are relevant to the subject of the Treaty or Convention. Intense advocacy by stakeholders is needed at this stage to bring the particular convention to the front burner.

Treaties and Conventions signed by the country have been known to remain inactivated for up to ten years.

At the end of the review process, a legal instrument to enact the provisions of the treaty into law is then presented to the National Assembly. This is usually in the form of an Executive Bill even though nothing in the Constitution or any other law prevents the bill being presented as a Private Members' Bill. An Executive Bill means that the Instrument is presented under the hands of the President indicating that he has special interest in the subject. This enables the Bill to go through a fast track mechanism which abridges the time for processing bills. The legislative process within the National Assembly entails that each house of the Assembly deliberates on the Bill and may decide to refer it to Committees for in depth analysis and review. It is then presented to the full house which may either adopt or reject the recommendations of the Committees. It is important to engage in lobbying at this stage to ensure that the members of the Committees give attention to the assignment and also to ensure that the Bill is not watered down. At present there is a House of Representatives Committee on Conventions and Treaties at the National Assembly. There is also a Senate Committee on Foreign Affairs which deals with conventions and treaties [10].

Critical analysis by stakeholders is needed at this stage to bring the particular Convention to the Floor. At the end of the scrutiny, a legal instrument to enact the provisions of the Treaty/Convention into law is then presented to the National Assembly for passage. Once the Bill has been passed into Law and given assent by the President, it becomes part of the domestic legal framework and immediately applicable in the local context. The provisions can be appropriated for policy implementation and enforcement of rights.

VI. LEGISLATIVE CHANGES NEEDED TO COMPLY WITH THE CONVENTIONS

A. *Constitution of the Federal Republic of Nigeria 1999*

The Nigerian Constitution sets the tone for the fight against corruption by providing that the State shall abolish all corrupt practices and abuse of power [15]. Further the Constitution has several provisions, and created several bodies whose mandate are primarily to combat corruption and ensure transparency and accountability in various sectors of the polity. Some of such bodies are, The Code of Conduct Bureau and Tribunal which administers the Code of Conduct for Public Officers; Federal Civil Service Commission which appoints and exercises disciplinary control over Federal Civil servants; The Federal Judicial Service Commission which recommends the appointment of, and exercises disciplinary control over judicial officers [15]. The Constitution also provides for the office of the Auditor General of the Federation who has the mandate to audit the Public Accounts of the nation and make an annual report to the National Assembly [15]. The Constitution also establishes the Independent National Electoral Commission-INEC with the mandate to regulate the registration and activities of Political

Parties, and further has provisions to regulate the funding of Political Parties [15].

1. Compliance with the AU Convention

The Constitution contains copious provisions for the actualizing of political and socio-economic rights of the citizens under the Fundamental Objectives and Directive Principles of State Policy contained in Chapter II. These objectives are in respect of issues such as economic rights, education rights, social rights, environmental rights and culture. However, the Constitution specifies that the rights outlined under this section are not "*justiciable*" i.e. not enforceable in court. In effect citizens cannot lawfully enforce their rights under this section either through the court process or otherwise. This inability to enforce the rights created under this chapter precludes compliance with Article 3(4) AU Convention. The economic and social and cultural rights outlined in chapter II of the constitution should be brought under chapter IV-the fundamental rights section of the constitution, with a view to making them enforceable.

Section 308 of the 1999 Constitution provides that no civil or criminal proceedings shall be instituted or continued against persons to whom the section applies during his period of office. The public officials granted immunity from prosecution are; the President, the vice President, State Governors and their deputies. This section precludes compliance with Article 7(5) AU Convention. It is therefore necessary to amend this section of the Constitution and review the provision on immunity, in order to give effect to Article 7(5).

Further the Constitution prescribes condition under which a treaty signed by the country can become part of the legal framework of the Country or 'domesticated' [15]. The section identifies two scenarios as follows: 1. Where the subject matter of the treaty falls within the Legislative ambit of the National Assembly under the Constitution. 2. Where the subject matter falls within the Legislative ambit of the State Assemblies. In the latter situation, the National Assembly may make laws implementing the treaty but such a law must be ratified by a majority of all the Houses of Assemblies in the Federation. The implication of these provisions of the constitution is that the process of ratification of treaties is almost as cumbersome as the passage of any other Bill which comes to the National Assembly. These provisions constitute major problems to the process of domestication of the anti-corruption Conventions.

