

JUDICIAL CORRUPTION AS A CLOG ON ECONOMIC DEVELOPMENT IN NIGERIA

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“It is difficult to overstate the negative impact of a corrupt judiciary:... it diminishes trade, economic growth and human development; and, most importantly, it denies citizens impartial settlement of disputes with neighbours or the authorities...judicial systems debased by bribery undermine confidence in governance by facilitating corruption across all sectors of government, starting at the helm of power. In so doing they send a blunt message to the people: in this country corruption is tolerated.”¹

ABSTRACT

Article 11 of the United Nations Convention Against Corruption (UNCAC)² gives State parties the responsibility of preventing opportunities for corruption among members of the Judiciary, amongst other duties. It is common knowledge that the Judiciary is the last hope of the common man. What then happens when this hope is compromised? Poverty, unemployment, political instability, national insecurity, economic meltdown and less development set in. This paper will describe judicial corruption with life examples with a strong argument that corruption in Nigeria’s Judiciary is a function of the Executive being in charge of appointment of key Judicial officers. It enumerates what Nigeria’s economy suffers as a consequence of Judicial Corruption including loss of financial proceeds of crime that should have been re directed back to the economy for growth and development. It concludes with pungent recommendations on how to curb judicial corruption and make for economic development in Nigeria.

KEYWORDS: *Corruption, Judiciary, Judicial Corruption, Proceeds of crime, Economic development*

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¹Executive summary: key judicial corruption problems Transparency International, Global Corruption Report, 2007, P.xxi, assessed on https://www.transparency.org/whatwedo/publication/global_corruption_report_2007_corruption_and_judicial_sy_stems last checked on 10-7-2017.

² Adopted by the UN General Assembly: 31 October 2003, by resolution 58/4 . It entered into force on 14th December 2005, in accordance with article 68(1) Signatories: 140 Parties: 182 (as of 11 July 2017). Nigeria signed the UNCAC on the 9th of December 2003 and ratified on the 24th of October 2004. Prior to the coming into force of the UNCAC, Nigeria has through both legislative and administrative measures taken steps to implement many of the initiatives contained in the UNCAC and other regional instruments with a view to ensuring transparency and accountability and strengthening the National Integrity System.

1.0 INTRODUCTION

Corruption and Economic development are two parallel lines; they can never meet. To have one existing in any society is to have the other absent. To corrupt means to change the original form of something so that it is damaged or spoiled in some way. Corruption is simply the misuse of public power for private gain. Economic development on the other hand is a process in which a society undergoes positive transformation in various components of its economy in order to achieve improvement in the welfare of its people.³

It is not new that Nigeria is ranked amongst the leading corrupt African Countries. This paper shows that despite moves by the Federal Government to curb corruption, especially through the formation of the Independent Corrupt Practices and other related Offences Commission (ICPC) in the year 2000 and the Economic and Financial Crimes Commission (EFCC) in 2002 as anti-corruption commissions⁴, there continues to be stubborn rise in corruption rate in Nigeria.

The third arm of government, the judiciary, in the opinion of this paper, is one of the many sectors in Nigeria tainted with corrupt practices. It explains with examples the fact that corruption thrives in the Judiciary. This is rooted in the fact that key judicial officers are appointed by the Executive or the government. The ruling party usually lobbies for political allies to be appointed to sensitive judicial positions. This seems like a life line in case such politicians have to face trial for one corruption case or another and explains the near-inability of the Judiciary to enforce the law when faced with cases involving these politicians.

In a country where the Judiciary is weak and cannot fight corruption, economic development is retarded; investors and investment suffer, there is political instability, national insecurity, unemployment, poverty, amongst others.

By way of depicting what the economy of Nigeria would gain if the problem of Judicial corruption is tackled, this paper takes a twist to discuss with data, how proceeds of crime from anti-corruption agencies in Nigeria were plunged back into the economy and this, no doubt added to the coffers of the country.

In Conclusion, the paper makes recommendations which are expected to strengthen the judicial processes, restore investor confidence and make for economic development in Nigeria.

³ E.B. Essien, "Corruption and economic development in Nigeria: A Materialistic Observation", *Journal of Economic and Sustainable Development*, ISSN 2222-1700, Vol 3 No 14, 2012 P.34.

