

Nigeria's Economic and Financial Crimes Commission: necessary reforms for an effective anti-corruption agency

Mitchell Watkins, Pallavi Roy
SOAS University of London, Anti-Corruption Evidence (SOAS-ACE)



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Key messages

- There are concerns that Nigeria's Economic and Financial Crimes Commission (EFCC) – the central anti-corruption agency tasked with investigating and prosecuting economic and financial crimes – serves as a 'debt collection agency' at the disposal of commercial banks, high net-worth individuals and politicians.
- Due to the EFCC's coercive power, private actors are increasingly utilising the Commission for debt recovery instead of relying on the courts. This has a substantial impact on the EFCC's capacity to operate as an effective anti-corruption agency.
- Our research finds that a majority of EFCC debt collection cases are best classified as civil cases that fall outside the Commission's jurisdiction. We conclude that this trend is driven by delays in the judicial system as well as state capture by private actors through informal connections between powerful creditors and the EFCC.
- In the short term, we recommend state-level judicial reforms to help restore public confidence in civil dispute settlement mechanisms, including the expansion of fast-track procedures, small claims courts and pre-action dispute settlement protocols. In the long term, we recommend efforts to increase transparency within the EFCC, including publicising its procedures for investigating and dismissing cases and establishing a triage process to prioritise cases.

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Introduction

The Economic and Financial Crimes Commission (EFCC) was established in 2003 as a central agency to drive Nigeria's anti-corruption activities. Critical for a well-functioning economy, the EFCC has the authority to investigate and prosecute bribery, fraud, tax evasion, money laundering, smuggling, oil bunkering and a host of other financial crimes.

But the EFCC has achieved mixed success. On the one hand, it has been instrumental in prosecuting senior political leaders and businessmen involved in illegal activities, as well as in recovering significant stolen resources that belong to the Nigerian state. On the other hand, the Commission has been subject to frequent political interference and corruption (Onyema et al., 2018). One emerging concern about the EFCC is that it now serves as a 'debt collection agency' at the disposal of commercial banks, high net-worth individuals and politicians.

In Onyema et al. (2019), we provide evidence that private actors are utilising the EFCC for the recovery of contractual debts, instead of relying on the courts and other civil dispute resolution mechanisms. Based on our analysis of EFCC cases, we find that a majority are civil in nature and fall outside the Commission's jurisdiction. Such involvement of the EFCC in civil matters suggests state capture by private actors.

This briefing paper summarises the findings of our research and recommendations to reduce state capture of the EFCC and restore public confidence in civil apparatus.

The EFCC's increasing role as debt collector

The EFCC's initial activities against corruption appeared to be effective. Between 2004 and 2010, it filed criminal charges against several politicians involved in financial crimes, including former governors, ministers and heads of public agencies. Between 2010 and 2015, the EFCC received 36,442 petitions, of which it investigated 15,124, prosecuted 2,460 and secured 568 corruption convictions (Onyema et al., 2018).

However, despite this initial success, there is a widely held perception that the EFCC has been ineffective in successfully and consistently combating corruption in Nigeria. This perception has been linked to several internal and external factors including lack of adequate funding, improper training of personnel, organisational dysfunction, political interference and internal corruption (ibid.). These factors have made the Commission susceptible to capture by both politicians and private actors.

In more recent years the EFCC has increasingly conducted fraud investigations – which are criminal in nature – to settle matters of debt collection relating to the violation of commercial agreements – which are civil in nature. Our key informant interviews indicate that both private businesses and creditors are now turning to the EFCC to recover their debts.

Does the EFCC have the authority to investigate debt default cases?

The EFCC has few legal constraints to investigate and prosecute economic and financial crimes. However, violations of civil contracts fall outside its authority. Therefore, it is important to distinguish an 'economic and financial crime' from a civil debt default case. A civil case involves a dispute between two or more parties on a particular issue. In contrast, a criminal case involves the violation of specific offences defined by statute. Generally, civil cases are brought by private individuals, while criminal cases are brought by the state. The remedies available under civil law are often monetary compensation in the form of damages. Criminal law, on the other hand, focuses on the enforcement of codified criminal statutes, whose infringement is punishable by the state with imprisonment and/or payments of fines.