2. Compliance with the UNCAC

UNCAC provides that State Parties should take measures to maintain balance between the immunity and jurisdictional privileges granted to public officials for the performance of their functions on the one hand, and the need to investigate, prosecute and adjudicate offences under the Convention. However, Section 308 1999 Constitution confers immunity from both civil and criminal prosecution on certain categories of public officers while they are in office. These categories of officials have control of public resources and are therefore vulnerable to corrupt practices. Shielding them from

prosecution will seriously undermine the campaign against corruption and encourage impunity. It is therefore critical to comply with Article 30 by reviewing the immunity clause.

B. Independent Corrupt Practices and Other Related Offences Act 2000

This law establishes the Independent Corrupt Practices and other Related Offences Commission-The ICPC, and confers on the Commission the general powers to receive, investigate and prosecute corrupt practices and other related offences as well as carry out public education. This Commission is a dedicated anti-corruption agency with full powers of investigation and prosecution.

A. Requirements for Compliance with the AU Convention

Article 2(1) of the AU Convention provides for Prevention of private and public sector corruption while the ICPC law appears to be restricted to public sector corruption and extends to officials in the private sector only in those circumstances where they form the demand or supply side of private sector corruption [8]. It will therefore be necessary to effect an amendment of the law to embrace prevention, investigation and prosecution of offences committed by officials of private sector organizations within those organizations, to bring it into compliance with Article 2(1) of the AU Convention.

On Co-operation among state parties the provisions of the ICPC Act in relation to Article 2(2) and (3) is insufficient to make for effective compliance. The Act empowers the Commission to seek for a prohibitive order from the court to prevent any person from dealing with property which is the subject matter of an offence under the Act but which is held or deposited outside Nigeria [8]. The effect of such an order will be to freeze the said assets [10]. The Act also empowers the Commission to engage the services of INTERPOL or similar local and international institutions to trace and detect cross border crimes. That is the extent of the co-operation provided for under the Act [8]. It will therefore be necessary to amend the Act to incorporate issues such as Mutual Legal Assistance and Co-operation, Joint Investigations, Extradition and exchange of information.

Promotion of social justice and balanced socio-economic development - The inability to enforce the socio-economic rights provided for in Chapter II of the 1999 Constitution, prevents compliance with Article 3(4) of the AU Convention. Despite creating those rights under the Directive Principles of State Policy, the Constitution provides that those rights are not '*justiciable*' i.e. unenforceable.

To ensure compliance with Article 2(5) AU Convention, it will be necessary to incorporate into the legal framework of the country the Whistle-Blowers Protection Law. S.64 ICPC Act provides for the protection of the identity of informants but does not provide for mechanisms to protect them in cases of disclosure of their identity.

The ICPC Act in S.44(2) makes reference to Illicit Enrichment stipulated in Article 4(g) of the AU Convention. However, this provision is subsumed under S.44 which deals primarily with forfeiture of corruptly acquired assets. As such,

the provision does not create an offence of illicit enrichment, but provides that unexplained affluence can be used as corroborative evidence in a trial for corrupt practices. It will therefore be necessary to effect an amendment of the Act to create and criminalize the offence of Illicit Enrichment. This is critical in view of the fact that the major focus of the Commission is combating Public Sector Corruption and sanctioning Public Sector officials who have custody of public finances, and the attendant prevalence of embezzlement and misappropriation [10].

Nigeria has a myriad of anti-corruption agencies whose enabling laws provide for independence. Some of such agencies are the ICPC and the Code of Conduct Bureau-CCB. There are also other agencies such as the Economic and Financial Crimes Commission –EFCC, the Public Complaints Commission and the Budget Monitoring and Price Intelligence Unit-BMPIU. However, these institutions are not free from interference from The Executive. In particular, the absence of financial independence impacts on their activities. A recently released National Integrity Systems Study of Nigeria conducted by Transparency International, made a finding that the ICPC, the CCB and the Public Complaints Commission are weak and underfunded [18].

More so, there is a total absence of compliance with Article 5(5) & (6) of the AU Convention. There is no Whistle-Blower Protection Law and Whistle- Blowers' Protection Regimen. This gap has been identified as one of the serious impediments to the campaign against corruption in Nigeria. In a press statement issued by the President of Transparency In Nigeria [18], on the occasion of the launching of the National Integrity Systems Study on Nigeria in 2004, he described the 'critical driver of the anti-corruption locomotive' as "the Whistle Blower located in civil society" There is the urgent need to pass this law which has been pending before the National Assembly.

The relationship between government [inclusive of the oversight agencies] and Civil Society Organizations CSOS and the Media is not very cordial. There is mutual distrust and interactions are sporadic and episodic. There are few instances of exchange of information. In order to ensure compliance with Article 12 AU Convention, it is necessary to institute a policy framework for sustainable dialogue, interaction and collaboration [10].

