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The EFCC and ICPC in Nigeria: overlapping mandates and duplication of effort in the fight against corruption

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1. Introduction

Corruption remains a major hindrance to Nigeria's development, despite efforts made by successive regimes to combat it. In the absence of institutionalised anti-corruption agencies (ACAs) during military rule, military decrees were used in the fight against corruption. The return to civil rule in Nigeria in 1999 represented a new chapter, with Acts passed via the National Assembly to establish ACAs as part of a broader international development agenda. The global campaign against corruption gave further impetus to the institutionalisation of ACAs in Nigeria, through anti-corruption conventions and protocols such as the United Nations Convention Against Corruption (UNCAC) in 2005 (UN, 2005), and the African Union Convention on Preventing and Combating Corruption (AUCPCC) in 2006 (AU, 2006).

Upon assumption of office in 1999, President Olusegun Obasanjo committed to combat corruption in line with international standards. His administration established the Independent Corrupt Practices and Other Related Offences Commission (ICPC) in 2000 and subsequently the Economic and Financial Crimes Commission (EFCC) in 2004. The latter has recorded some progress – for example, between 2003 and 2007, the EFCC secured 270 convictions including the successful prosecution and conviction of a former governor in Nigeria. Financial assets were also recovered, including around 207 trillion Nigerian Naira (NGN) (US$505 million) looted by General Sani Abacha (Okonjo-Iweala, 2012).

Despite pockets of progress, however, the anti-corruption crusade in Nigeria is beset with various obstacles – not least structural challenges that stem from the overlapping functions of various ACAs, which undermines their effectiveness and efficacy. Against this backdrop, this paper examines the overlap between the ICPC and the EFCC in particular.

In order to address the issue properly, the paper briefly summarises the history of ACAs in Nigeria in section 2 before exploring the wider anti-corruption landscape in the country in section 3. Section 4 analyses the overlap in the constitutional and general functions of the ICPC and EFCC and provides a comparative analysis of their respective activities. Sections 5 and 6 consider the challenges that the ICPC and EFCC face, including the withdrawal by the Federal Government of the Commissions' responsibilities to handle high-profile corruption cases. Section 7 concludes by briefly considering relevant policy implications.

2. History of anti-corruption agencies in Nigeria

The World Bank describes an ACA as a body that reviews and verifies official asset declaration; carries out investigations of possible corruption; and pursues civil, administrative, and criminal sanctions in the appropriate forums (World Bank, cited in Iwuamadi, 2016: 154). Further, the UNCAC states that an ACA should have the 'necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence' (UN, 2005: Article 6 (2)).

ACAs are nascent in Nigeria and have proliferated in the 20 years since the return to civil rule in 1999. Today, there are at least 24 agencies with anti-corruption functions. However, most of these exist only in name, and without any visible record of achievement. The ICPC and the EFCC appear to be the most pronounced – perhaps because of the scope of their assigned functions and powers.

2.1. The Independent Corrupt Practices and Other Related Offences Commission (ICPC)

The history of the ICPC can be traced to efforts by President Olusegun Obasanjo who, on assuming office in 1999, initiated the passage of the Corrupt Practices and other Related Offences (CPRO) Act, which was passed by the National Assembly and signed into law in June 2000 (Federal Republic of Nigeria, 2000). The enactment of the CPRO Act established the ICPC as the apex body responsible for fighting corruption and other related offences in Nigeria, providing for the composition, powers and functions of the Commission in Section 3 and Section 6 of the Act, respectively. Specifically, the Act stipulates that the ICPC shall consist of a Chairman and 12 other members, two of whom must be selected from each of the six geo-political zones of Nigeria and shall be persons of proven integrity appointed by the President upon confirmation by the Senate. ICPC Members shall also not begin to discharge their duties until they have declared their assets and liabilities as prescribed in the Nigerian Constitution.

The independence of the ICPC is guaranteed by Subsection 3(14) of the CPRO Act, which states that 'the Commission shall, in [the] discharge of its functions under [the CPRO] Act, not be subjected to the direction or control of any other person or authority'. While the independence of the Commission may appear to conflict with the broad powers of the President (under Section 5 of the Constitution 1999 as amended), this is not a conflict because all executive powers are vested in the President at the Federal Level under Nigeria's presidential system. Indeed, it is characteristic of this system of government. Instead, the independence envisaged under S3 (14) of the CPRO Act allows operational independence in running the affairs of the Commission. Ultimately, the ICPC Chairman will report the

activities of the Commission to the President, but this does not mean the President has oversight for specific operational matters day to day.

The CPRO Act further defines corruption, prescribes the punishment for corruption-related offences and sets out the mandate and function of the ICPC. Generally speaking, the tasks of the ICPC can be categorised as prevention, enforcement and awareness-raising on corruption in the country, as specified in Section 6 (a–f) of the CPRO Act (UNDP, 2005; Badet et al., 2016).

In addition, the ICPC has adopted an approach that involves the inclusion of citizens to further tackle corruption. More specifically, this means the employment of civil servants in its anti-corruption campaign through Anti-Corruption and Transparency Units (ACTU). ACTU were established to serve as an extension of the ICPC and to complement and strengthen its efforts in the areas of monitoring and reporting. ACTU operate within Ministries, Department and Agencies (MDAs), with the idea being that the directors of the MDAs have a better understanding of their organisations and are able to identify causes, trends and patterns of corruption. There are 427 MDAs currently in operation that have made remarkable progress in supporting the mandate of the ICPC (ICPC, 2018), with the efforts of some ACTU leading to the identification of corruption cases. For example, a review by the ACTU of the Ministry of Niger Delta Affairs led to the recovery of NGN 209 billion that had been misappropriated. Some ACTUs have also been instrumental in undertaking preliminary investigation of petitions written by the staff of their organisations or transferred to them by the ICPC.