⁴ The Money Laundering Act 1995, 2000, The Independent Corrupt Practices and Other Related Offences Commission (ICPC) 2000, The Economic and Financial Crimes commission Establishment Act (2004), The Money Laundering (Prohibition) Act 2004

1.2 THEMATIC CLARIFICATION OF TERMS

CORRUPTION

Corruption is an insidious plague that has a wide range of corrosive effects on societies.⁵ It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish.⁶

A common belief is that Corruption in the Judicial Process is simply a Judge taking bribes. The above definitions clearly exceed this theory. “Judicial Corruption” or Corruption in the “Judicial Process” in this paper includes corrupt acts by Judges, Prosecutors, Court Officials, Lawyers, as well as Police Officers and other Law Enforcement Agents, who are intimately involved in the operation of the Justice System.⁷ And so, this paper uncovers the corrupt practices of these officers who are entrusted with the criminal administration processes in Nigeria.

ECONOMIC DEVELOPMENT

This paper will adopt the explanation that Economic Development is a process in which a society undergoes a gradual unfolding (positive transformation) in various components of its economy in order to achieve improvements in the welfare of its people.⁸ Instances of the desirable changes are: reduction in the extent of inequality among the citizenry; reduction in the level of absolute poverty; reduction in the level of unemployment; improvements in literacy, housing conditions, health services; e) improvements in the provision of infrastructural facilities; improvements in the level of social and political consciousness of the people; improvements in the level of technology of the people which will practically engender a greater ability to draw on local resources (human and materials) for local needs and for exports.

PROCEEDS OF CRIME

This paper adopts the explanation given by the UNCAC⁹ on the subject matter to wit-in the case of embezzlement of public funds, the confiscated property would be returned to the state requesting it; in the case of proceeds of any other offence covered by the

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⁵ Kofi A. Annan Secretary-General in his Forward to the UNITED NATIONS CONVENTION ON CORRUPTION, 2004, assessed on https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf

⁶ Ibid.

⁷ A.A.I. BANJOKO, CORRUPTION IN THE JUDICIAL PROCESS: MYTH OR REALITY, paper delivered during a National Workshop for Judicial Officers on Judicial Ethics, Anti-Corruption and Performance Evaluation on 25th-26th May, 2015

⁸ E.B. Akpakpan, 2007. “Paradigms of Economic Development”, Unpublished Manuscript, Department of Economics, University of Uyo, Uyo. In E.B. Essien,

⁹ By the office of the United Nations Office on Drug and Crime, <<https://www.unodc.org/unodc/en/treaties/CAC/>> last checked on 18-7-2017.

Convention, the property would be returned providing the proof of ownership or recognition of the damage caused to a requesting state; in all other cases, priority consideration would be given to the return of confiscated property to the requesting state, to the return of such property to the prior legitimate owners or to compensation of the victims.¹⁰

2.0 WHAT IS JUDICIAL CORRUPTION?

According to Transparency International, corruption is ‘the abuse of entrusted power for private gain and Judicial corruption includes any inappropriate influence on the impartiality of the judicial process by any actor within the Court system.¹¹

Thus, while the Judges and Court Staff are directly involved in the adjudication of the law, the Police, Lawyers, Prosecutors and all those involved in cases before they actually get to Courts are equally stakeholders. For example, the Court bailiffs are saddled with the responsibility of enforcing court judgements after a case is closed. And so, at any point corruption takes place along the judicial stream that is, flowing from the Police to the bailiff we refer to it as judicial corruption.

The examples depicted by Transparency International¹² are similar to what we find in Nigeria. Example, a situation where a Judge allows or excludes evidence with the aim of justifying the acquittal of a guilty defendant on a high political or social status is similar to what took place in the famous James Ibori’s case in Nigeria. It is on record that the Federal High Court sitting in Asaba acquitted Ibori of all 170 charges of corruption brought against him. However, upon intense investigation of his case by the Department for International Development (DFID) alongside Nigeria’s anti-corruption unit and the Economic and Financial Crimes Commission (EFCC), the same man pleaded guilty at Southwark Crown Court sitting in London, to 10 counts of money laundering and conspiracy to defraud. One wonders what made the Court discharge Ibori at the High Court when the EFCC at the time, tendered evidence backing up the charges of theft of public funds, abuse of office and money laundering. Your guess is as good as mine. Another instance easily comes to mind. The National Judicial Council late last year had, after its 82nd meeting, recalled six Judges from the Abuja Division of the Federal High Court. Some of the Judges were suspended after a search was carried out at their residences by the State Security Services (SSS) on October 7, 2016. And three of the Judges were arraigned for alleged corruption. Even though these Judges were later recalled, it does not wipe the taint of corruption absolutely.