The ICPC Act [8] provides for the applicability of the law outside Nigeria in respect of citizens of Nigeria and Permanent Residents of the Country. It however does not provide for situations where the offence, though committed outside its territory by persons who are not nationals or permanent residents, but its vital interests or the "deleterious or harmful consequences of its effects impacts on the Country." To comply with Article 13(1)(d) of the AU Convention, the Act has to be amended to incorporate this provision.

The Extradition Act of Nigeria makes Extradition conditional upon the existence of a Treaty between the Country and the requesting State Party. Article 16 AU convention Confiscation and seizure of the proceeds and instrumentalities of crime while S. 36-49 of the ICPC Act has

copious provisions on seizure, confiscation and forfeiture of the proceeds of crime, there is no provision on repatriation of proceeds of corruption in accordance with Article 16(c) AU Convention. It is therefore necessary to amend the ICPC Act to incorporate that provision.

On banking secrecy, the ICPC Act [8] empowers the Commission to have access to documents and information in banking institutions in the course of investigation and prosecution under the Act. However, to ensure compliance with Article 17(4) AU Convention the Country needs to enter into Bi-lateral Treaties with other State Parties to give effect to the Convention in relation to other Countries.

On Cooperation and mutual legal assistance, the ICPC Act does not have provisions for cooperation and Mutual Legal Assistance as provided in Article 18 AU Convention. There is the need to come up with a policy framework to incorporate issues of Co-operation and Mutual Legal Assistance, which will enhance the activities and operations of the Commission.

Similarly there are a number of national agencies and authorities engaged in combating various aspects of corruption, but a study has revealed that these agencies are weak and under-funded. There are insufficient resources for capacity building for both human and other resources. While agencies such as the CCB access funding through budgetary appropriation by the National Assembly, their budget still has to go the Executive for approval before going to the National Assembly. For the ICPC and EFCC, funding is accessed through the Presidency. This raises serious issues of independence and undue influence [18].

B. Compliance with the UNCAC

The ICPC Act [8] has copious provisions on confiscation and seizure of proceeds of corruption. However, on the Scope of application there is no provision in the Act for return of proceeds of corruption to a party outside the country. It is therefore necessary to amend the Act to that effect in order to comply with Article 3 UNCAC.

Nigeria has instituted several policies and structures aimed at combating corruption. The present administration in the Country has a strong anti-corruption agenda. To this effect a number of oversight institutions focused on diverse aspects of corruption have either been created or energized since the Obasanjo government [1] came to power. However, one strategic component of an effective anti-corruption regimen is conspicuously missing and that is a National Action Plan to combat corruption. As a result, the myriad of on-going efforts to combat corruption appear sporadic, episodic and disjointed. The strategic co-operation among the agencies and between the agencies and the civil society is lacking. In particular, the anti-corruption campaign does not have a structured agenda for the participation of Civil Society Organizations and NGOS. The absence of the National Action Plan has been identified as a causative factor in the minimal progress recorded in the campaign and has also raised concerns about the sustainability of the whole agenda [10]. In order to comply with Article 5 UNCAC, it is necessary to construct and adopt a National Action Plan against corruption.

By virtue of its enabling statute the ICPC is independent as the law provides that the Commission, Chairman and members shall not be subject to any other authority but the Act in the exercise of their functions [8]. However, the Commission is not independent in practical terms because they are not legally empowered to access their funding through the budgetary and appropriation process from the National Assembly. As a result, they are funded by the Presidency and also report to the Presidency. This has raised concerns about their neutrality and independence. It is necessary to ensure their actual independence and the consequential compliance with Article 6(2) UNCAC. This can be accomplished by incorporating the Commission into the Constitution of Nigeria.

On Illicit Enrichment under Article 20 there is no specific provision in the Act which creates and criminalizes the offence of Illicit Enrichment. There is the need to amend the Act to incorporate Illicit Enrichment as an offence.

Bribery in the private sector in Article 21 viz-a-vis the wording of S.8 CPA suggests that the offence of gratification created under that section includes officials in the private sector. The section talks about “government department, corporate body or other organization” in relation to the offence of gratification. However, when this section is read jointly with S.6 CPA which outlines the mandate of the Commission, it appears that the Commission is concerned only with officials in the Public Sector. This fact is also underscored by the fact that the Commission in its activities focuses mainly on Public Sector institutions and their officials. In order to remove this ambiguity, it is necessary to amend the Act and give specific powers to the Commission to investigate and prosecute private sector organizations. This will ensure compliance with Article 21 UNCAC.