Despite the efforts made by the ICPC to curb corruption and promote the engagement of civil society, however, corruption has persisted in Nigeria. The need to establish another agency became inevitable – the ICPC was no longer permitted to investigate high-profile corrupt individuals, and by 2003 Nigeria was listed by the Financial Action Task Force (FATF) on Money Laundering as one of 23 non-cooperative countries and territories (NCCTS) due to a weak anti-money laundering framework and laws. Furthermore, the country lacked an independent Financial Intelligence Unit (FIU) in line with the FATF guidelines. It was under these circumstances that the EFCC was established in 2003 with a robust mandate to address economic and financial crimes, including corruption and money laundering.

2.2. The Economic and Financial Crimes Commission (EFCC)

The EFCC was established in 2003, and has been mandated to prevent, investigate and prosecute economic and financial crimes since the enactment of the Economic and Financial Crimes Commission (Establishment) Act in 2004 (Federal Republic of Nigeria, 2004). Until 2018 when the Nigerian Financial Intelligence Unit (NFIU) was established, the EFCC was the FIU and focal point for implementation of the 40+9 FATF recommendations in Nigeria with responsibility for preventing, investigating and prosecuting economic and financial offences in the country (Jensen and Png, 2011).

The EFCC was set up as an inter-agency Commission with a board comprising 22 members drawn from all of Nigeria's Law Enforcement Agencies (LEAs) and regulators. The

Commission is empowered to investigate, prevent and prosecute offenders who engage in money laundering, embezzlement, bribery, looting and any form of corrupt practices including illegal arms deals, smuggling, human trafficking, and child labour, etc. The EFCC is also responsible for identifying, tracing, freezing, confiscating or seizing proceeds derived from terrorist activities.

The creation of the NFIU in 2018 as a separate agency from the EFCC was to comply with international standards of combating money laundering, suspicious financial transactions and terrorism financing. Consequently, the NFIU – which is a member of the Egmont Group of global FIUs[1] – is vested with the responsibility of collecting suspicious transactions reports (STRs) from financial and designated non-financial institutions, and analysing and disseminating them to all relevant government agencies and other FIUs all over the world.

Table 1 summarises the core facets of both the ICPC and the EFCC.

Table 1: Core facets of the ICPC and the EFCC

	The Independent Corrupt Practices and Other Related Offences Commission (ICPC)	**The Economic and Financial Crimes Commission (EFCC)**
Established by	Corrupt Practices and Other Related Offences (CPRO) Act, 2000 (Federal Republic of Nigeria, 2000)	Economic and Financial Crimes and Commission Establishment Act, 2003 and amended 2004 (Federal Republic of Nigeria, 2004)
Date of commencement	1 June 2000	23 March 2004
Jurisdiction	The Chief Judge of a State or the Federal Capital Territory, Abuja	The Federal High Court or High Court of a State or Federal Capital Territory
Appointment	The Chairman and members of the Commission shall be appointed by the President, upon confirmation by the Senate	The Chairman and members of the Committee other than ex-officio members shall be appointed by the President, upon confirmation by the Senate
Reason for establishment	To receive and investigate any report and in appropriate cases to prosecute cases of fraud or corruption	To investigate all financial crimes including advance fee fraud, illegal charge transfer, money laundering, counterfeiting, credit card fraud, contract frauds, etc.
Act is applicable to	Individuals, public bodies, parastatals	Individuals, corporate bodies, organisations

Source: The author.

[1] See https://egmontgroup.org/

3. Overview of Nigeria's anti-corruption landscape

Corruption remains a major impediment to progress in Nigeria. Although attempts have been made to combat corruption using different anti-corruption strategies, the fight against graft is yet to achieve the desired short- and long-term results. For instance, Nigeria has consistently scored very low on the fight against corruption, as ranked on the Transparency International (TI) Corruption Perception Index (CPI).[2] Over an eight-year period (2013–2020), Nigeria has remained among the worst performers globally, having scored below 30 on a scale of 100 (see Figure 1). Similarly, the country has ranked among the topmost corrupt countries within the same eight-year period (see Figure 2).

