

## The economic and financial crimes commission and its role in curbing corruption in Nigeria:

### Evaluating the success story so far

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#### Abstract

As part of the efforts to combat corruption in Nigeria, the Economic and Financial Crimes Commission was one of the institutions put in place to fight the menace. It has very wide powers to fight corruption, and financial crimes. This paper discusses the activities of the Commission in the war against corruption, financial and economic crimes. Though the Commission recorded appreciable achievements in combating economic and financial crimes, some factors that militated against its success were equally identified and appraised. The paper concludes that major albatross encountered by the Commission in the performance of its functions lies not in the legal instruments with which to work, but the will-power, weak implementation and enforcement machinery by the Commission.

**Keywords:** economic crimes, financial crimes, commission, corruption, Nigeria

#### Introduction

There is a plethora of anti-corruption institutions in Nigeria before the establishment of the Economic and Financial Crimes Commission <sup>[1]</sup>. These institutions include the Legislature, the Judiciary, the Police, Code of Conduct Bureau, Standard Organisation of Nigeria, Budget Monitoring and Price Intelligence Unit, etc. <sup>[2]</sup>

The financial industry is enmeshed in issues such as electronic fraud and deployment of funds for illegitimate activities <sup>[3]</sup>. Nigeria is losing over 200 billion dollars per year as a result of corruption and financial crimes <sup>[4]</sup>. Money laundering, for instance, has reached an alarming rate with private and public service officials indicted in the practice <sup>[5]</sup>. Many government officials have been caught in the process of trafficking money. Often times, such officials are politicians, a status they exploit to escape justice <sup>[6]</sup>. Billions of Naira is being lost by the Federal Government everyday due to the activities of illegal oil bunkerers <sup>[7]</sup> and trade malpractices <sup>[8]</sup>. The indulgence of some Nigerians in Advance Fee Fraud has destroyed the reputation and credibility of the country all over the world. This has made it unnecessarily difficult for majority of innocent Nigerians to transact business both locally and internationally <sup>[9]</sup>.

In the address of former President of the Federal Republic of Nigeria, Olusegun Obasanjo while signing the Anti-Corruption Bill on the 13<sup>th</sup> of June, 2000, observed *inter-alia*:

*Corruption has been responsible for the instability of successive governments since the first republic. Every coup since then has been in the name of stamping out the disease called corruption. Unfortunately, they often turn out to be worse than the disease. And Nigeria has been the worse for it. Nigeria's external image took a serious bashing as our beloved country began to feature on top of every corruption index... We must tackle it head-on for our country to make any meaningful economic progress. With corruption, there can be no sustainable development, nor political stability* <sup>[10]</sup>.

It is because of the prevalence of corruption and financial

crimes in Nigeria that necessitated the establishment of the Economic and Financial Crimes Commission (hereinafter referred to as "the EFCC") on the 13<sup>th</sup> day of December, 2002. This paper shall examine the establishment, functions of the Economic and Financial Crimes. It shall equally evaluate the activities of the anti-corruption Body, assess the impediments to the effective realisation of the objectives of the Commission as well as the achievement of the Body so far.

#### Establishment of the Economic and Financial Crimes Commission

The Economic and Financial Crimes Commission was established on the 13<sup>th</sup> of December, 2002 after the Bill enacting the Commission was passed by the Senate and the House of Representatives had been authenticated by Ibrahim Salim, the then Clerk of the National Assembly <sup>[11]</sup>.

The Economic and Financial Crimes Commission act, 2002 was repealed by the Economic and Financial Crimes Commission (Establishment) Act, 2004. The Act makes the Economic and Financial Crimes Commission a body corporate with perpetual succession and a common seal. This implies that the Commission can sue and be sued in its corporate name and hold or dispose of properties <sup>[12]</sup>.

#### Functions of the Economic and Financial Crimes Commission

The functions of the Economic and Financial Crimes Commission as contained in sections 6 and 7 of the Economic and Financial Crimes Commission Act include the investigation of all financial crimes, coordination and enforcement of all economic and financial crimes laws <sup>[13]</sup>, the adoption of measures to identify, trace, freeze, confiscate or seize proceeds derived from terrorist activities, economic and financial crimes related offences, the adoption of measures to eradicate the commission of economic and financial crimes, the examination and investigation of all reported cases of

economic and financial crimes, dealing with matters connected with the extradition, deportation and mutual legal or other assistance between Nigeria and any other country involving economic and financial crimes and carrying out and sustaining public and enlightenment campaign against economic and financial crimes within and outside Nigeria <sup>[14]</sup>.

### **The Enforcement Strategies of the Economic and Financial Crimes Commission.**

According to Ribadu <sup>[15]</sup>, the Commission's enforcement strategies since inception include: investigation, arrest and detention of suspects, arraignment and prosecution of suspects, confiscation and seizure of properties, freezing of accounts and deportation of accused persons <sup>[16]</sup>. Individuals and organisations can file complaints through a written petition to the EFCC, which will then initiate investigation if the case falls within the power of the EFCC. The Public Enlightenment Unit of the Commission is charged with the responsibility of sensitising members of the public about the danger of economic and financial crimes in Nigeria in order to reduce its incidence <sup>[17]</sup>. Prosecution of cases by the Commission is done by contracting them out to private legal practitioners on behalf of the Commission.

### **Activities of the Economic and Financial Crimes Commission**

The Commission is presently investigating high-profile Nigerians involved in economic and financial crimes. The Commission is investigating how Sambo Dasuki, Musibau Obanikoro (former Minister of State for Defence) and Governor Ayo Fayose of Ekiti State removed N4.6 billion from the account of the office of the National Security Adviser between 4<sup>th</sup> and 13<sup>th</sup> April, 2014 <sup>[18]</sup>, the sharing of ₦23 billion by the former Minister of Finance, Mrs. Nenadi Usona among North-Eastern States at the instance of former Petroleum Minister, Mrs. Diezani Alison-Madueke for the prosecution of the 2015 presidential election <sup>[19]</sup> and the tracing of \$40 million to Ex-President Jonathan's Cousin, Roberts Azibaola, to a bank in London. The cash was wired through Citibank N.A Canada Square, Canary in Wharf London into the account of Plus Holdings Nigeria Limited of Azibaola <sup>[20]</sup>.