Embezzlement of property in the private sector as contained in Article 22 of the convention, the ICPC Act has no provisions against that. The Act is concerned primarily with Public Sector Corruption. It will therefore be necessary to amend the CPA with a view to broadening its scope to include prevention and prosecution of private sector corruption. This will ensure compliance with Article 22 UNCAC.

The interpretation section of the ICPC Act describes “Person” as including juristic persons or “anybody of persons, corporate or non-corporate.” However, the body of the Act does not suggest that Legal Persons are contemplated in respect of the offences created. The sanctions created are more consistent with natural persons than juristic or legal persons. Therefore, a more concise language is required in order to establish liability for legal persons in accordance with the provisions of Article 26 UNCAC

The Act has insufficient provisions for protecting witnesses, informers and reporting persons. The law provides that officers of the Commission shall not be compelled to disclose the identity of informants [8]. It also provides for protecting documents which might lead to the disclosure of identity of informants. These provisions are inadequate as it does not provide for protection of witnesses and informants in situations where their identities are disclosed despite these rudimentary precautions. It also fails to take cognizance of

situations where witnesses must necessarily give evidence in open court. In order to comply with Articles 32 and 33, it will be necessary to pass a Whistle-Blowers Protection Law with the components for Physical Protection; Relocation of victims and their families; and Compensation.

The ICPC is a specialized authority dedicated to the detection, prevention and prosecution of corruption. However it does not have the requisite independence envisaged in Article 36 due to the fact that it lacks financial independence as stated above.

Criminal Justice System in Nigeria does not really contain provisions for bargaining or negotiating with suspects of crime [3]. In effect it will be problematic to legally discuss mitigating punishment, or immunity from prosecution. The Attorney General and Minister for Justice has absolute powers to decide to prosecute a crime or stop prosecution by entering a *nolleprosequi* [15]. However, he cannot determine or influence terms of sentence as that lies within the exclusive preserve of the trial court in accordance with the Law. In order to comply with Article 36 UNCAC, it will be necessary to review the Criminal Procedure Law to include such issues as plea bargaining and other similar issues.

The ICPC Act has no provisions on Mutual Legal Assistance and International Co-operation in respect of the offences created under the Act as envisaged in UNCAC. It will therefore be necessary to amend the Act to incorporate such issues and ensure compliance with Articles 43 and 46 UNCAC.

The ICPC Act has no provisions to facilitate Asset Recovery or transfer of proceeds of crime to other State Parties. The Act has no provisions for recovery of property through International Co-operation and confiscation. In order to ensure that the Act complies with Articles 51-57 UNCAC, it will be necessary to incorporate the said provisions.

The ICPC Act has no specific provisions on the issue of training and technical assistance to or from other State Parties. However, S.7 of the Act which deals with Standing Orders empowers the Chairman of the Commission to issue administrative orders on issues such as training and other matters that will be expedient for the running of the Commission. The Commission may through the powers conferred under this section comply with Articles 60-62 UNCAC.

C. Criminal Code Act [16]

1. Requirements for Compliance with the AU Convention

The Criminal Code [15] criminalizes and sanctions the categories of corruption in the private sector. However, it has no provisions to discourage unfair competition, and encourage respect for tender procedures as prescribed under the convention [4]. Public Procurement Law is an example of such requirements which Nigeria has as a law.

2. Requirements for Compliance with the UNCAC

The UNCAC contains comprehensive provisions aimed at building systems and providing deterrence for corrupt practices. These provisions prescribe best practices and

minimum standards on various issues [13]. In distinction, the Criminal Code criminalizes and prescribes sanctions on a limited number of issues with no emphasis on building systems and providing deterrence. It will be necessary to codify the provisions of Article 12 UNCAC either by amending the Criminal Code or in a new legislation, in order to comply with the said Article of the Convention.

D. Economic and Financial Crimes Commission (EFCC) Act 2004

The EFCC Act establishes Commission with the mandate to investigate financial crimes such as advance fee fraud, money laundering, counterfeiting, illegal charge transfers, futures market fraud, fraudulent encashment of negotiable instruments, computer credit card fraud, and contract scam [7]. The Commission is also the designated Financial Intelligence Unit (FIU) of the Country [7] and is the Coordinating Agency for the enforcement of the Money Laundering [Prohibition] Act 2011, The Advance Fee Fraud and Other Related Offences Act 2006, The Failed Banks [Recovery of Debts] and Financial Malpractices in Banks Act, The Banks and Other Financial Institutions Act 1991 as amended, Miscellaneous Offences Act, and any other law or regulation relating to Economic and Financial Crimes [7].