In Onyema et al. (2019), we present details of three legal cases where the EFCC was involved in civil debt collection activities. Interestingly, we find that not just private players but even government agencies use the EFCC to enforce civil contracts. The cases document the phenomenon where parties involved in a commercial dispute initiate criminal fraud proceedings through the EFCC for civil debt default disputes, and

show that the EFCC has consistently investigated these cases despite reprimands by Nigerian courts. Indeed, the case studies provide several examples where Nigerian courts ruled that the EFCC's investigations into civil contract transactions violated defendants' fundamental human rights to personal liberty as protected in Nigeria's Constitution.

In essence, state agencies are being used for private ends, which raises critical questions about the nature of business-government relationships and its impact on enforcement systems.

Why are private actors turning to the EFCC to collect debts?

A driving factor for the increased involvement of the EFCC in civil debt collection are the procedural delays in Nigeria's civil-legal architecture for debt recovery. These delays and inefficiencies in the settlement of commercial disputes carry heavy cost implications for businesses and creditors, which compel parties to misuse the EFCC to recover debts. Businesses make commercial decisions as to which enforcement mechanism (i.e. the courts or the EFCC) best meets their business objectives in terms of time and returns. Due to the EFCC's coercive powers, businesses consider the Commission to be a more effective route.

Another reason for increased EFCC involvement in debt collection cases is informal connections between the EFCC and private-sector actors, notably powerful banks. Powerful private actors can use these relationships to influence EFCC investigations and achieve a more favourable settlement through a criminal case compared to a civil case.

Recommendations and conclusions

In the short-term, we recommend judicial reforms to help restore public confidence in civil dispute settlement mechanisms including fast-track procedures, expansion of small claims courts, and pre-action dispute settlement protocols in state courts.

One conclusion from our research is that EFCC involvement in debt collection cases is primarily attributable to a lack of trust by litigants in civil dispute resolution mechanisms. Consequently, reforms are required in Nigeria's judicial system to **reduce delays and the cost of civil litigation**. We highlight three major reforms undertaken by the Lagos State High Court in 2019 that address the issue of delays and distortions in civil financial cases, and recommend that these reforms be adopted by the other 35 states of the federation:

1. The 2019 Lagos State High Court Rules introduced a **fast-track procedure** for civil matters where judgments for cases above 100 million Naira are determined within two years (Lagos State Judiciary, 2019).
2. The 2019 Rules also recognise a stricter **pre-action protocol** in which parties must explore dispute settlement options such as negotiation, mediation or arbitration before processes for litigation can be validly filed.
3. Finally, the Lagos State Judiciary introduced a **small claims court** within the Magistrate Court System for disputes under 5 million Naira. The small claims court requires that commercial disputes must be resolved within 60 days from the commencement of the case.

However, we recommend that the **threshold for the small claims court be increased** to 10 million Naira and the **threshold for the fast-track procedure be reduced** to 50 million Naira, both of which will increase the number of civil disputes that fall under these schemes. The increased ability to seek recourse in small claims courts has the potential find support among smaller entrepreneurs and private-sector players who typically do not have the financial and political resources to

engage in lengthy legal disputes and 'build coalitions' to engage in policy change through collective action (Khan et al., 2019).

In the long term, we recommend that the EFCC publicises its procedures for investigating cases and devises a triage process to prioritise petitions.

A push towards **increased transparency** of the EFCC is required, which can be partly achieved if the EFCC were to **publish its rules and procedures** for investigating and also discontinuing cases. Clarification of the 'rules of the game' will force legal professionals to give deeper consideration before submitting petitions to the EFCC over matters that are civil in nature. Additional efforts should also be made by the EFCC to devise and publish a **triage process** – which is overseen by the Attorney General – for how the Commission prioritises cases so that powerful private-sector players are less able to influence proceedings. The publication of such regulatory parameters will guide both the EFCC itself, as well as private actors.

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Anti-Corruption Evidence (ACE) Research Consortium

SOAS, University of London, Thornhaugh Street, Russell Square, London WC1H 0XG

T +44 (0)20 7898 4447 • E ace@soas.ac.uk • W www.ace.soas.ac.uk