Olisah Metuh, former Publicity Secretary, who is standing trial before the Federal High Court, Abuja at the instance of the Economic and Financial Crimes Commission has shown his readiness to refund the sum of ₦400 million fraudulently collected from the office of the National Security Adviser for the re-election of former President Jonathan <sup>[21]</sup>.

The EFCC equally arraigned former Chief of Air Staff, Air Marshall Dikko Umar at the Federal High Court, Abuja on alleged money laundering, criminal breach of trust and corruption involving ₦7.382 billion <sup>[22]</sup>. The suit filed against the former chief of General Staff, Alex Badeh by the EFCC, revealed how he bought properties in Abuja for his three children at the sum of ₦970 million <sup>[23]</sup>. The former Minister of Aviation, Femi Fani-Kayode was arraigned at the Federal High Court, Abuja for withdrawing the sum of ₦2.5 billion illegally from the Central Bank of Nigeria and paid into the accounts of six members of the Peoples' Democratic Party and the Goodluck Support Group. It was alleged that Fani-Kayode got about ₦840 million from the fund <sup>[24]</sup>.

Sambo Dasuki, former National Security Adviser is at the centre of massive investigation into the alleged

misappropriation of about \$2.1 billion meant for the procurement of arms to fight Boko Haram insurgency in Nigeria <sup>[25]</sup>. In 2015, the EFCC filed a 13 count charge of false assets declaration against the Senate President, Dr. Bukola Saraki, at the Code of Conduct Tribunal (CCT). He was alleged to have corruptly acquired many properties while in office as Governor of Kwara State, but failed to declare some of them in the forms earlier filed and submitted to the Code of Conduct Bureau. He was equally accused of making an anticipatory declaration of assets upon his assumption of office as Governor which he later acquired <sup>[26]</sup>.

### **Constraints of the EFCC in the Performance of its Duties of Prosecuting**

Apart from prosecuting suspects, EFCC is equally charged with supervising, controlling and coordinating all activities relating to the investigation of offences relating to economic and financial crimes <sup>[27]</sup>. In the course of performing these functions, the EFCC encountered many challenges. The Challenges include:

#### **(a) Selective Prosecution**

Many Nigerians are accusing EFCC of partiality in its operation. They believe that the Commission is selective. For instance, Kupolati once accused the Commission of selective operation during the time of President Obasanjo <sup>[28]</sup>. The story of selective prosecution is the same under the present administration of President Buhari <sup>[29]</sup>.

#### **(b) Plea Bargaining**

Plea bargaining is arrived at through negotiations between the prosecutor and the defence during which a possible resolution of the charges against the accused person is reached <sup>[30]</sup>. It is very sad to observe that the execution of plea bargaining in Nigeria allows criminals to escape punishment. In an address to the 5th Annual General Conference of the Nigerian Bar Association in Abuja in 2011, the then Chief Justice of Nigeria, Dahiru Musdapher condemned the practice of plea bargaining when he said that the plea has no place in Nigerian law but invented to provide soft-landing for treasury looters <sup>[31]</sup>. The application of plea bargaining in the Pension Fraud involving one John Yusuf shows that plea bargaining is a fraud. In the said case, John Yusuf, a former Police Pension Fund Chief was sentenced to a term of two years in prison or an option of a fine of N750,000.00. In the said agreement, the convict pleaded guilty to the charge against him. He opted for the option of fine <sup>[32]</sup>.

#### **(c) The Presiding Judge**

Ordinarily, the trial judge is expected to dispense justice without fear or favour. He holds the balance between the prosecution and the defence, he is expected to decide cases before him impartially and whether the prosecution has discharged the burden of proof as prescribed by law <sup>[33]</sup>. Some courts have been tainted by allegations of corruption or succumbing to political influence. Ayo Salami, retired president, Court of Appeal publicly accused Katsina-Alu (CJN as he then was) of trying to put pressure on him to decide an electoral petition in favour of the Peoples' Democratic Party <sup>[34]</sup>. In 2007, Peter Odili, former Governor of Rivers State secured a judgment at the Federal High Court restraining the EFCC from investigating the finances of his Government <sup>[35]</sup>. With regard

to Lucky Igbinedion, the former Governor of Edo-State, he reached a plea bargain agreement with the EFCC concerning various counts of money laundering amounting to about \$25 million. The trial judge was accused of deviating from the terms of agreement by sentencing Igbinedion to ridiculous sum of 3.5 million fine. Igbinedion paid the fine immediately. The fact that he had the money on him gave room for suspicion that he knew what the judgment was going to be <sup>[36]</sup>.

Under the EFCC Act, courts are to treat the cases filed by the EFCC expeditiously <sup>[37]</sup>. The Chief Judges of the Federal High Court, High Court of the Federal Capital Territory, Abuja and State High Court are enjoined to designate courts and judges to hear matters filed by the Commission. The congestion of the cases in our conventional courts, inadequate judicial officers and recording proceedings in long-hand are seriously affecting expeditious hearing of cases filed by the EFCC.

#### (d) Political Interference

The Chairman of the EFCC stays in office at the pleasure of the president <sup>[38]</sup>. The EFCC presented a list of about 135 people who should not run for office during President Obasanjo's regime in 2007. The list contained the names of the perceived enemies of the president <sup>[39]</sup>. Aondoakaa was accused of interfering with the cases prosecuted by the EFCC when he was Attorney-General of the Federation <sup>[40]</sup>. He was accused of destroying cases relating to corrupt State Governors by discontinuing most of the cases <sup>[41]</sup>. After an order of the court freezing \$35 billion of Ibori assets in 2007 <sup>[42]</sup>, Aondoakaa provided Ibori's counsel with a letter indicating that Ibori had been investigated in Nigeria and no charges had been filed against him. The letter made the court in the United Kingdom to defreeze Ibori's assets <sup>[43]</sup>.

#### (e) Allegations of Corruption.

Larmode, the former Chairman of EFCC, admitted that corruption is traceable to the Commission. He said that those he was supposed to send out to carry out the Commission's mandate on certain individuals are themselves enmeshed in corruption <sup>[44]</sup>. Recently, the Commission arrested one of its operatives, Mohammed Bui, a Deputy Superintendent, for collecting \$150,000 from some military officers being investigated by the Commission <sup>[45]</sup>. The Federal Government has also set up a panel to probe EFCC and ICPC. The panel was mandated to investigate high-profile corruption cases allegedly compromised by the EFCC and ICPC <sup>[46]</sup>.