1. Compliance with the AU Convention

State parties to the AU convention are required to take steps to ensure the independence of national anti-corruption bodies. The EFCC has no legal provisions for independence in its enabling law. In addition to the absence of guarantee of independence in its enabling law it accesses its funding from the executive and as such is dependent on them. Further, there is no security of tenure for the principal staff of the Commission. The Chairman and members of the Commission are appointed by the President subject to confirmation by the Senate [7]. However they may be removed at any time by the President for inability to discharge the functions of their office or for misconduct, without recourse to the Senate [7]. This provision gives room for insecurity and mischief [7]. There is therefore the need to amend Sections 2 and 3 of the EFCC Act to ensure compliance with the provisions of Article 5[3] AU Convention.

The EFCC Act [7] stipulates that officers of the Commission cannot be compelled to disclose the source of information or identity of their informants except by court order. There is no further provision to protect informants in cases where their identities are made known. This provision is grossly inadequate to protect Whistle-Blowers as it has no protection regimen which should include mechanisms for physical protection, compensation, resettlement and protection for the families of Whistle-Blowers. It is therefore critical to pass the Whistle-Blowers Bill pending before the National Assembly, to ensure compliance with Article 5(5) & (6) AU Convention.

The Act recognizes illicit enrichment only to the extent that unexplained possession of pecuniary resources can be used as corroborative evidence in the trial of offences under the Act

[7]. However the Act does not establish the specific offence of Illicit Enrichment which can be prosecuted on its own. There is therefore the need to amend the Act to create the offence of Illicit Enrichment in compliance with Article 8 AU Convention.

The AU convention stipulates that each State party has jurisdiction over acts of corruption when they are committed by a national outside its territory. The Act has no prescription or delineation for the scope of Jurisdiction under the Act. While S.19 stipulates that the Federal and State High Courts have jurisdiction in respect of offences, it does not define the scope for assumption of Jurisdiction i.e. where and by whom the offences are committed. It is therefore critical to amend the Act to incorporate situations where offences are committed outside the country by citizens outside the country. This is necessary because a large number of Economic and Financial crimes are perpetrated as Trans -border crimes [10].

2. Compliance with the UNCAC

The EFCC Act confers investigative and preventive powers on the Commission and in addition has detailed provisions on the seizure, confiscation and forfeiture of the proceeds of Economic and Financial crimes [7]. However, while it has provisions for the return of the proceeds of Economic and Financial crimes to Nigeria, it has no similar provision in relation to return of proceeds of crimes from Nigeria. It must be noted however, that there have been reported instances of the EFCC returning proceeds of crime to victims outside Nigeria even in the absence of specific provisions in the law [10]. In order to comply with the principles under Article 3 UNCAC, it will be necessary to amend the EFCC Act to incorporate provisions enabling the return of criminal proceeds from Nigeria.

Nigeria has a myriad of anti-corruption initiatives and anti-corruption bodies to actualize the initiatives. However, the country is yet to put in place a National Action Plan against Corruption. In effect, the anti-corruption agenda of the government is not cohesive and lacks co-ordination. A missing component is the absence of structured participation of the Civil Society in the anti-corruption agenda. This situation needs to be redressed to ensure compliance with Article 5(1) UNCAC.

The EFCC has no legal provision for independence in its enabling law. The Commission is funded from the Presidency and has no right of direct budgetary appropriation from the Legislature. In addition, the principal staff officers of the Commission do not have security of tenure. The necessary independence envisaged under Article 6(2) UNCAC is lacking.

As with the Corrupt Practices and Other Related Offences Act, the EFCC Act does not establish the specific offence of illicit enrichment which can be prosecuted on its own. S.7(b) of the Act gives the EFCC special powers to investigate the assets of any person where it appears that the person's lifestyle and extent of the assets are not justified by the source of income. However, the Act does not criminalize the offence of Illicit Enrichment. At best it may be used as a pointer to

induce investigation with the aim of uncovering other crimes. Further S.19(5) stipulates that the fact of possession of unexplained pecuniary resources may be used as corroborative evidence at the trial of offences under the Act. It is therefore necessary to amend the Act to specifically create and criminalize the offence of illicit enrichment. This will transfer the onus of proof of innocence on the party in possession of unexplained assets in order to comply with Article 20 UNCAC.