¹⁰UNODC Convention Highlights: Asset Recovery, assessed on <https://www.unodc.org/unodc/en/corruption/convention-highlights.html> >

¹¹ Defining Judicial Corruption, Executive summary: key judicial corruption problems, Transparency International Global Corruption Report, 2007, n. 1 *ibid*

¹² *ibid*

We also have instances where judges may inaccurately summarise Court proceedings or distort witness testimony before delivering a verdict that has been purchased by one of the parties in the case. There have been cases too where parties preferred the ruling of a particular Court or Judge to that of another.¹³ It is said that one always prefers the one who listens to him.

Cases where junior Court personnel lose files are rampant. Practicing lawyers cannot narrate enough what they go through every day in Courts. One files a document today, the next day, it is not in the record books of the Court and so on and so forth.

Judicial corruption is the Nigeria Police. Police officers may manipulate a case in favour of the highest bidder. This is what Transparency International refers to as a case being corrupted before it gets to Court. The Police can tamper with evidence in support of criminal indictment.

This paper further agrees that the misuse of scarce public funds allocated to the Judicial arm of government is judicial corruption. Cases where Judges bid for contracts like Court building, equipment and even stationery using pseudo names or their relatives is an example of judicial corruption.

Again, TI¹⁴ has documented what it calls the possible determinants of Judicial corruption even though it is limited to just Judges and Court. To the extent that it applies to Nigeria and to Nigerian situation, this paper agrees that-

- i. *The lower the official salary, the higher the likelihood of corrupt behaviour.*
If the official salary of
- ii. *The higher the complexity of the judicial system, the higher the expected level of judicial corruption.*
- iii. *If judicial decisions, as well as the underlying reasoning, need to be published, expected corruption levels are lower.*
- iv. *The slower the judicial system, the higher the likelihood of corruption.* It appears plausible to assume
- v. *The higher the degree of checks and balances, the lower the expected level of judicial corruption.*

¹³ Recently, a Judge of the Federal High Court in Abuja, Justice Babatunde Quadri, dismissed an application by a former Governor of Jigawa State, Sule Lamido, requesting that the trial of his ex-governor be returned to the former trial Judge, Justice Adeniyi Ademola. Governor Lamido's reason was that removing the case from Ademola's Court would mean starting the case afresh. Rejecting Lamido's request in a ruling, Justice Quadri held that it would better serve the interest of justice and public peace not to return the case to Justice Ademola. It will be recalled that Justice Ademola, his wife, Olubowale, and Lamido's lead counsel, Mr. Joe Agi (SAN), were jointly prosecuted before the High Court of the Federal Capital Territory by the Federal Government but were exonerated of all the 18 counts preferred against them on April 5, 2017. See <http://saharareporters.com/2017/07/07/judge-refuses-return-former-governor-lamido%E2%80%99s-trial-justice-ademola> last assessed on 11-7-2017.

¹⁴ Stefan Voigt, "When are judges likely to be corrupt?" in "Global Corruption Report 2007, Corruption in Judicial System", Transparency International, Ibid.

- vi. *If anti-corruption agencies increase the likelihood of corrupt behaviour being sentenced, then such agencies will be correlated with lower degrees of corruption.*
- vii. *Countries in which the prosecution agencies enjoy a monopoly have a higher level of corruption.*¹⁵

Now, by virtue of the Constitution, all judicial officers in Nigeria are public officers for the purpose of the code of conduct.¹⁶ Thus, Judicial officers are bound by the provisions of paragraph 6(1), Part 1 of the fifth schedule not to ask for or accept property or benefits of any kind for himself or any other person in the discharge of his duties. More so, judicial officers swear to an oath not to allow personal interests influence their conduct or official decisions. Judicial officers who breach any of these Constitutional provisions will be liable to punishment for judicial misconduct.¹⁷ Acts of judicial misconduct involve corruption and corrupt practices which in turn challenge the rule of law and the independence of the Judiciary.¹⁸

Internationally, the The United Nations Convention against Corruption (UNCAC) is the only legally binding universal anti-corruption instrument. The Convention covers five main areas including criminalization and law enforcement and asset recovery. The Convention covers many different forms of corruption, such as bribery, trading in influence, abuse of functions, and various acts of corruption in the private sector. A highlight of the Convention is the inclusion of a specific chapter on asset recovery, aimed at returning assets to their rightful owners, including countries from which they had been taken illicitly. The vast majority of United Nations Member States are parties to the Convention.¹⁹

2.1 HOW BAD IS IT?

On 1st July 2010 the National Bureau of Statistics (NBS) presented the newly published "NBS/EFCC Business Crime and Corruption Survey" which was conducted in partnership with the Economic and Financial Crimes Commission (EFCC) and the United Nations Office on Drugs and Crime (UNODC). The survey was carried out in 2007 as part of the project to support the EFCC and the Nigerian Judiciary. This survey was funded by the European Union with 25 million Euro.²⁰ The survey covered over

¹⁵ Ibid.