#### (f) The Challenge of Immunity.

Section 308 of the 1999 Constitution as amended provided for executive immunities for President, Vice President, Governor and Deputy Governor of a State. In *Fawehinmi v I.G.P.* <sup>[47]</sup>, Oguntade, J.C.A (as he then was) observed that:

*The simple and ordinary meaning of section 308(1) of the Constitution, 1999 is that the person to which that provision applies could not be made to face civil or criminal proceedings in court* <sup>[48]</sup>.

The court has held that public officials can be investigated while in office, for the purpose of filing a criminal charge against them after leaving office <sup>[49]</sup>. It is doubtful whether such investigation can be thorough because the President, Vice-president, Governors and their deputies cannot be arrested for the purpose of taking their statements <sup>[50]</sup>. Some of the prosecution witnesses may not be readily available after the

completion of their tenure. Former Governor Dariye of Plateau State relied on the provision of section 308 of the Constitution to frustrate his prosecution while in office <sup>[51]</sup>.

#### Cases Prosecuted by the EFCC

The EFCC has arraigned some nationally prominent public office holders on corruption charges. Many of these corruption cases have made little progress in courts and those convicted have faced relatively little or no prison term. Other public office holders who have been widely implicated of corruption have not been prosecuted <sup>[52]</sup>. Some of the nationally prominent public office holders prosecuted by EFCC are hereunder discussed:

##### (a) EFCC and Bode George

Bode George was arraigned with Aminu Dabo, Captain Abidoeye and Zama Maidaribe for allegedly awarding contracts valued N100 billion without due process during his tenure as the Chairman of the Nigerian Ports Authority <sup>[53]</sup>. George was convicted on October 26, 2009 <sup>[54]</sup>. The conviction of Bode George was, however, set aside by the Supreme Court for failure to prove the charge against him <sup>[55]</sup>. The effect of this acquittal is that Bode George has no criminal record <sup>[56]</sup>. The case also revealed the slow pace of our criminal justice system. George was sentenced to two and a half years imprisonment in 2009 and he had completed the term before the case was finally put to rest in 2013. Unfortunately, he cannot sue for compensation or damages in the absence of malice on the part of the prosecution <sup>[57]</sup>.

##### (b) EFCC and Lucky Igbinedion

Lucky Igbinedion was arraigned at the High Court of Enugu for money laundering funds totaling N4 billion when he was Governor of Edo State <sup>[58]</sup>. The 147-Count charge preferred against him included fraudulent embezzlement, stealing and use of several corporate companies as conduit pipes to siphon several billions of Naira from the state. He pleaded guilty to all the counts in the charge sheet. He was subsequently convicted and fined N3.5 million following his plea of guilty, which came as a result of plea bargain between him and the EFCC.

##### (c) EFCC and Diepreye Alamiyeigha

Alamiyeigha was Governor of Bayelsa State between 1999 and 2005. In September 2005, he was arrested by British Authorities in London. The London Metropolitan Police found about £1 million in cash at his home and charged him with money laundering. After being admitted to bail, he managed to flee the United Kingdom. The EFCC said he disguised as a woman and re-appeared in Bayelsa State, claiming he had been transported there by God. As a sitting Governor, he enjoyed immunity from prosecution in Nigeria, but four months later, he was impeached by the State Legislature and the EFCC charged him with embezzling about \$55 million <sup>[59]</sup>.

In July, 2007, he pleaded guilty to failing to declare his assets, his front companies were convicted of money laundering and the court ordered his assets seized. He was sentenced to two years imprisonment and released, for time served, the day after his sentencing <sup>[60]</sup>.

##### (d) EFCC and Tafa Balogun

Tafa Balogun was the first nationally prominent public office holder in Nigeria to be convicted by the EFCC. He was

arraigned for failing to declare his assets and his companies were convicted of eight count charge of money laundering. He was sentenced to six months imprisonment and the court ordered the seizure of his assets reportedly worth in excess of \$150 million <sup>[61]</sup>.

#### (e) EFCC and Cecilia Ibru

Ibru was arraigned on a 25-count charge of corrupt practices in office <sup>[62]</sup>. The EFCC accused her of granting a credit facility in the sum of 20 million US Dollars to Waves Project Limited which was actually above her credit approval limit. She was equally accused of approving the granting of a credit facility in the sum of N2 billion to Petosan Farm Limited without adequate security as laid down by the regulation of Oceanic Bank <sup>[63]</sup>. Ibru was convicted on the 8<sup>th</sup> of October, 2010 and sentenced to six months imprisonment <sup>[64]</sup>. She also forfeited properties and assets valued N191 billion <sup>[65]</sup>.

#### (f) EFCC and Others

In *FRN v Amadi* <sup>[66]</sup>, the accused was involved in the offence of attempt to obtain money by false pretences <sup>[67]</sup>, forgery and uttering <sup>[68]</sup>. He was convicted and sentenced to imprisonment without an option of fine. In the *Federal Republic of Nigeria v Nwakagbu and Others* <sup>[69]</sup>, the accused persons were tried on a two-count charge of conspiracy to vandalise Nigerian Petroleum Corporation Pipeline <sup>[70]</sup>. They were convicted and sentenced to life imprisonment.

Most of the judgments delivered in respect of cases involving public office holders were through plea bargain. It has been argued that the procedure has made nonsense of our criminal justice system <sup>[71]</sup>. It was argued that Plea bargaining does not necessarily mean remorsefulness on the part of the accused person compared to pleading guilty under the Criminal Procedure Act. It simply encourages an accused to plead guilty and thereby enjoy some benefits from his outlawed behaviour <sup>[72]</sup>.

In all the cases mentioned above, sentences imposed by courts were just too light compared with the gravity of the offence committed. For instance, Tafa Balogun who embezzled public funds of about N10 billion got just six months imprisonment. Alameiseigha was sentenced to two years imprisonment and released for time served, the day after his sentencing, Cecilia Ibru who stole about N191 billion was sentenced to six months imprisonment <sup>[73]</sup>.