Figure 1: Nigeria: TI CPI score, 2013–2020

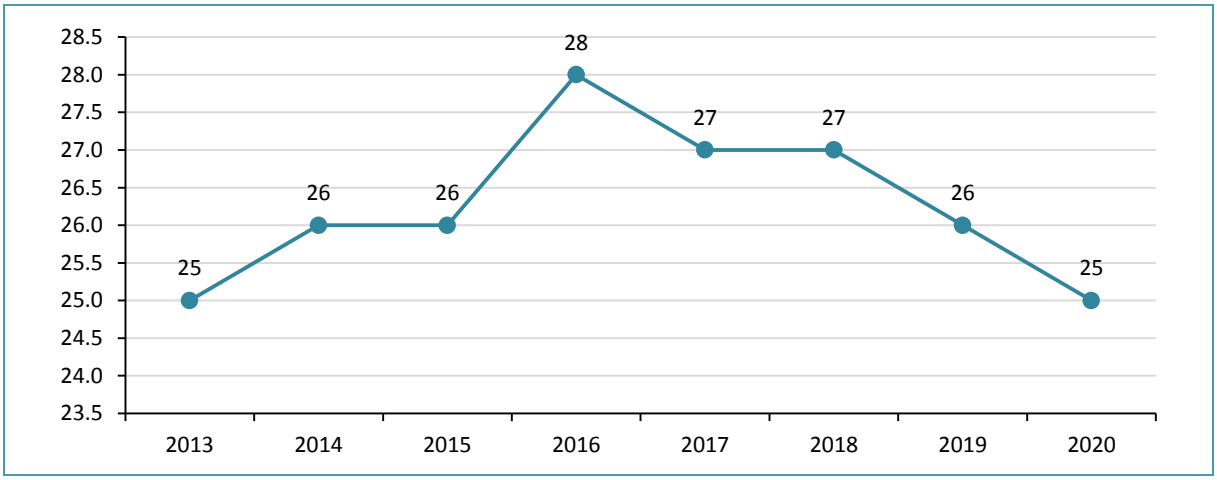
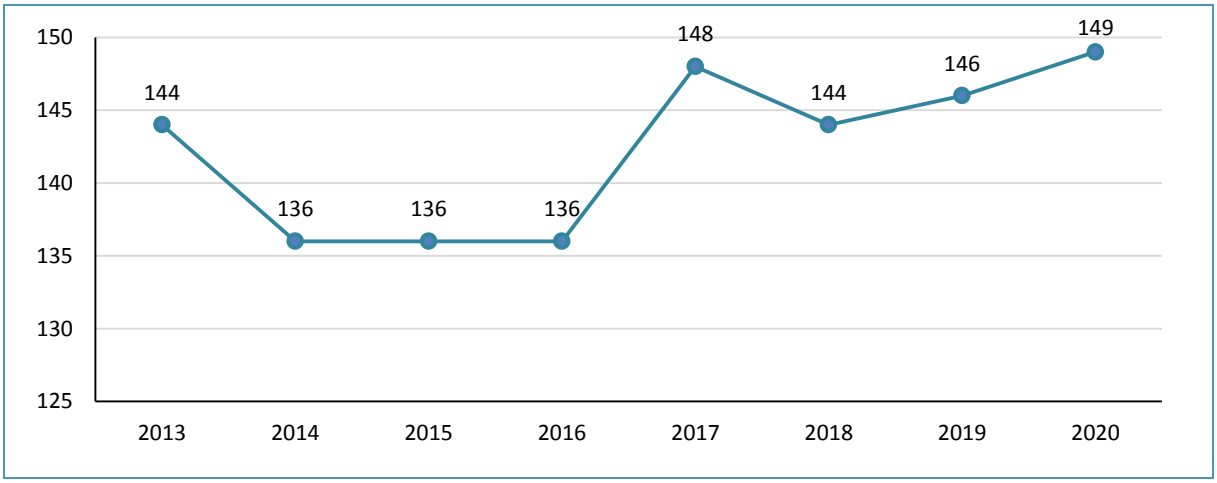


Figure 2: Nigeria: TI CPI ranking, 2013–2020



Source: Compiled by author, drawing on https://www.transparency.org/en/cpi

[2] See https://www.transparency.org/en/cpi/2020/index/

Corruption takes various forms in Nigeria, with political corruption being the most prevalent and having negative implications for the country's development (Ibeanu and Egwu, 2007). As noted by Okonjo-Iweala (2012: 82–92), corruption is said to take four major dimensions in Nigeria:

1 The first is 'corruption on a grand scale', which involves theft of public assets by high public officials. This relates to cases such as the theft of public assets by former military dictators like General Sani Abacha, who plundered an estimated US$5 billion from Nigeria's commonwealth between 1993 and 1998. In this category, multinational corporations are very much complicit as purveyors and facilitators.

2 The second dimension is 'petty corruption', which is pervasive among middle- and low-level public officials and indeed the private sector. Petty bribery and extortion are commonplace in this category.

3 The third dimension pertains to 'corruption from within'. This is typified by corrupt Nigerian institutions and companies facilitating corrupt practices with foreign companies. For example, Siemens admitted to paying 10 million euros to Nigerian government officials between 2001 and 2004 to facilitate contract awards.

4 The fourth relates to 'top-down corruption'. This form of corruption is particularly noticeable in Nigeria's public services and bureaucratic system. Corruption in this form is carried out by the political elite in the country and has a trickle-down effect on Nigeria's civil services and public services such as healthcare and education.

The listing of some Nigerians in the so-called 'Panama papers'– leaked documents that detail activities of the offshore financial industry – points to the scale of corruption in the country; while the comments from a former UK Prime Minister who referred to Nigeria as 'fantastically corrupt' indicate the country's reputation globally (BBC, 2016).