¹⁶ Paragraph 5, part II of the fifth schedule to the CFRN, 1999 (amended) 2011.

¹⁷ Paragraph 19, Part 1 of the Fifth Schedule of the CFRN, *ibid*.

¹⁸ Suzzie Onyeka Oyakhire, "Judicial Integrity in the Course of Justice Delivery" in "Integrity in the Temple of Justice" E.Azinge (ed) NIALS, 2014, P. 455

¹⁹ See the UNCAC, Article 11, n. 1, *Ibid*.

²⁰ EU, UNODC and EFCC Partner With The National Bureau Of Statistics In The Conduct Of The First Ever Business Crime And Corruption Survey In Nigeria, assessed on <https://www.unodc.org/nigeria/en/press-release_business-crime-and-corruption-survey-in-nigeria.html> last checked on 17-7-2017.

2,200 businesses across all Nigerian States and sectors of the economy and aimed at gathering the perception and experiences of businesses with regard to corruption and crime. The corrupt public institutions were the police and customs, as well as utility companies such as the Power Holding Company of Nigeria (PHCN), in that order of notoriety. Paradoxically, the judiciary represented by the nation's courts were rated by the report to be least corrupt. However, as later found, the survey noted that not many of the business people turned to the justice system to resolve their disputes, only about 20 per cent. The reason is not far-fetched. From the reactions to the survey conducted, not many businessmen and investors have the patience to go through the rigorous court processes and especially when they all perceive that the judiciary is corrupt.

3.0 IMPACT OF JUDICIAL CORRUPTION

3.1 *Poverty:* *There is no gentle way to say it: When kleptocrats loot their nations' treasuries, steal natural resources, and embezzle development aid, they condemn their nations' children to starvation and disease.*²¹ Nigeria has the largest economy on the African continent yet the country harbors some of the poorest people in the world with as many as 69 percent of the population living below the poverty line.²² Judicial corruption in Nigeria is one of the root causes of poverty in the nation. *Corruption is contributing to poverty in Nigeria in two main ways. The first way is by aggravating income inequality; lower income households use a higher proportion of their income for bribes to access basic social services, leaving them with very little disposable funds to spend on essential goods and services. Secondly, corruption erodes the institutional capacity of government to deliver quality public services such as education, health, infrastructure, security, etc. Government officials, through embezzlement of public funds, divert public investment away from major public needs into capital projects that offer huge opportunities for corruption but are of little value to most citizens.*²³ The role of judicial corruption in this instance is to aid these government officials wriggle out of various suits against them in the Court of law, depriving citizens access to justice and better economic life, thereby re-enforcing poverty amongst them.

<<https://efccnigeria.org/efcc/index.php/eu-unodc-project>> last checked on 16-7-2017

²¹ Eric Holder, the United States Attorney General, at the Global Forum IV, in Doha, on November 2009. Assessed on <<https://2009-2017.state.gov/documents/organization/190690.pdf>> last checked on 18-7-2017

²² Action Aid Nigeria, "Poverty and Corruption in Nigeria: A Report" assessed on <<http://www.actionaid.org/nigeria/publications/poverty-and-corruption-nigeria>> Last checked on 18-7-2017

²³ Ibid.