#### Prevention and Control of Financial Crimes by EFCC

There are so many provisions of the EFCC Act and other laws that empower the Commission to investigate and prosecute offences committed by any person, corporate bodies under the EFCC Act or any other law relating to financial crimes <sup>[74]</sup>. To ensure adequate prevention and control of financial crimes, the EFCC Act empowers the Commission to be the coordinating agency for the enforcement of the provisions of the Money Laundering Act, Failed Banks (Recovery of Debts) and Financial Malpractices Act, Banks and Other Financial Institution Act, Miscellaneous Offences Act, Provisions of Criminal Code and Penal Code and any other law or regulation relating to economic and financial crimes <sup>[75]</sup>.

For the purpose of enabling the Commission to discharge its duty of preventing financial crimes and coordinating the enforcement of the laws relating to financial crimes, the various heads of regulatory bodies in the financial industry are

automatic members of the Commission. The bodies are Nigerian Deposit Insurance Corporation, Security and Exchange Commission and Central Bank of Nigeria. The Commission can easily and adequately get information concerning any deposit or transfer and suspicious transaction from these financial institutions <sup>[76]</sup>.

As a result of flow of information, the EFCC was able to prosecute about 239 money laundering cases, resulting in 12 convictions in 2005 <sup>[77]</sup>. In 2006, the EFCC investigated about 950 suspicious transaction cases involving about N450 billion from local banks <sup>[78]</sup>. *Zero Tolerance* published that an estimate of \$500 billion is laundered annually worldwide and out of this figure, an estimated ten percent is traceable to Nigeria <sup>[79]</sup>.

The activities of the EFCC also extend to Advance Fee Fraud <sup>[80]</sup>. The Commission mounts surveillance on the activities of fraudsters as a result of the influence of Information and Communication Technology (ICT) <sup>[81]</sup>. According to Ribadu, the internet enables the criminals to reach a greater number of potential victims more quickly and sometimes without being traced <sup>[82]</sup>. At the International level, the Commission maintains a working relationship with the International Police (INTERPOL), the Financial Action Task Force (FATF) of the G8 <sup>[83]</sup>, the UK Metropolitan Police, Federal Bureau of Investigation (FBI), Canadian Police and the Scorpion of South Africa.

#### EFCC and International Community

The EFCC was established in 2002 due to International pressure to address pervasive economic and financial crimes in Nigeria. Countries like the United States, United Kingdom and the European Union provided substantial assistance in technical support and capacity building to the Commission. Between 2006 and 2010, the European Union, being the largest donor to the Commission provided US \$235 million of assistance to the Commission <sup>[84]</sup>. Foreign law enforcement agencies such as the US Federal Bureau of Investigation and London Metropolitan Police assisted in training key EFCC investigators <sup>[85]</sup>.

The United Kingdom prosecuted some Nigerian officials for money laundering. The Metropolitan Police service brought money laundering charges against former Governors Dariye, Alameiseigha and Ibori. One of the associates of Dariye was sentenced to three years imprisonment for laundering more than €1.4 million of public funds stolen by Dariye by an English Court <sup>[86]</sup>. In 2007, a court in the United Kingdom froze Ibori's assets worth \$35 million. In May 2011, Ibori was extradited from Dubai to London over allegations of stealing \$292 million in the State Funds <sup>[87]</sup>. In 2011, the US Department of Justice sought a court order to seize \$1 million US property of former Bayelsa Governor, Alameiseigha <sup>[88]</sup>.

#### Achievements of EFCC

The EFCC has recorded success in the areas of investigation, arrest and prosecution of prominent Nigerians. The EFCC successfully investigated and prosecuted Lucky Igbinedion <sup>[89]</sup>, Diepreye Alameiseigha <sup>[90]</sup>, Cecilia Ibru <sup>[91]</sup>, Joshua Dariye <sup>[92]</sup>, Jolly Nyame <sup>[93]</sup> and other prominent political public office holders were also charged.

The EFCC did well in recovering various huge sums of money looted by corrupt public Nigerians. According to Oguche <sup>[94]</sup>, the EFCC recovered money and assets derived from crime worth over \$700 million, £3 million pounds from British

Government between 2003 and 2004. EFCC also refunded the sum of \$4.48 million to an 86 year old Hong Kong woman, Julianah Ching being money recovered from advance fee fraud investigation. The Commission recovered N100 billion assets from Ex-Governors <sup>[95]</sup> and N55 million bribes in 2005 from Committee Members of the National Assembly given as bribe to lobby for increase in education budget <sup>[96]</sup>. The Commission secured the return of about N50 million from the British Metropolitan Police as proceeds of corruption recovered from Dariye's girlfriend <sup>[97]</sup>.

The EFCC also enjoys cooperation and collaboration with Federal Bureau of Investigation, the UK's Office of Fair Trading (OFT) and Metropolitan Police. The Commission has recorded success in changing the negative image of Nigeria in the international sphere. As a result of this, Nigeria was made a member of Egmont Group of Financial Intelligence Units in 2007 <sup>[98]</sup>.

Another notable achievement of the EFCC is the establishment of its Training Institute in Abuja and Zonal Offices in strategic cities around the country <sup>[99]</sup>.

### Conclusion

When you fight corruption, it fights back <sup>[100]</sup>, the meaning of this is that war against corruption in Nigeria is a difficult task. The EFCC has not successfully attacked corruption because of lack of political will to fight corruption on the part of the Government. The EFCC is not free from the whims and caprices of the President and they are not properly funded. The institutions that are expected to assist the EFCC in fighting Corruption are themselves corrupt. The Police, the Judiciary, the Legislature and the EFCC are corrupt. There is nothing wrong with the EFCC Act. It is conceded that it is not possible to have a perfect law or institution <sup>[101]</sup>. The problem is enforcement.

### Recommendations

In view of the conclusion reached above, the following recommendations are offered in order to strengthen the EFCC in combatting corruption in Nigeria.

It is urgently necessary to improve the legislative framework for combatting corruption in Nigeria. We must make necessary amendment to all laws designed to combat corruption, particularly the EFCC Act in order to make their enforcement more efficient and effective. The EFCC Act should be amended to create the offence of living above one's income. The Act should also be amended so as to make the Commission independent both politically and financially with the assurance of security of tenure of office for official of the Commission.