However, just as the incidence of corruption has a long history in Nigeria, the fight against corruption has a long – albeit episodic – history too. In simplistic terms the anti-corruption plight can be divided into two periods:

- The first concerted efforts can be characterised by the attempts of various military junta to fight corruption using military decrees in the absence of institutionalised agencies. This saw the implementation of anti-corruption crusades like 'Operation Purge the Nation' by General Murtala Mohammad and the 'War Against Indiscipline and Corruption' (WAI&C) in 1983 by the Buhari/Idiagbon regime. Such crusades were implemented haphazardly, however, and could not be sustained in order to realise concrete results (Ethelbert, 2016).
- The second round of anti-corruption efforts relied – and continue to rely – on established ACAs operating within legislation enacted by the National Assembly. This second period dates from the return to civil rule in 1999, which saw the ratification and domestication of various international anti-corruption protocols such as the UNCAC (UN, 2005), the AUCPCC (AU, 2006) and the Economic Community of West African States (ECOWAS) Protocol against Corruption (ECOWAS, 2001). The ratification of these instruments also gave impetus to efforts aimed at strengthening existing ACAs and establishing new ones. Thus, the second period is characterised by the institutionalisation of anti-corruption

using ACAs like the Code of Conduct Bureau and Tribunal, the ICPC, EFCC and NFIU, to mention a few, with increased support garnered from international development partners and civil society organisations (CSOs) too.

Based on prosecutions and recovered assets, the post-1999 anti-corruption agenda has been more successful than that of pre-1999 military regimes. For instance, although the ICPC could not secure a single conviction within the first three years of its establishment, the EFCC was able to obtain 270 convictions and recovered billions of Naira between 2003 and 2007 (Okonjo-Iweala, 2012). This signalled a turning point in the fight against graft – while most of these convictions related to advance fee fraud, the conviction of top Politically Exposed Persons (PEPs) like the former Inspector General of Police Tafa Balogun and former Governor of Bayelsa state DSP Alamieyeseigha for graft and money laundering sent a strong message that such figures would henceforth face justice.

At a general level, the anti-corruption landscape in Nigeria over the years has been characterised by poor funding and weak capacity of ACAs, alongside political interference. Delving deeper, the reason for the ICPC's poor performance early on is connected to attempts by some top politicians to thwart anti-corruption efforts. Indeed, during the first two years of its establishment, the constitutionality of the ICPC was challenged in court and the Commission could not conduct any meaningful business. There were also attempts from some quarters within the Senate to water down the powers of the Commission (UNDP, 2005). Consequently, the rate of prosecutions of corrupt public officers drastically reduced between 2007 and May 2015 compared to that recorded between 2003 and 2007, and serious concerns were raised about the government's failure to prosecute and convict offenders (Iwuamadi, 2016).

One of the greatest obstacles to the activities of the ICPC and the EFCC in eradicating corruption in recent times may be the utilisation of 'nolle prosecui', which has led to the persistent withdrawal of case files relating to criminal charges against very privileged persons. Within eight months of his tenure, the Attorney General and Justice Minister (2010–2015) Mr Mohammed Bello Adoke was reported to have withdrawn about 25 high-profile cases (Nurudeen, 2017). Similarly, the EFCC was in charge of prosecuting Senator Danjuma Goje over the alleged misappropriation of NGN 5 billion while in office as the Governor of Gombe State. The case was ongoing for eight years before it was withdrawn using the power of nolle prosequi by the Attorney General of the Federation, Abubakar Malami. The deal was allegedly brokered to persuade Danjuma to step down from his race for Senate President (The Cable, 2020).

4. Overlap in the constitutional functions and objectives of the EFCC and ICPC

There is ongoing debate on the recognisable overlap in the operations of anti-corruption institutions in Nigeria. Further, this overlap has become an increasing concern as the fight against corruption appears to be largely ineffective despite the existence of several anti-corruption agencies and initiatives in the country.

For the most part, anti-corruption agencies operate in isolation whereby they do not share information and consequently remain unproductive. Raimi et al. (2013) contend that the ICPC and EFCC were both established by the government to create a culture of accountability, corporate governance, financial management and ethical standards, and thus have a shared agenda. However, Iwuamadi (2016) describes how anti-corruption agencies in Nigeria are usually seen to be either in checkmate or conflict.

Largely, the ICPC was established with a mandate to investigate and prosecute persons suspected to have committed an offence under the Corrupt Practices and Other Related Offences Act of 2000 (CPRO Act) or any other law prohibiting corruption; to examine the practices, systems and procedures of public bodies where they aid or facilitate corruption; and to educate the public and enlist their support in combating corruption (ICPC, 2012). The EFCC, in turn, was established by law to intervene in the investigation and prosecution of economic and financial crimes including corrupt offences.

As a result of the perceived overlap in mandates, there have been calls across various quarters for the two agencies to merge in order to establish a coherent anti-corruption agency. Indeed, this was a major recommendation of the Oronsaye Committee for the review of government agencies and departments; however, the recommendation was rejected by the Federal Government in its white paper in 2014 (The Citizen, 2014). The Oronsaye Committee's recommendations essentially set out a course towards the reduction in the cost of governance, elimination of duplicate functions in government departments and agencies, and the devolution of governmental powers. The government's rejection of its recommendations in 2014 is indicative of its commitment to maintaining the status quo. Furthermore, it points to the superficial nature of Goodluck Jonathan's commitment to fighting corruption, as Jonathan set up the committee but refused to implement any of its recommendations.