- 3.2 Unemployment:** The economically active population or working age population (persons within ages 15 and 64) increased from 108.03 million to 108.59 million, this represents a 0.5% increase over the previous quarter and a 3.4% increase when compared 2015; In 2016, the labour force population (i.e. those within the working age population willing, able and actively looking for work) increased to 81.15 million from 80.67 million in 2016, representing an increase of 0.6% in the labour force during the quarter.²⁴ This figure, according to this report is as a result of corruption. Again, the judiciary is a contributory factor to this level of unemployment because where there is judicial corruption, businessmen are scared of investments which in turn lead to reduced work force in the country.
- 3.3 Retarded Business:** Judicial corruption has led to lower human capital, higher leakage through money laundering, weak investment, poor fiscal revenue and expenditure and poor institutions.²⁵ Again, this paper point to the recent survey by the National Bureau of Statistics (NBS) on crime and corruption survey in Abuja. The report's statistics deal with impact assessment of corruption on Nigerian businesses based on the experiences of many entrepreneurs. There was a general consensus that corruption impedes businesses. According to the report, 71 per cent of the over 2,200 businesses questioned said corruption was a major obstacle to their operations and about 20 percent tied it to judicial corruption.²⁶
- 3.4 National Insecurity:** When crimes are not convicted as a result of corruption in the judicial system, the economy is affected adversely. The personal interests of those involved in these corrupt practices are made to over-ride those of the public. This undermines the capacity of the government in resource allocation and service delivery.²⁷ This in turn brings frustration and deprivation to the citizens and ultimately leads to all manner of agitations amongst the citizenry. The issue of national security or insecurity goes to the foundation of every nation. The rights of individuals are realized only in an organized political society and the continuance of that society depends on national security for without national security, any nation is in danger of collapse and overthrow.²⁸

²⁴ National Bureau of Statistics (NBS) , Unemployment / under employment report, Q4, 2016 <<http://nigerianstat.gov.ng/elibrary?page=2&offset=10> >

²⁵ Impact of Corruption on Nigeria's Economy <https://www.pwc.com/ng/en/assets/pdf/impact-of-corruption-on-nigerias-economy.pdf> > Last checked on 17-7-2017.

²⁶ Ibid.

²⁷ F.C. Onuoha, "Corruption And National Security, The Three Theory And The Nigeria Experience" in Nigerian Journal of Economic and Financial Crimes, 2009, Vol 1 No. 2 P8.

²⁸ B. O. Nwabueze, " Presidentialism in Commonwealth Africa" in O. B. Agu "Economic Crimes and National security: Nigerian Perspective in "Law and Security in Nigeria" E. Azinge and F. Bello (eds) NIALS 2011, P 397.

3.5 Government Instability: *In the effort to enhance governance in Nigeria and combat corruption, public agencies suffer a crisis of credibility – they can no longer be taken seriously. The belief is widely held that they have been politicized and that rules, where they exist, are not applied except against people who are not in the good books of government.*²⁹

This is closely twined with the problem of National insecurity. Poor masses constantly agitate the failure of government to perform its own part of the social contract. Thus, the stability of such government is jeopardized. Citizens wait anxiously for the next election season, as the case with any democratic setting such as Nigeria, to vote out the government from power. Where Government is unstable like this, no meaningful development or serious investments can be made.

4.0 THE JUDICIARY/ PROCEEDS OF CRIME

Some offences are financially motivated (otherwise called financial crimes) and generate wealth for the perpetrators. For the purpose of this part, the focus will be on such financially motivated offences, including other offences where financial gain is not the primary motive but the offence causes financial loss to an identifiable victim³⁰. This part interrogates the attitude of members of the judiciary towards these offenders and the impact of these attitudes on the Nigerian economy.

The Economic and Financial Crimes Commission Act (EFCCA)³¹ in the interpretation section defines economic and financial crime to mean-

“the non-violent criminal and illicit activity committed with the objectives of earning wealth illegally either individually or in a group or organized manner thereby violating existing legislation governing the economic activities of government and its administration and includes any form of fraud, narcotic drug trafficking, money laundering, embezzlement, bribery, looting and any form of corrupt malpractices, illegal arms deal, smuggling, human trafficking and child labour, illegal oil bunkering and illegal mining, tax evasion, foreign exchange malpractices including counterfeiting of currency, theft of intellectual property

²⁹ C.A. Odinkalu, Corruption and Governance in Africa: How do we break the cycle in Nigeria? In “Corruption and Governance Challenges in Nigeria” Conference Proceedings, ” CLEEN FOUNDATION Monograph Series. No 7, 2010, P.31.

³⁰ A. Adekunle, “Proceeds Of Crime In Nigeria: Getting Our Act Together” NIALS Press, 2011 P.3

³¹ EFCC A, S. 46. This Act repealed and re-enacted the EFCC (Establishment) Act No 2 of 2002.

and piracy, open market abuse, dumping of toxic wastes and prohibited goods, etc.;'

Three (3) ingredients deduced from this definition are:

- a. Non-violent criminal activity;
- b. Committed with objective of earning wealth illegally; and
- c. Violation of existing legislation.