The EFCC Act should be amended by allowing the Chief Justice of Nigeria, the President of the Senate, the Speaker of the House of Representatives, the President of the Nigerian Bar Association, President of the Nigerian Labour Congress and Representatives of two non-government organisations to jointly appoint the Chairman of the EFCC. They should also be responsible for the removal if there is any reason warranting the removal of the Chairman before the expiration of his tenure. The Commission must also receive its fund from the Federation Account directly and not from the Presidency.

The idea that the EFCC chairman should be a law enforcement or security agency official should be discarded. The EFCC Act requires that the Commission's Chairman should be a serving

or retired member of any government security or law enforcement agency not below the rank of assistant Commissioner of Police or equivalent <sup>[102]</sup>. The requirement should be removed and replaced with criteria focused solely on integrity, experience and ability. Ordinarily, it is good to appoint a career law enforcement official as EFCC chairman but corruption has tarnished the image of the police and it is very difficult to identify senior officers who are untainted by any such allegations <sup>[103]</sup>. The Government should as a matter of paramount importance, appoint qualified people of integrity to the position of EFCC Chairman whether they have a law enforcement background or not.

It is equally necessary to put in place the necessary machinery that will remove or reduce all the hindrances facing the EFCC. For instance, corruption and financial crimes are very complex to detect. Therefore, investigators must be trained in order to be effective <sup>[104]</sup>. EFCC must also engage the services of competent counsel to handle their cases. Those who are involved in corrupt practices are ready to secure the services of the best lawyer available in order to escape conviction. Ricky Tarfa said that a defence counsel has to take advantage of anything that might benefit his clients <sup>[105]</sup>.

The EFCC must be well funded. Investigation and prosecution of corruption cases require enough money. Training and re-training of investigators require money, the Commission needs money to engage the services of competent prosecuting counsel. The former Chairman of the EFCC, Larmode lamented that lack of fund was hindering the work of the Commission <sup>[106]</sup>.

It will be difficult for the EFCC to fight corruption if the Commission itself is corrupt. The Commission must set an example of institutional transparency by requiring all their officials to publicly declare the total value of their assets. Clarion calls are being made by well-meaning Nigerians that the EFCC Boss and the Director of State Security Service should be relieved of their positions because of corruption allegations leveled against them. If the assertion is correct, it will be honourable for the leadership of the institutions to throw in the towel and resign to pave way for a non-corrupt official.

It is also necessary to reform the plea bargaining process in Nigeria. From the Tafa Balogun, Igbinedion and the Yusuf's cases the pattern of granting ridiculously lenient sentence had been entrenched. A legal framework to regulate the role of the prosecuting counsel, defence counsel and the judges involved must be put in place. Where a person found guilty of an offence is sentenced to pay a fine, the amount of the fine should not be less than the amount involved in the case <sup>[107]</sup>.

The executive must stop the idea of interfering in the work of the EFCC. The power of the Attorney General of the Federation as a member of Government to interfere in anti-corruption cases must be reduced by amending section 174 of the Constitution which gives the Attorney-General power to take over any criminal prosecution.

The Constitution should be amended by making the exercise of the power of the Attorney-General to enter a *nolle prosequi* a subject of judicial review.

The court should be allowed to determine whether or not the exercise of the power is corruptly done. Therefore, section 174 of the Constitution that gives Attorney-General the power to take over or discontinue a criminal matter should be amended to include a subsection (4) to wit:

*The power of the Attorney-General to discontinue a criminal matter pursuant to section 174(1) (c) shall be a subject of judicial review.*

Unfortunately, the Supreme Court decided otherwise in *State v Ilori* <sup>[108]</sup>. The Supreme Court has now ruled that it can overrule its own previous decisions <sup>[109]</sup>. In view of the abuse of the exercise of power of *nolle prosequi* by the Attorney-General, both at the Federal and State levels, the Supreme Court should overrule itself in *State v Ilori* and adopt the decisions of the Court of Appeal where the Court held that the Attorney-General's power to enter a *nolle prosequi* could be questioned in a court of law <sup>[110]</sup>.

The role of the EFCC in stamping out corruption will be meaningless if the immunity clause contained in section 308 of the Constitution of Nigeria, 1999 is not removed. If this immunity clause is completely removed or removed in corruption cases, the public office holders concerned will no longer have legal backing for looting Government treasuries <sup>[111]</sup>. Prominent Nigerians like Late Yar'Adua <sup>[112]</sup>, David Mark <sup>[113]</sup> and former Chief Justice of Nigeria, Alfa Belgore supported the removal of the immunity clause <sup>[114]</sup>.

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- The authentication was done in accordance with the provision of section 2(1) of the Authentication Act, Cap. 4, LFN, 1990
- Section 1 (6) and (9) of the Act. See also, *Salomon v Salomon (1897) A.C.*, p.22
- By the provision of section 2 (a-b) of the Act, Economic and financial Crimes Laws include the provisions of the Criminal Code, Penal Code, Banks and Other Financial Institutions Act, 1996, Miscellaneous Offences Act, The Failed Bank (Recovery of Debts) and Financial Malpractices Act, Advance Fee Fraud and Other Related Offences Act and Money Laundering (Prohibition) Repeal and Re-enactment Act.
- For a detailed discussion, see Oguche S. An Appraisal of the Roles of the EFCC and ICPC in Combating Corruption and Financial Crimes in Nigeria, University of Jos Law Journal. 2010; 9(2):74.
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- Alli Y, Ogunmola O. Drama in Bank as EFCC Freezes Fayose's Account" *The Nation*, 2016; 21:1.
- Idugboe JE, Nwano TC. A Critical Analysis of the Practice, Procedure and Mechanisms of the Economic and Financial Crimes Commission (EFCC) in Abdulqadir, I.A. *et.al* (eds.) *Corruption and National Development: Proceedings of the 46<sup>th</sup> Annual Conference of the Nigerian Association of Law Teachers*, 2013, p.108
- Ikhilae E. EFCC, Dasuki, Obanikoro, Fayose Removed ₦4.6 billion from ONSA Account. *The Nation*, 2016, p.8
- Alli Y. I Shared Diezani's 23 billion Poll Cash Among North-East States. *The Nation*, 2016, p.1.
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- Ikhilae E. How Metu's Firm, 77 Others paid ₦1.4 b for Fictitious Contracts, *The Nation*, 2016, p.6
- Ikhilae E. Ex-Air Chief Umar Arraigned for ₦7.382b Fraud". *The Nation*, 2016, p.7.
- Ikhilae E. Badeh Bought Abuja Houses for Sons at ₦970m. *The Nation*, 2016, p.8.
- All Y. 2.5b Bazaar: EFCC QUIZZES Fani-Kayode Over ₦840m Share, *The Nation*, 2016, p.10
- Alabelewe A. \$2.1b Armagate: EFCC Seizes Dasuki's General Houses. *The Nation*, 2016, p.1
- Adesomoju A. CCT Trial: FG Lines Up Eight Witnesses Against Saraki, *The Punch*, Saturday, 6<sup>th</sup> February, p.3. See also, Ajani, J. (2016) CCB/CCT/EFCC v Saraki: "A Case of Many Parties" *Sunday Vanguard*, April 10, pp.21-22, Adesomoju, A. (2016) "Saraki Moves to Stop Trial Again" *The Punch*, Thursday, April 21, p.2 and Adebayo, M. (2016) "Saraki Pleads Not Guilty to 16 Fresh Charges" *Daily Sun*, 2016, p.6.