The Act provides that officers of the Commission cannot be compelled to disclose the source of their information or disclose the identity of their informants except by an order of court [7]. This provision is grossly inadequate to protect witnesses and experts whose testimonies are often made in open court. It is therefore an urgent necessity to enact a Whistle-Blowers' Protection Law which will incorporate the components of protection, compensation and relocation of witnesses, victims and reporting persons. This will ensure compliance with Articles 32 and 33 UNCAC.

The Criminal Justice System in Nigeria has no provision for compensating victims of crime. Thus the Criminal Procedure Act and the Criminal Procedure Laws of the various states of the Federation need to be amended to include provisions for the compensation of the victims of crime. This will ensure compliance with Article 35 UNCAC.

The Criminal Justice System does not have provisions for plea bargaining [3] or other forms of co-operation which enables the accused person to negotiate their charges and sanctions. There is therefore the need to amend the Criminal Procedure Laws of the Federation and the component States to incorporate this provision.

The Act has no provisions to facilitate direct recovery of Assets by another State Party in accordance with Article 53 UNCAC. Further, there are no provisions to permit other State Parties to initiate civil proceedings to establish ownership of properties which are proceeds of crimes; compensation for damages to other State Parties; and enabling the courts to recognize another State Party's claim as a legitimate owner of a property acquired through an offence under the Act. It is therefore necessary to amend the Act to incorporate these provisions.

The UNCAC has provisions to facilitate the recovery of properties which are proceeds of crime. However, the EFCC Act does not have provisions to confiscate property on behalf of another State Party. There is also the need to modify the laws in order to give effect to Article 54 UNCAC. This will facilitate giving effect to orders for confiscation, freezing or seizure made by the courts of another State Party; and allow confiscation without criminal conviction in cases where the offender cannot be prosecuted by reasons of death, absence or other appropriate cases. The Act contains no provision to facilitate return of proceeds of crime or corruption to another State Party in accordance with Article 57 UNCAC.

E. Code of Conduct Bureau and Tribunal Act

This Act establishes the Code of Conduct Bureau and the Code of Conduct Tribunal. The Act provides a Code of

Conduct for public officers which incorporate provisions for Asset Declaration; Conflict of Interest Rules; Rules on acceptance of Gifts; prohibition of foreign accounts by certain public officers; and prohibition from belonging to secret societies. The Code of Conduct for Public Officers is also incorporated in the 1999 Constitution [15]. The Act establishes the Code of Conduct Tribunal which has the mandate to try offences referred to it by the Bureau under the Act. The Chairman and members of the Code of Conduct Bureau and the Tribunal have security of tenure which is prescribed under the Constitution [14].

1. Compliance with the AU Convention

The Code of Conduct Bureau and Tribunal Act provides that all public officers shall declare their assets to the Code of Conduct Bureau within three months of assuming public office; every four years in the course of the public office and upon leaving public office [15]. The aim of this provision is to track misappropriation of public funds and illicit enrichment [10].

However, declarations made under this provision are not made available to the public thereby undermining the transparency of the whole process. Critics have however argued that the provision for declaration already presumes public access and no further guideline is required. An access to information law will clarify this ambiguity by enabling access to the declarations. There is an urgent need to make this process transparent to ensure compliance with Article 3(3) of the AU Convention.

The Bureau and Tribunal are legally independent by virtue of their enabling laws and also by virtue of the fact that the agencies are created directly by the Constitution. As a result they access their funding from the National Assembly through the budget and appropriation process. However, this does not guarantee the Bureau financial independence as their budget is subject to scrutiny and approval by the Executive before it is submitted to the National Assembly. The National Integrity Systems Study [18] on Nigeria discloses that the Bureau and Tribunal are under-funded, leading to weak and ineffective structures. Capacity building both in terms of infrastructure and human resources are not carried out regularly. To ensure compliance with Article 5(3) AU Convention, urgent measures need to be taken to improve the funding of the Bureau and Tribunal.

Another constraint which the Code of Conduct Bureau CCB faces in the execution of its mandate is the issue of immunity of certain public officials such as The President, the Vice President, The Governors and their deputies [15]. The CCB has not been able to successfully prosecute these categories of officials in cases where they have breached the Code for public officers, in relation to issues such as failure to declare assets; false declarations and maintaining accounts in foreign banks. The attempts made by CCB to prosecute such officials have been met with the defence of immunity from prosecution. In order to prosecute the war against corruption, the provision for immunity of certain public officials must be reviewed.

2. Compliance with the UNCAC

Article 8 of UNCAC prescribes the establishment of processes to encourage public officers to report acts of corruption noticed in the course of their functions, to the appropriate authorities. However, the absence of protection for reporting persons makes it unlikely that public servants will report corruption. It is therefore critical to enact a Whistle-Blowers Protection Law as well as establish a protection regimen for whistle-blowers in order to ensure compliance with the Article 8(4) of UNCAC.