Let me try and paint a picture around this definition; A is a wealthy businessman with political clout. He goes into contract with B, they make profit but A takes it all. He has defrauded B. B sues A to Court. A knows C who recommended the Judge in A's case before his Judicial appointment. A's judgement is manipulated and he is set free. B goes home in huge loss, scared of future investments and total loss of confidence on the Judiciary.

In another scenario, D is a politician and launders funds. He is brought to be tried in Court. D's political party is the ruling party and so *faithful* party members rally round to influence Court's decision. D is set free and smiles home with his loot.

Clearly, in both scenarios, financial crimes were committed but were discharged as a result of judicial corruption. The reason this paper has taken this twist is because there is a need to establish a nexus between what the Nigerian economy has lost and is still losing to Judicial corruption. When we understand that these financial crimes when sabotaged are gains to the perpetrators and serious loss on the whole economy, then we understand the dire need to address the issue of proceeds of crime to aid economic growth, development and investment in Nigeria.

In a recent compilation by the EFCC on landmark achievements in the fight against Economic and Financial Crimes,³² the commission recorded that between 2013 and 2014, the amount of money laundered out of Nigeria dropped to 91.8%, recording an all-time low of \$807,585,061.70. According to this report, this drop represents a huge boost to the economy as cash that would have been ferried out of Nigeria remained in the country for its development.³³ EFCC also recorded improvement in recovery of assets to the tune of over sixty five billion naira³⁴ from persons convicted of economic crimes.³⁵ These heavy amounts recovered by a single commission in Nigeria has benefitted the

³² EFCC, "Landmark Achievements In The Fight Against Economic And Financial Crimes", Public Affairs Directorate 2012-2015

³³ P. 6, Ibid.

³⁴ Specifically, sixty five billion, three hundred and twenty million, six hundred and sixty nine thousand, Three hundred and fifty naira, thirty-five kobo. See EFCC Land mark Achievement, Ibid, P. 9

³⁵ Also, the sum of two hundred and forty five million, nine hundred and fifty two thousand, thirty dollars and thirteen cents were recovered in cash in addition to six hundred and ninety-three thousand, three hundred and ninety-nine pounds sterling, sixty two thousand, six hundred Euro were recovered.

Nigerian economy and helped reduce to a reasonable extent, the incentive to engage in corrupt practices.

Other anti-corruption bodies, the Independent Corrupt Practices and Other Related Offences Commission (ICPC)³⁶ and the Code of Conduct Bureau (CCB)³⁷ are urged to compliment the efforts of the EFCC. They seem to have left the tackling of high corruption cases in Nigeria to the EFCC even though they have similar mandates.

Interestingly, a bill for an Act for the Proceeds of Crime has been passed by the National Assembly. The Bill provides a legal and institutional framework for the recovery and management of proceeds of unlawful activities. It also seeks to harmonize and consolidate the existing legislative provisions on the recovery of proceeds of crime and related matters in Nigeria.³⁸ Since Nigeria has ratified the provisions of the UNODC to the effect that asset recovery aimed at returning assets to their rightful owners, including countries from which they had been taken illicitly. The Judiciary

These provisions, it is hoped will help refocus the Judiciary towards recovering the proceeds of crime which will be reverted to the economy for growth and development.

³⁶ With the coming into force of the 1999 Constitution, the incoming civilian administration headed by General Olusegun Obasanjo announced an intention to tackle corruption, and his first step in this direction was the establishment of the Independent Corrupt Practices Commission (ICPC). Section 3 of the ICPC Act (2000) established the Commission. According to section 6 of the Act, the Commission has the following general duties: • where reasonable grounds exist for suspecting that any person has conspired to commit or has attempted to commit or has committed an offence under this Act or any other law prohibiting corruption, to receive and investigate any report of the conspiracy to commit, attempt to commit or the commission of such offence and in appropriate cases, to prosecute the offenders; • examine the practices, systems and procedures of public bodies and where, in the opinion of the Commission, such practices, systems or procedures aid or facilitate fraud or corruption, to direct and supervise a review of them; • to instruct, advise and assist any officer, agency or parastatals on ways by which fraud or corruption may be eliminated or minimised by such office, agency or parastatal; • 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; • educate the public on and against bribery, corruption and related offences; and • enlist and foster public support in combating corruption. See Action Aid Nigeria, n. 22 *ibid*.