27. Section 7 (1) (a) and (b) of the Act
28. Kupolati T. Crisis of Constitutional Impeachment of Governor Fayose as a Case Study, in Olatunbosun, I.A (ed.) *Legal Issues For Contemplating Justice in Nigeria. Essays in Honour of Hon. M.O. Onalaja. Ile-Ife, Department of Jurisprudence and Private Law, Faculty of Law, O.A.U., 2004, P.69*
29. The Peoples' Democratic Party (PDP) has accused President Buhari of pursuing a selective anti-corruption agenda, with its chieftains as targets. Mordi, R. (2016) "Is Buhari's Anti-Corruption War Selective?" *The Nation*, p.33.
30. Ferguson G, Roberts D. Plea Bargaining: Directions for Canadian Reforms, *52 Canadian Bar Review*, P.497 at 501. The EFCC was the first prosecuting body to introduce plea bargaining with the aim of achieving asset recovery. This was noticed in some high profile prosecutions where the accused persons were allowed to enter the plea of guilty, forfeit part of the asset and sentenced to light imprisonment. For detailed study, see Akande I.F. *et.al* (2013) "The Fight Against Corruption in Nigeria: The Imperative of Criminal Justice System Reforms". In Abdulqadir, I.A. *et.al.*( eds.) *Corruption and National Development: Proceedings of the 46<sup>th</sup> Annual Conference of the Association of Law Teachers*, p.3` at 48; Alubo, A.O. *et.al* (2013) Plea-Bargain Mechanism in the Judicial Determination of Corruption Cases: A Critical Inter-Jurisdictional Assessment" in Abdulqadir, I.A *et.al* (eds.) *Corruption and National Development: Proceedings of the 46<sup>th</sup> Annual Conference of the Nigerian Association of Law Teachers*, 1974; p.235.
31. Adesomoju A. CJN Condemns Plea-Bargain, *The Punch*, 16<sup>th</sup> November, p.1. Plea bargaining was first observed in Nigeria in 2000 when the then Speaker of the House of Representatives, Salisu Buhari Pleaded guilty to the offence of perjury and forgery and was sentenced to N2,000.00 fine- *C.O.P v Salisu Buhari (2000)* FWLR (pt 1) P.164. See also, Odedube, N. and Makinde, F. (2007) "Plea Bargain is Corruption- Bola Ajibola" *The Punch*, 5<sup>th</sup> August, p.2; Kalu, A.U. (2012) "The Role of Plea Bargaining in Modern Criminal Law." Ani, C.C (2012) "Plea Bargaining: Immunity From Punishment". A paper presented at a Roundtable on Plea Bargaining organized by NIALS at the Supreme Court Complex, Abuja, 2011.
32. Bulus J. Police Pension Fraud: A Chronology of Plea Bargaining Compromises, 2013. Available online at <http://vanguardngr.com> accessed on 27<sup>th</sup> of March, 2013. The cases of Tafa Balogun, Cecilia Ibru and Igbinedion were concluded through the use of plea bargaining with light sentences.
33. The standard of proof required in criminal trial is "proof beyond reasonable doubt". See section 135(1) of the Evidence Act, Cap. E14, LFN, 2011. See also, the cases of *Ijeoma v. State* (1990) 6 NWLR (pt. 158) P.567 and *Aruna v State* (1990) 6 NWLR (pt. 155) P.125.
34. Soniyi Tobi, Salami, Katsina-Alu Face-Off Deepens. *This Day*, P.2.
35. Ekeinde A. Ex-governor of Nigerian Oil State Escapes Arrest *Reuters*, March 5, P.1.
36. In 2011, the EFCC filed new charges against Igbinedion. But on the 15<sup>th</sup> of May, 2011, the Federal High Court dismissed the case, ruling that the new charges would amount top double jeopardy. See Okala, Z. (2011) "Federal High Court Discharges Lucky Igbinedion of Corruption Charges" *The Nation*, 16<sup>th</sup> May, P.1. See also, section 36 (9) of the 1999 Constitution. In Ibori's case, the Federal High Court dismissed all the counts against him without allowing the prosecution to present any of its evidence at trial. See *FRN v Ibori* Charge No. PHC/ASB/IC/09
37. Section 19 (2) (b) and (c) of the Act.
38. Section (3) (2) of the EFCC provides that a member of the Commission may be removed at anytime if the President is satisfied that it is not in the interest of the Commission that such a member should remain in office.
39. Chibueze J. Editorial Opinion, *The Nation*, Friday, March 16, 2007 under the title "Election or Selection", 2007.
40. Michael Aondoakaa was Attorney-General and Minister for Justice in Yar'Adua administration from July, 2007 to February, 2010.
41. Ribadu made the statement in United Kingdom when he was testifying against former Governor of Delta State, James Ibori in a money laundering case on the 25<sup>th</sup> of August, 2009. See *Human Rights Watch* of August, 2011 at P.29
42. Estelle Shirbon. Britain Freezes Assets of Nigerian Ex-Governor, *Reuters*, 2011, P.2,
43. Emman Anya, Misikilu Mojeed. Attorney-General's Letter sets Ibori Free. *The Punch*, 4<sup>th</sup> of October, at P.3. For a detailed discussion on the Albatross of Ibori, see Babatunde I.O (2010) "Extradition in International Law; The Ibori's Conundrum" *University of Ado-Ekiti Law Journal*. 2011; 4:266.
44. Omotoso F. EFCC still a Sleeping Giant, available online at <http://www.nigerianewsworld.com/content/efcc-still-a-sleeping-giant>. Accessed on Thursday 15<sup>th</sup> of May, 2013.
45. Fadimu S. Commission Arrests Own Operative for Collecting N45 million Bribe from Military Officers Under Probe. *The Nation* Saturday, 2016, P.4
46. Adesomoju A. FG Raises Panel to Probe EFCC, ICPC, *The Punch*, 2001, P.2
47. (2000) FWLR (pt. 12) P.2015
48. See also, *Tinubu v I.M.B Securities (2001)* FWLR (pt.77) P.1003, Daud, K.A. (2010) "To retain or to Remove? The Jurisprudence of the Immunity Clause in the 1999 Constitution of the Federal Republic of Nigeria" *EBSU Journal of International Law and Juridical Review*, P.380 at 389.
49. *Fawehinmi v IGP, Ibid.*
50. Daud, K.A *Ibid.*
51. *EFCC v Dariye (2005) NSCC, P.4. See also, AGF v Atiku(2007) 8 NWLR (pt. 1035) P.117. See further, Ikpeze N (2013) "Fusion of Anti-Corruption Agencies in Nigeria: A critical Appraisal" NALT 46<sup>th</sup> Annual Conference Proceedings Unilorin 2013 at p.17*
52. Adeniran, D. (2010) "CACOL Demands Quick Dispensation of Justice in the Following cases".*The Nation*, March 28, pages 64-65
53. Ketefe, K. "Alleged N100bn Fraud: EFCC Lists 13 Witnesses Against Bode George" available online at <http://www.nairaland.com/nigeria/topic/59547.0.html>. Visited on 25/9/2010.
54. Temple, C.V "The Conviction of Chief Bode George Might as well Be Only Symbolic (Pictorial)" available at