Further, Article 12(2)(e) UNCAC enjoins State Parties to take measures to prevent conflicts of interest by imposing restriction for a reasonable period of time on the professional activities of former public officials. The restrictions may include barring them from employment in the private sector after leaving office, where such employment relate to functions held or supervised by them during their tenure. The CCBT ACT does not have provisions which comply with the above article of UNCAC. Section 5(1) & (2) of the Code for public officers merely provide that the persons who have retired from the offices of President and Vice President; governors and their deputies; and the Chief Justice of the Federation, are prohibited from services or employment in foreign companies and enterprises. There is need to amend this section of the Code to include:

- All other categories of public officers covered by the Code of Conduct for public officers.
- Extend the scope of prohibited activities to include local companies and enterprises.

F. Electoral Act 2010

The Electoral Act regulates the conduct of Federal, State, and Local Government elections in the country. It prescribes rules and regulations for registration of voters, procedure at elections; and registers and supervises the conduct of Political Parties. The Act also prescribes electoral offences and regulates the funding of Political Parties. It is the operative law of the INEC which is created under the Constitution [15]. 1999 Constitution [15] prohibits political parties from receiving funds from outside Nigeria. They are required to declare and remit any such money to INEC within twenty-one days of receipt of same. In addition, it requires Political Parties to submit to INEC, detailed analysis of sources of funding and assets, as well as statement of expenditure.

1. Compliance with the AU Convention

On funding of political parties from illicit funds, both the Electoral Act and the Constitution do not contain provisions which proscribe funding acquired through illegal and corrupt practices. It appears that the Laws are concerned only with proscribing foreign funding of political parties and failed to address the issue of illicit funds from within the Country. There is a need to amend the Electoral Act to incorporate a provision to prohibit funding of Political parties from corrupt sources. This will ensure compliance with Article 10 AU Convention.

2. Compliance with the UNCAC

Article 7(3) UNCAC requires State Parties to take legislative measures to enhance transparency in the funding of candidates and political parties. However, S.225 of the Constitution which regulates receipt of funds focuses on funding of political parties and fails to address the issue of funding of candidates. There is no requirement for candidates to disclose and declare funds received in the course of campaign and elections. Further, the said S.225 proscribes foreign funding of political parties but failed to address the issue of funding political parties with illicit funds from within the country. In order to comply with Article 7(3), it will be necessary to incorporate the above issues into the Electoral Act.

VII. VARIATIONS IN THE REQUIREMENTS FOR LEGAL CHANGES BETWEEN THE TWO CONVENTIONS

The legal requirements necessary to ensure compliance with the AU Convention and UNCAC vary on several issues. This is reflected in the construction of the language of the instruments which impose either persuasive or mandatory obligations. A further determinant is the scope of the issues covered by the two Conventions. The UNCAC has 71 Articles and therefore covers a broader range than the AU Convention which has 28 Articles. However, the AU Convention is more definitive on certain issues thereby imposing specific and clear obligations. The variations can best be appreciated if examined in the context of specific issues and themes in the instruments as follows:

1. Political Corruption - The AU Convention in Article 10 imposes mandatory obligations on State Parties to proscribe funds acquired through illegal and corrupt practices to fund Political Parties. In contrast, the requirement of UNCAC as provided in Article 7(3) on the issue is persuasive. In effect, upon ratification of the AU Convention State Parties are obliged to enact laws to enforce the provisions while there appears to be no such compulsion by UNCAC. The UNCAC however has a broader range by requiring State Parties to prescribe criteria for candidates seeking election into public office- Article 7(2). The AU convention is silent on this issue.
2. Declaration of assets\Conflict of interest The AU Convention has a mandatory provision on Declaration of Assets by public officers as opposed to UNCAC which has a persuasive provision under Article 5. Therefore State Parties to the AU Convention have a mandatory obligation to institute a declaration of Assets regimen where none exists. On the other hand the UNCAC has provisions to prevent Conflict of Interest which is missing from the AU Convention.
3. Trading in Influence - The AU Convention in Article 4(1)(f) imposes a mandatory obligation on State Parties to criminalize the offence of trading in influence. In effect the parties are required to make laws making the offence punishable, where laws are not already in existence. This

is in contrast to UNCAC which has a persuasive provision which may or may not be translated into laws.