In the remainder of this section we examine the overlapping functions of the ICPC and EFCC across five key areas:

1 Investigation of financial crimes/corruption

2 Prosecution of financial crimes

3 Identification, seizure, freezing and confiscation of the proceeds of corruption and economic and financial crimes

4 Advisory powers

5 Prevention of corruption.

4.1. Investigation of financial crimes/corruption

Both the ICPC and the EFCC are vested with special powers to *investigate* whether any person, corporate body or organisation has committed an offence under the relevant Acts or other laws relating to economic and financial crimes. They are also empowered to investigate a person's assets if it appears that their lifestyle and extent of assets are not justified by their income source. Generally, both the ICPC and EFCC can investigate any person on issues related to corruption (Akpoghome and Nwano, 2017).

Specifically, the power of the ICPC to investigate corruption and other related offences is set out under section 6(a) of the CPRO Act, which provides that:

> *Where reasonable grounds exist for suspecting that any person has conspired to commit or has attempted to commit or has committed an offense under this act or any other law prohibiting corruption, to receive and to investigate any report of the conspiracy to commit, attempt to commit or the commission of such offense and, in appropriate cases, to prosecute the offenders*
>
> (Federal Republic of Nigeria, 2000: section 6(a)).

Similarly, Section 6(b) of the EFCC Act stipulates that the functions of the Commission include:

> *…the investigation of all financial crimes including advance fee fraud, money laundering, counterfeiting, illegal charge transfers, futures market fraud, fraudulent encashment of negotiable instruments, computer credit card fraud, contract scam, etc.*
>
> (Federal Republic of Nigeria, 2004).

This implies that since both the EFCC and ICPC have powers to investigate corruption and economic/financial crimes, there is bound to be an overlap in the interests and execution of the two agencies' duties.

4.2. Prosecution of financial crimes

Both the EFCC and the ICPC are also empowered to *prosecute* persons suspected to have been involved in corruption or to have committed economic and financial crimes, and thus have an overlapping mandate in this regard too. As mentioned above, section 6(a) of the CPRO Act vests the ICPC with the power to investigate and prosecute corruption cases. Similarly, section 6(m) of the EFCC Act provides the Commission with the following responsibilities: 'taking charge of, supervising, controlling, coordinating all the responsibilities, functions and activities relating to the current investigation and prosecution of all offences connected with or relating to economic and financial crimes'.

The fact that the EFCC is charged with *coordinating all* investigations and prosecution of economic crimes including corruption naturally suggests that this covers cases investigated by the ICPC. However, the ICPC is independent and not subject to any person or authority in the exercise of its duties, and consequently its work cannot be coordinated by the EFCC.

This overlap – and contradiction – has led to a situation where the two bodies sometimes investigate the same case(s) simultaneously. Furthermore, situations have also arisen where some cases are investigated by the ICPC, EFCC, the Police and the Department of State Services (DSS), with all of them asserting their right to investigate corruption cases. This has also encouraged the public to file multiple petitions to different agencies, and has created occasional avoidable conflicts and a waste of scarce resources.

While conflicts are inevitable under the current system, one area in which the agencies have tried to work in harmony is in the charging of defendants or in instituting actions under provisions of the law of the other agency. For example, the ICPC has effectively utilised section 17 of the Advance Fee Fraud Act (Federal Republic of Nigeria, 2006) to recover assets under the 'Non-Conviction' process, a law that is enforced by the EFCC. Equally, the EFCC has charged defendants under the CPRO Act (Federal Republic of Nigeria, 2000).

4.3. Identification, seizure, freezing and confiscation of the proceeds of corruption, and economic and financial crimes

The ICPC and EFCC have both been empowered to identify, seize and freeze assets acquired through corrupt means or through the commission of economic and financial crimes. The EFCC Act, section 6(d), specifies that the Commission has the powers to adopt 'measures to identify, trace, freeze, confiscate or seize proceeds derived from terrorist activities, economic and financial crime related offences or the properties the value of which corresponds to such proceeds' (Federal Republic of Nigeria, 2004: section 6(d)). Similarly, section 37(1) of the CPRO Act states that: 'If in the course of an investigation into an offence under this Act any officers of the Commission has reasonable grounds to suspect that any movable or immovable property is the subject matter of an offence of evidence relating to the offence he shall seize such property' (Federal Republic of Nigeria, 2000: section 37(1).

Nigerian law backs the confiscation of assets that represent the proceeds and instrumentalities of illegal and criminal acts within the country and even those assets held in foreign countries. The provisions relating to the identification, tracing, freezing and seizure of criminal proceeds and instrumentalities are contained in sections 36–41, 44, 46 and 49–50 of the CPRO Act (Federal Republic of Nigeria, 2000) and sections 6(d), 26 and 34 of the EFCC Act (Federal Republic of Nigeria, 2004). However, a conviction is not required under the CPRO Act by virtue of sections 47 and 48 and section 17 of the Advance Fee Fraud Act (Federal Republic of Nigeria, 2006). Instrumentalities intended for use in offences are covered under section 25 of the EFCC Act, but they are not covered in the CPRO Act. Recently, the country has emphasised provisions relating to the lawful origin and acquisition of alleged proceeds, as provided by section 7(b) of the EFCC Act and section 44(2) of the CPRO Act.