³⁷ The Code of Conduct Bureau is established as a Federal Executive Body under section 153(1) (a) of the Constitution of the Federal Republic of Nigeria 1999. The Third Schedule to the Constitution sets out its composition and powers and includes the following: 1. The Code of Conduct Bureau shall comprise the following members: • a Chairman; and • nine other members, each of whom, at the time of appointment, shall not be less than fifty years of age and subject to the provisions of section 157 of this Constitution shall vacate his office on attaining the age of seventy years. 2. The Bureau shall establish such offices in each state of the Federation as it may require for the discharge of its functions under this Constitution. 3. The Bureau shall have power to: • receive declarations by public officers made under paragraph 12 of Part I of the Fifth Schedule to this Constitution; • examine the declarations in accordance with the requirements of the Code of Conduct or any law; • retain custody of such declarations and make them available for inspection by any citizen of Nigeria on such terms and conditions as the National Assembly may prescribe; • ensure compliance with and, where appropriate, enforce the provisions of the Code of Conduct of any law relating thereto; and etc.

³⁸ The Nigerian Voice On-line, 4th June, 2015, 4th June, 2015 assessed on < <https://www.thenigerianvoice.com/news/181406/1/senate-passes-proceeds-of-crime-bill.html> > last checked on 17-7-2017

5.0 RECOMMENDATIONS

Nigeria presently is in dire need of economic development and increased investment. The recession and the dwindling price of oil in the capital market calls for serious attention to viable ways by which the country can be improved. Judicial corruption is a threat to the economic development of the nation and scares would-be investors from the polity as an investor would not want to jeopardize scarce resources on an economy that cannot guarantee fair play while applying her laws.

Therefore, to greatly improve investment and economic development and to ensure that the judicial system is systematically rid of corruption, this paper makes the following recommendations:

5.1 *Alternative Dispute Resolution (ADR) to decongest Courts:* It is common knowledge that the ADR process is an alternative to Court proceedings. It stemmed from the dissatisfaction with delays, costs and inadequacies of the litigation process.³⁹ These were faced by claimants whose trials were in Court and there was no prospect of recovering legal costs from an opponent in the event of victory. This paper therefore strongly recommends ADR because ADR will help cut down lengthy bureaucratic processes to reduce opportunities of bribery in the Judiciary.

5.2 *Plea bargain to recover quickly proceeds of crime:* plea bargain is a negotiated agreement between a prosecutor and a criminal defendant whereby the defendant pleads guilty to a lesser offense or to one of multiple charges in exchange for some concession by the prosecutor, usually, a more lenient sentence or a dismissal of other charges.⁴⁰ Plea bargaining thus presents a less expensive method of disposing of cases with less time and money than full scale trial. For the purpose of this paper, plea bargaining is one of the viable mean to ensure less involvement of the judicial system, helping to recover proceeds of crime. Even though the concept of plea bargaining is arguable,⁴¹ it is the position of this paper that while plea bargaining may be a tool for letting off financial criminals, it is economically profitable because it ultimately helps to recover looted, defrauded,

³⁹Karl Mackie and others, the ADR Practice Guide: Commercial Dispute Resolution” in P.O. Idornigie, “Commercial Arbitration Law and Practice in Nigeria” Lawlords Publication, 2015, P31.

⁴⁰ B. A. Garner(ed), Black’s law Dictionary,(10th Edition) Thompson Rheuters. P.

S.I. Nchi, the Nigerian Law Dictionary, 2nd Edition Jos Greenworld Publishing company ltd, 2000, P 403.

⁴¹ Former Chief Justice of the Federation, Dahiru Musdapher is of the opinion that plea bargaining is “alien” idea to Nigerian jurisprudence and has been abused to free senior government officials accused of corruption. However, the Nigerian Bar Association and the National Human Rights Commission are of the opinion that the baby should not be thrown out with the bathe water because plea bargaining can play a useful role in the criminal Justice system. See M.A. Ayoade, “Evaluating the Legal Architecture on Corruption in Nigeria” in the Nigerian Journal of contemporary Law, Vol. 18, No 1, 2012, P 63.

stolen or embezzled funds which can be re applied to the boost economy. This is a typical case of weighing the balance and understanding that a part of the looted or diverted money recovered is better than letting the criminal enjoy the proceeds of his crime after jail term.⁴² Notably, the plea bargain between the EFCC and former Inspector General of Police, Mustafa A. Balogun was a laudable achievement. The former IG got a light sentence and forfeited assets worth billions of naira to the Federal government of Nigeria. Same as the case between EFCC and Emmanuel Nwude involving over 240 million Dollars.⁴³

5.3 *Judicial Appointment should be based on merit:* Judicial independence and judicial accountability, two concepts key to the promotion of judicial integrity, can be bolstered to tackle corruption in judicial systems. First, Judicial officers must be appointed purely on merit and not to serve or reward any political purpose. This will ensure that when matters that touch on the integrity of Judicial officers come before the Court, fairness and total adherence to the rule of law is respected and accorded both parties.