- <http://www.pointblanknews.com/artopn1920.html>. Accessed on 25/9/2010
55. *George v FRN* (2013) LPELR, P.21895
  56. The doctrine of *autrofois acquit* is in his favour. Under this doctrine, a previous acquittal is a bar to a subsequent trial for the same offence
  57. If a person can prove malicious prosecution successfully, he will be entitled to damages. See Kodilinye, G. (1982) *The Nigerian Law of Torts*, Ibadan: Spectrum Books Limited, P.26
  58. *FRN v Igbinedion*. Unreported Suit No. FHC/EN/CR/10/2008
  59. BBC News online (2005) "Nigerian Governor to be Impeached" November, 25
  60. Dulue, M (2007) "Former Nigerian State Governor Freed a Day After Corruption Conviction" *Association Press*, July 28, P.2. See also, Alubo A.O. *et al* (2013) *op.cit* pp.259-260
  61. Suit No FHC/ABJ/CR/14/2005: *FRN v Balogun*. Judgment delivered on the 22<sup>nd</sup> of November, 2005
  62. Charge No. FHC/L/297c/2009
  63. Failure to secure adequate security is an offence punishable under section 15 of the Failed Bank and Financial Malpractice in Bank Act, 2004.
  64. Akkem, N and Tunde, O. (2010) "Cecilia Ibru Jailed. To lose N191 bn". *The Tribune* Saturday, 9<sup>th</sup> October, P.1
  65. *Ibid*. Assets forfeited included 94 properties which comprised of about 22 in Lagos, 2 in Asaba, 2 in Abuja, 1 in Rivers State, 65 in Dubai, 2 in Maryland, USA and 191 different types of shares in unlisted companies in different banks. See also, Oguche, S. (2010) "An Appraisal of the Roles of the EFCC and ICPC in Combatting Corruption and Financial Crimes in Nigeria". *University of Jos Law Journal*, Vol. 9, No.2, P.74.
  66. (2006) E.F.C.L.R, P.4
  67. Contrary to sections 5(1), 8(b) and 1(3) of the Advance Fee Fraud, Cap. A6, LFN, 2004
  68. Contrary to sections 467(2) and 468 of the Criminal Code, Cap. 77, LFN, 1990
  69. (2006) 2 E.F.C.L.R p.80
  70. Contrary to sections 10(6) and 3(19) of the Miscellaneous Offences Act, 2004. See also, *FRN v Inyang* (2006) 2 EFCLR, P.164, *FRN v Iwveze and Anor*. (2006) 1 EFCLR, P.197, *FRN v Ikpe and Anor*(2006) 2 EFCLR. P.1
  71. Olatunbosun, I.A and Alayinde, Z.O (2010) "Plea Bargaining: A Mockery of Nigerian Criminal Justice System" in Ajetombi, D (ed.) *Law, Politics and Development: The Challenges of an Emerging Mega-City. Ikeja Nigerian Bar Association, P.109, particularly at P.117*.
  72. *Ibid*
  73. Ani, C.C (2012) "Plea Bargaining: Immunity From Punishment" Paper presented at a Roundtable on Plea Bargaining organised by Nigerian Institute of Advanced Legal Studies on the 19<sup>th</sup> of April.
  74. Sections 7 (1) and 13 (12) of the EFCC Act
  75. Section 2 (1) (b), (c) (ii), (f), (g) and (j) of the Act
  76. See section 25 of the Money Laundering (Prohibition) Act, 2011
  77. SEC Annual Report and Accounts, 2005.
  78. *Zero Tolerance* (2007) EFCC News Magazine, April Edition, Vol 1, No.4, P.22
  79. *Zero Tolerance* (2007) EFCC News Nigeria, October Edition, Vol. 2, No.1, P.36
  80. Pauline, C.R (2004) "Advance Fee Scam in Country and Access Borders". International Conference paper on Cyber Crime presented at Australian Institute of Criminology, Melbourne.
  81. *Ibid*.
  82. Ribadu, N (2006) "Nigeria's Struggle with Corruption". Presentation made to the US Congregation House Committee on International Development, Washington DC.
  83. The Financial Action Task Force on Money Laundering was set up in Paris in 1989 in response to the mounting international pressure against money laundering. The body came up with 40 recommendations. Nigeria was given up till December, 2002 to comply with the recommendations or face sanctions. In compliance, Nigeria enacted the Economic and Financial Crimes Commission Act of 2002
  84. *Human Rights Watch* (2011) "Corruption on Trial? The Record of Nigeria's Economic and Financial Crimes Commission" August edition, P.2.
  85. EU's assistance was part of the \$32.2 million project that was implemented by the United Nations Office on Drugs and Crime (UNODC)
  86. Estelle Shirbon (2007) "Court Convicts Nigerian Over Stolen Public Funds" *Reuters*, April 5, P.2
  87. Ibukun, Y (2011) "Nigerian Ex-Governor Extradited to UK Over Allegations of stealing \$292 million in State Funds" *Associated Press*, April 15, P.15. See generally, Babatunde, I.O (2010) "Extradition in International Law: The Ibori Conundrum" *UNAD Law Journal*, Vol. 4, PP. 266-285 particularly PP.271-273
  88. US Department of Justice: Assistant Attorney-General Lanny Bruer of the Criminal Division spoke at Franz Hermann Memorial Lecture at the World Bank on the 25<sup>th</sup> of May, 2011
  89. *Ibid*.
  90. *ibid*.
  91. *Ibid*.
  92. *Ibid*.
  93. *Nyame v FRN* (2003) FWLR (pt. 156 P.721
  94. *Ibid*.
  95. Obuah, E (2010) "Combating Corruption in a Failed State: The Nigerian Economic and Financial Crimes Commission (EFCC)" *Journal of Sustainable Development in Africa, Vol 12, No. 1 at p.45*
  96. Akije, C. (2005) "Wabara, Osuji and Others Arraigned in Court" *This Day*, April 3<sup>rd</sup>, P.1
  97. Obuah, E. *Op.Cit* at P.45
  98. The Egmont Group, with headquarters in Toronto, Canada has over 106 members. It is an international network of FIUS that was formed in 1995 to promote the exchange of intelligence and enhance global co-operation in the fight against money laundering and terrorist financing.
  99. Udombana, N.J (2007) "The Economic and Financial Crimes Commission Act 2004: Equipping the EFCC for a More Effective Role in Justice Administration". In Yusuf, F.A.O (ed.) *Issues in Justice Administration in Nigeria*. Essays in Honour of Honourable Justice S.M.A Belgore. Lagos; VDG International Limited, P.372
  100. Ribadu, N (2007) "Fighting Corruption in Nigeria". *National Public*, Radio Morning Edition, April 4. Shortly