4. Public procurement - Articles 5(4) and 7(4) of the AU Convention imposes a mandatory obligation on State Parties to create and strengthen procedures for hiring, procurement, and management of public goods and services. This will require State Parties to enact specific legislation where none exists. The UNCAC however has a non mandatory provision on the issue.
5. Whistle-blower protection - The AU Convention in Articles 5(5) & 5(6) imposes a mandatory obligation on State Parties to protect informants, witnesses and whistle-blowers. In effect State Parties are mandated to pass Whistle-Blowers Protection Laws and institute protection regimen. The UNCAC, in Articles 8(4) and 32, has similar provisions but with only persuasive obligations. In fact the language of Article 32 makes the obligation subjective by making it dependent on the availability of means to the State Party.

In general, the AU Convention has a more definitive and imperative language which will constrain State Parties to enact laws and institute structures in order to comply with the principle and letter of the Convention. On the other hand, the UNCAC has provisions on a wide range of issues capturing a broader dimension of anti-corruption issues.

VIII. ADVOCACY STRATEGIES

The need to domesticate both the AU Convention and UNCAC in a country like Nigeria cannot be overemphasized. However the challenges and obstacles along the way cannot also be ignored. A proactive strategy which will give entry point and roles to all stakeholders should be adopted to facilitate a timely domestication of, and implementation of the Conventions.

IX. RECOMMENDATIONS

1. The Federal and State Governments and members of the National Assembly should undertake necessary legislative changes as outlined above, to bring domestic law into compliance with the AU and UN conventions. In particular:
 - a. Pass the Whistle-blowers Protection Bill that is currently before the National Assembly and introduce strong protection measures for victims, witnesses and reporting persons to encourage public reporting of corruption.
 - b. Amend the EFCC and ICPC Acts to remove duplication and make them under one strong independent body.
 - c. Make the new independent anti-corruption body to incorporate stronger provisions for international cooperation and mutual legal assistance to combat corruption.
 - d. Amend the constitution to review the immunity clause that prevents the prosecution of certain public officials.
 - e. Amend the constitution to include a clause giving automatic force of law to all treaties entered into by the country.

- f. Establish a credible committee to conduct a needs assessment of the laws, internal structures, policies and methodology of the existing oversight agencies with a view to measuring them against the standards set by the AU and UN Conventions. This assessment should identify the legislative reforms required to bring domestic law in line with the international anti-corruption standards. The committee should prepare an executive bill for domestication of the conventions.
2. Government must take steps to co-ordinate national anti-corruption activities. Prepare and implement a national action plan against corruption. Such a plan should be drawn up in consultation with civil society organizations.
3. Government must take steps to co-opt the States into the anti-corruption agenda and the domestication of the anti-corruption conventions.
4. Government must increase and make adequate resources available and staffing of the anti-corruption agencies to investigate and prosecute cases of corruption without fear or favour.
5. Governments should Increase public awareness of anti-corruption issues through media campaigns and public education curriculum.
6. Freedom of expression, as guaranteed in the Nigerian constitution and international law, should be respected at all times. NGOs and the media should be allowed to carry out their work fairly without fear of harassment and intimidation.
7. Donor organizations to Provide technical assistance and training to improve the capacity of anti- corruption bodies.
8. There is need to fund local NGOs to carry out monitoring, advocacy and public education around anti-corruption issues.
9. Nigeria must address such “practices, systems and procedures” of assaulting poverty, the culture of impunity and the provision of basic needs to all Nigerians.
10. Civil society organizations to coordinate national advocacy to pressure and monitor the federal and state governments to domesticate the AU and UN Conventions.

X. CONCLUSION

The most fundamental ingredients necessary for Nigeria to communicate, collaborate and implement the anti-corruption conventions and close the gulf of corruption is to address such “practices, systems and procedures” of assaulting poverty, the culture of impunity and the basic needs of Nigerians with sincerity of purpose, particularly those related to the individual needs as well as the society’s needs) for food, shelter, clothes and other necessities of life; individual access to public services like water, power, energy, sanitation, health, education etc, unhindered access to participation or even exert relative influence on decision making processes that affect him from local to national issues. This is because no constitutional or legislative provision and no anti-corruption convention can solve the menace of corruption in Nigeria if

the issue of poverty alleviation and provision of basic needs to the generality of people are not addressed and solved.

Hence, for effective checks and control of corrupt practices unique to Nigeria, anti-corruption institutions should not be controlled by the executive. Special Independent courts, designated to deal with corrupt offences, for quick dispensation of cases, be established with appropriate corruption monitoring units. And above all leaders must be honest, prudent, focused and have sincerity of purpose.

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