4.4. Advisory powers

The EFCC and the ICPC also perform advisory roles and are expected to advise the government or any of its agencies on measures to be taken to combat corruption. In line with this, the EFCC Act specifies that the powers of the EFCC include: 'undertaking research and similar works with a view to determining the manifestation, extent, magnitude and effects of economic and financial crimes and advising government on appropriate intervention measures for combating same' (Federal Republic of Nigeria, 2004: section 6(vi)). In a similar manner, section 6(c–d) of the CPRO Act (Federal Republic of Nigeria, 2000) outlines the function of the ICPC to include:

> *(c) to instruct, advise and assist any officer, agency or parastatals on ways by which fraud or corruption may be eliminated or minimized by such officer, agency or parastatal;*
>
> *(d) to advise heads of public bodies of any changes in practices, systems or procedures compatible with the effective discharge of the duties of the public bodies as the Commission thinks fit to reduce the likelihood or incidence of bribery, corruption, and related offences;*

4.5. Prevention of corruption

Both the EFCC and the ICPC are tasked with adopting necessary measures aimed at preventing corruption in the country (Federal Republic of Nigeria, 2000: section 6(f); 2004: 6(e)). Section 6(f) of the CPRO Act further empowers the ICPC to adopt measures that include coordinated preventive and regulatory actions, and the introduction and maintenance of investigative and control techniques on the prevention of economic- and financial-related crimes. In furtherance of these functions, both agencies established training institutions – the Anti-Corruption Academy of Nigeria for the ICPC and the EFCC Academy for the EFCC. These two institutions deliver education and trainings around law enforcement and anti-corruption for professionals and administrators in the public and private sectors, as

well as provide a platform for dialogue, networking, cooperation and collaboration in crimes management and control.

4.6. Additional powers

The above subsections demonstrate a clear overlap in the functions of the ICPC and EFCC, as set out in their respective establishment Acts. This institutional framework creates a very real risk of duplication of efforts in the absence of any coordinated cooperation mechanisms. However, it is important to note that the EFCC has the powers and functions not just over corrupt practices, but importantly over financial crimes too. This broader mandate includes advance fee fraud, terrorism and all forms of criminal offences emanating from financial transactions and terrorism including the prosecution, identification, confiscation and seizure of all proceeds of terrorism-related activities. Additionally, section 7(2) of the EFCC Act empowers the Commission to serve as the coordinating agency for the enforcement of the provisions of:

a the Money Laundering Act, 2004; 2003, No.7; 1995, No. 13

b the Advance Fee Fraud and Other Related Offences Act, 1995

c the Failed Banks (Recovery of Debt and Financial Malpractices in Banks) Act

d the Banks and Other Financial Institutions Act, 1991, as amended

e the Miscellaneous Offences Act

f any other law or regulation relating to economic and financial crimes, including the Criminal Code and Penal Code.

The definition of 'Public officers' under the CPRO Act is expansive and provides the ICPC with the power to prosecute public officers. Under the Act, a public officer is defined as including persons employed or engaged in any capacity in the public service of the Federation, State or Local Government, public corporations, private companies floated by any government or agency, as well as judicial officers, appointed or elected officials and members of parliament (ICPC, 2012). It is also important to note that the CPRO Act applies outside as well as within Nigeria in relation to offences committed by citizens and permanent residents of Nigeria (Federal Republic of Nigeria, 2000: section 66(1)).

5. Understanding the challenges of the EFCC and ICPC

Undeniably, Nigeria's war against corrupt practices has been hindered by a number of factors.

Certain factors can be linked to the Nigerian political system, which is rooted in a rentier arrangement where the political class derive rents from virtually all economic projects. Under such an environment, interference with the work of the ACAs is common and inevitable. Nigeria also suffers from a 'collective-action' problem, whereby a large segment of the population rationalises and normalises corruption based on the perception of others. The judicial system is still largely weak, which is compounded by the unprofessional and fraudulent practices of some defence attorneys, while a dearth of manpower within certain sectors of the economy coupled with inadequate financial resources mean that critical infrastructure is absent. The lack of synergy and cooperation amongst the ACAs has also been very unhelpful.

Such challenges can be categorised as external and internal factors, which together undermine the work of the EFCC and ICPC.

5.1. External and environmental factors

The environment in which the ICPC and EFCC operate makes it difficult for the two agencies to achieve their mandates. Some of the factors that hinder operations are beyond the control of the EFCC and ICPC. This includes Nigeria's outdated legal system and limitations pertaining to the legal workforce (Sowunmi et al., 2010; Human Rights Watch, 2011; Umoh and Ubom, 2012). While the Evidence Act was amended in 2011 to allow the admissibility of electronically generated evidence and the Administration Criminal Justice Act made provisions to fast-track criminal trials and prevent delays by defence counsel, any improvements brought about by these laws have not been realised in practice. Corruption trials are still suffering inordinate adjournments and the defence counsel often finds a way to delay and draw out corruption trials.

There are no special courts for the trial of cases relating to corruption and financial graft. Instead, the ACAs still depend on regular courts, which are burdened with heavy case lists and scarce time. The duration of the judicial process is still overwhelmingly slow too: the average time taken for a criminal trial to proceed to court is four to six years and sometimes longer. Also, delays of trials depend on the calibre of lawyers on the case, the status of the accused and the type of offence (Aileru, 2016).

For example, in 2007, the EFCC charged Mr Joshua Dariye in court over the embezzlement of NGN 1.162 billion from the Plateau State's Ecological Fund[3] during his time as Governor. The trial was stalled for eight years following his protracted attempt to prevent prosecution, and even within this period he became a serving Senator of the Federal Republic of Nigeria. The Supreme Court ordered that the case should proceed in 2015 and he was finally convicted in 2018 for two categories of offences, namely criminal breach of trust and criminal misappropriation which attracts a penalty of 14 years.