- after the arrest of James Ibori, Ribadu was abruptly removed from office as EFCC Chairman in January, 2008, and consequently, the Police Affairs Commission demoted him by two ranks and the State Security forcibly removed him from the graduation ceremony at NIPSS, Kuru. See also, Eboh, C. (2008) "Nigerian Police Demote Former Anti-Graft Head" *Reuters*, August 6, P.1, Obateru, T "Drama at NIPSS – Ribadu Denied Graduation, Arrested" *Vanguard*, November 24 at P.1
101. Agbede, I.O (2003) " Political Corruption: The Limit of Law" In Ibidapo-Obe, A. *et. Al* (eds.) *Law, Justice and Good Governance. Faculty of Law, UNAD, P.233*
102. Section 2(a) (ii) of the EFCC Act.
103. Tafa Balogun, former Inspector General of Police was sentenced to six months imprisonment under Ribadu for financial crimes allegedly committed at a time when he was serving as Nigeria's Chief Law Enforcement Officer. Also, another former Inspector-General of Police, Mr. Rufus Ehindero is under investigation by the EFCC for mismanaging the Police fund at a time he was serving as Nigeria's Chief Law Enforcement Officer. Another former Inspector General of Police Muhammed Abubakar said that "Nigerian Public has lost even the slightest confidence in the ability of the Police to do anything good". See Scott Bidauff (2012) "Nigeria New Police Chief Vows to Crack Down on Corruption" *Christian Science Monitor*, February, 14, P.1
104. Holt, T. and Graves, D. (2007) " A Qualitative Analysis of Advance Fee Fraud Email Schemes" *International Journal of Cyber Crime and Criminology*, P.137. See also, Oriola, T. (2005) "Advance Fee Fraud on the Internet: Nigeria's Regulatory Response". *Computer, Law and Security Review*, P.26
105. *Human Right Watch* interview with Ricky Tarfa in Lagos on the 22<sup>nd</sup> of February, 2011.
106. Channels Television News of 15<sup>th</sup> November, 2013 at 8 P.M
107. Shittu, W. (2012) "Comparative Analysis of the Jurisprudence of Plea Bargain" available online at <http://www.punchnig.com> accessed on 16/8/ 2013
108. (1983) 1SCNLR, P.94
109. *Odi v Osafile* (1985) 1NWLR (pt1), P.17
110. The Court of Appeal in *Ilori v the State* declared that the power of the Attorney –General to enter a nolle prosqui is subject to section 191(3) of the 1979 Constitution requiring him to act in the public interest and in the interest of justice. But the Supreme Court disagreed. See generally, Sagay, I.E. (1988) *Legacy for Posterity: The Work of the Supreme Court (1980-1988)* Lagos: Nigerian Law Publication Limited, P.44
111. Ijalaye, D.A (2007) "Sovereign Immunity in International Law: D.S.P Alamiyeseigha Saga" *Ikeja Bar Review*, vol.1, P.6. To add salt into an injury, the Nigerian Upper Legislative Chambers are proposing a bill to further clothe the legislators with immunity thereby stretching the ambit of section 308 of the 1999 Constitution beyond the earlier immunity provided for the President, Vice-Presidents, Governors and their Deputies in Nigeria. If this is achieved, the catalytic effect is better imagined than experienced.
112. Adeniyi, S. (2008) "Yar'Adua backs Immunity Clause Removal" *The Punch*, Friday, January 25 at page 7.
113. David Mark "Immunity Clause Must Go" *The Punch*, Wednesday, January 30, 2007, P.7
114. Belgore S.M.A (2008) "Rule of Law and Democratic Governance in Nigeria: Challenges and Prospects" being a paper delivered at the Pre-Convocation Lecture at the University of Abuja reported by *The Nation* of Sunday, February 10 at P.8.