In 2007, the EFCC arrested James Ibori, whose offences included theft of public funds and money laundering. However, in 2009, the Federal High Court discharged and acquitted him of all 170 corruption charges brought against him by the EFCC. The case was reopened again in 2010, with new allegations of embezzling NGN 40 billion. Apparently, Ibori had used the Delta State as collateral for a NGN 40 billion loan when he was Governor of the state. Ibori fled Nigeria that same year to Dubai, which prompted the EFCC to seek help from the International Criminal Police Organization (INTERPOL). The governments of Nigeria and the United Kingdom finally agreed to work together on Ibori's extradition to the UK: it was confirmed that he was awaiting extradition in June that year and in 2012 Ibori was sentenced to 13 years by Southwark Crown Court (UK) for his crimes.

Constant government interference in the judicial process also undermines the effectiveness of ACAs. In particular, the lack of tenure security for the chairpersons of the EFCC is detrimental, with the Federal Government having been accused of removing and replacing the Chair of the EFCC from time to time in order to benefit its agenda. Conversely, the EFCC has also been criticised for discrimination and bias by partnering with the ruling government and only investigating and prosecuting offenders from the opposing government (Ngube and Okoli, 2013). These challenges alter the public perception of the Commission, negatively impacting its worth and legitimacy (Sowunmi et al., 2010). The ICPC, on the other hand, provides security of tenure for its chairperson and members. The Chair is appointed by the President upon confirmation by the Senate, and they can only be removed by the President with the approval of a two-thirds majority of the Senate (Federal Republic of Nigeria, 2000: section 3).

A subtle rivalry between the EFCC and ICPC revolves around a quest for relevancy and leadership in the anti-corruption fight in Nigeria. This has often affected the focus of each Commission in terms of the cases pursued.

[3] An intervention fund provided by the Federal Government of Nigeria to state governments in order to tackle the country's numerous ecological challenges.

5.2. The Constitutional Immunity Clause and 'nolle prosequi'

Section 308 of the 1999 Constitution of Nigeria as amended (Federal Republic of Nigeria, 1999) provides immunity for at least 74 elected public officials – notably the President, Vice President, State Governors and Deputy Governors. This immunity prevents the arrest and prosecution of the sitting governors and their deputies while in office – yet most cases of graft committed in the last 20 years of democracy have been by state governors.

Former EFCC chair Mallam Nuhu Ribadu once claimed to be investigating corruption allegations involving 31 of Nigeria's 36 state governors, with sufficient evidence to prosecute at least 15 of them (VoA, 2009). The Supreme Court in its decision in Gani Fawehinmi vs Inspector General of Police held that public officials covered by immunity can be investigated while in office, and the EFCC and ICPC have since investigated one or two serving governors. The preservation of relevant records has often been challenging, however, because the culprits have tried to destroy documentation, while relevant witnesses may have retired or left the service by the time a particular governor leaves office.

It is also important to point out that while section 52 of the CPRO Act provides for the appointment of an Independent Counsel to conduct investigations of corruption in respect to categories of public officers, this provision has never been utilised since the establishment of the ICPC in 2000.

The constitutional right to enter a 'nolle prosequi' by the Attorney General of the Federation and States has further impeded the work of the ICPC and EFCC at times. Sections 174 and 211 of the Constitution as amended grants an Attorney General the powers to prosecute, take over or discontinue criminal proceedings, and these expansive powers have sometimes been used to interfere unnecessarily in the prosecutorial duties of the ICPC and EFCC. Indeed, several Attorney Generals have taken over prosecution of certain cases from the EFCC and ICPC, and former Attorney General Kaase Aoondakaa – who had previously served as an attorney to one defendant governor prior to his appointment (Ikpeze, 2013) – caused controversy regarding who should prosecute former governors indicted for corruption.

There have also been several directives from Attorney Generals on the powers of the ICPC and EFCC to prosecute cases without reference to the Office of the Attorney General. Some Attorney Generals have halted on-going investigations or have terminated criminal prosecutions. This has led to conflict and in some cases a recommendation from an Attorney General to remove an EFCC Chair from office for refusing to cooperate.

5.3. Internal structural challenges

Both the ICPC and EFCC lack adequate funding and capacity. While donors have assisted from time to time, there are still funding gaps which impact operations and, at times, have meant that the Commissions have been unable to pay staff adequately. Shortfalls in funding can affect virtually every segment of the two Commissions, which has consequences for the

success of investigations. The ICPC and EFCC have been unable to fund high-profile and complex investigations, for example, with insufficient budgets to hire competent lawyers, accountants or other expert investigators to achieve their mandates.

Additionally, fundamental investigative, legal and forensic skills are still largely lacking within both Commissions. The lack of forensic accounting in fraud detection, in particular, has vastly hindered the ICPC's and EFCC's ability to carry out economic and financial crimes investigations effectively (Augustine and Uagbale-Ekatah, 2014). Although, this can also be attributed to lack of funding, Bierstaker et al. (2006) and Muthusamy (2011) have argued that behavioural controls, organisational resources and the perceived cost of fraud can impact the adoption of forensic accounting in fraud detection processes.

6. The withdrawal of corruption cases from the ICPC and EFCC by the Federal Government

In August 2015, the Buhari administration created the Presidential Advisory Committee Against Corruption (PACAC, 2017), which was the first committee set up after Buhari was sworn into office. PACAC's mandate includes the promotion of a reform agenda for the government's anti-corruption effort, to advise on prosecutions against corruption and to implement required reforms in Nigeria's criminal justice system.

Subsequently, the Buhari administration established a Presidential Advisory Committee on Asset Recovery (PCAR), an interagency committee headed by the Vice President, Yemi Osinbajo. The objective of PCAR is to bring together all law enforcement agencies involved in the recovery of assets, as well as to achieve coordination and transparency in the management of recovered funds through the designation of a dedicated Central Bank Account. PCAR coordinates the collation and categorisation of recovered assets, verifying records and the status of physical assets such as buildings recovered under previous administrations. PCAR has also created a framework for the Management of Recovered Stolen Assets to avoid re-looting and mismanagement of assets, as occurred in the past.

In 2016, the Federal Government announced it would start to take over high-profile corruption cases from ACAs. To this end, Attorney General of the Federation (AGF) Abubakar Malami announced that the EFCC, ICPC, the police, the Federal Inland Revenue Service (FIRS) and the DSS should compile and transfer all high-profile cases to the newly established National Prosecution Coordination Committee (NPCC). The NPCC was set up to ensure effective investigation and prosecution of high-profile criminal cases in the country and to ensure that duplication of effort was avoided in favour of collaboration between agencies. The truth, however, was that the AGF had once again initiated and established this structure to have a hold on the ACAs and oversight of their activities despite a public declaration of non-interference.

Example cases transferred to the NPCC include:

- a forgery suit against former Senate President Bukola Saraki, his Deputy Ike Ekweremadu, former clerk of the National Assembly Alhaji Salisu Abubakar Maikasuwa and his Deputy Benedict Efeturi. The four defendants were charged before the Abuja High Court over alleged forgery of the Senate Rules and Procedures 2015 (Ojoye, 2016).
- an investigation of Senators and the House of Representatives over non-executed constituency projects earmarked for them in the 2014 and 2015 budgets. According to the AGF, the sum of constituency projects totalled NGN 200 billion for the two years (Adesomoju, 2016).

Besides the fanfare, however, the 20-person NPCC has very little to show in terms of achievements, in spite of the 80 lawyers it pooled to prosecute high-profile corruption cases in the country. Its objective of 'efficient, effective and result-oriented prosecution of high-profile criminal cases in the country' (Premium Times, 2016) came to naught and the NPCC has since virtually fizzled out.

In May 2018, the Minister of Justice and AGF Abubakar Malami disclosed that PCAR had recovered a total of NGN 769 billion in assets. In addition, PCAR recovered another NGN 13.8 billion from tax evaders in the same month, while NGN 439.2 million was paid to whistleblowers who revealed information on tax evasion. A further NGN 13.6 billion was recovered from public officials (Premium Times, 2017). The exact value of assets recovered under the Buhari administration is still mired in controversy, however, with various figures quoted by different officials at different times. Questions also remain regarding utilisation of the recovered assets.

In yet another effort to disable the powers of the EFCC and ICPC, the AGF in October 2019 passed the Asset Tracing, Recovery and Management Regulations (Federal Republic of Nigeria, 2019). These Regulations gave the AGF the power to investigate and recover assets within and outside Nigeria including their custody, management and disposal. This subsidiary legislation is in direct conflict with the powers already vested in the ICPC and EFCC, therefore as well as trying to manage their own conflicting legislative powers, the two agencies must also contend with the powers of the AGF as well.

7. Policy implications

The implication of the overlapping functions and objectives of the ICPC and EFCC described in this paper is that a national anti-corruption policy and agenda is undermined in Nigeria. As noted by Iwuamadi (2016), until recently Nigeria had no national strategy to combat corruption despite the multiplicity of ACAs in the country. In July 2017, the Federal Executive Council approved the National Anti-Corruption Strategy (NACS) with the main objectives of identifying and closing existing gaps in the anti-corruption space, strengthening the legal and institutional framework designed to prevent and combat corruption, and mainstreaming anti-corruption principles into governance and service delivery at national level (Solomon, 2017). However, the strategy – which has already expired – lacked coherence and failed to secure the necessary collaboration between the ACAs and the implementation Secretariat in the Federal Ministry of Justice/Technical Unit on Governance Anti-Corruption Reforms (TUGAR) in order for the strategy to be effective.

The NACS is yet to directly address the issue of overlap between agencies, even though the strategy was partly designed to do exactly this. Furthermore, it does not address the political interference in the activities of ACAs that, in turn, weakens public trust around the independence and non-partisan position of the two agencies.

As the ICPC and EFCC record, document and report on different performance indicators, it is difficult to obtain any coherent data to measure the country's achievement against a national anti-corruption agenda. Policy interventions are also episodic and haphazard given the adoption of different strategies by the two Commissions.

To this end, it is imperative that the ICPC and EFCC cooperate and that the Federal Government of Nigeria strengthens these institutions through improved funding and support. This will enable optimal performance by both agencies and should work to reduce duplication of effort and to align agendas. While the constitutional role of the AGF in the fight against corruption is key and strategic, the office holders must act strictly in the public interest as opposed to bowing to political pressure. And the Commissions themselves must pursue a better relationship with the AGF: they must realise that the Constitution is supreme and that the powers conferred on the AGF are superior to any other conferred by the National Assembly. It is better to pursue an approach based on engagement and cooperation than legal argument as to which agency should lead the fight against corruption in Nigeria.

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