5.4 *Separation of Powers:* The principle of separation of powers has it that the three arms of government must be independent of each other while working together to achieve the good of all. Often times, we see serious interference of the judiciary by the Executive arm of government. It is said that he who pays the piper dictates the tune. Because the judiciary looks up to the Executive and sometimes the Legislature for remuneration, they often play to the dictates of these Arms of government. Therefore, it is the recommendation of this paper for there to be an independent Judiciary. Independence in this sense does not suggest absolute independence, as that would negate from the essence of democracy but the judiciary should be allowed to carry out its functions without fear or favour.⁴⁴

5.5 *Less Interference by the AG FED:* Section 174(1) of the Constitution empowers the Attorney General to institute, take over, continue or discontinue any criminal proceedings that may have been instituted by any other authority. This is concern to our Criminal justice system. If within the trial of a

⁴² This is the case in normal criminal justice processes. The criminal is convicted and sent to jail. His dependents and relatives enjoy the proceeds of crime and often furnish better treatment of this criminal while serving his jail term. In the opinion of this writer, this does not help the economy of Nigeria. See the position of the United States Supreme court in the case of *Santo Bello v New York* (1971) 404 U.S. 257 where the Court opined that "Plea bargaining contains more advantages than disadvantages, while others have been willing to endure or sanction it only because they regard it as a necessary evil." See also, Akin Ibidapo-Obe & F. Abayomi Williams, "Arbitration in Lagos State A Synoptic Guide" Concept publications Ltd, 2010, P.112-116.

⁴³ L. Ughegbe, EFCC and Igbinedion: The After taste of a plea bargain: Guardian, 30 March, 2010. P. 79

⁴⁴ T. Niki, "Law, Judiciary and Nigerian Democracy" in I.A. Ayua (ed), "Law, Justice and the Nigerian Society, NIALS Press, Lagos, 1995, P.130

controversial financial or economic crime, the Attorney General discontinues the case by virtue of its Constitutionally guaranteed powers, the interpretation of the common man on the street, who by the way is defined as a reasonable man is that corruption had taken place in the judiciary because to such a man, the Attorney General and the Courts belong to the same justice sector. As depicted in the controversial case of Makanjuola, a Permanent Secretary at the ministry of defence who was standing trial for embezzling over Four hundred million naira (N400,000,000). His case was abruptly terminated after trial Judge had fixed a date for the pronouncement of judgement.⁴⁵ Thus, we recommend that the powers vested on the Attorney General of the Federation be used sparingly and in such cases where there is likelihood of miscarriage of justice or national threat to avoid abuse or misuse of such powers.

5.6 *Proceeds of Crime Bill:* Today, the laws on the recovery and management of proceeds of crime in Nigeria are fragmented in some existing legislations, including the Economic and Financial Crimes Commission (Establishment) Act, 2004, the Independent Corrupt Practices Offences and Other Related Matters Act, 2000, the National Drug Law Enforcement Agency Act, 2004 etc., the absence of a comprehensive legal framework to deal with recovery and management of assets has hampered the anti-graft war in Nigeria. It is hoped that the Government will sign the Proceeds of Crime Bill into Law and enforce it equally amongst perpetrators.

5.7 *Proper Accountability Of Proceeds Of Crime:* It is not just enough to work towards ensuring that the proceeds of crimes are recovered. It is pertinent as well to ensure that these crime proceeds are channeled accordingly. As such, individual victims should be restituted and where the state is the victim, the proceeds should be plunged back into the state's treasury and not left fallow to be re-stolen or re-looted. To ensure this, this paper recommends that Government sets up a Body whose function will be that of oversight function on the EFCC, ICPC, Police and the Judiciary. Members of this body must not be politicians but men and women of integrity who have distinguished themselves in various fields. This will ensure that the law is applied to all perpetrators equally, not going by the cliché that *in Nigeria, rules are inconvenient and enforcement happens to losers, non-persons or politically ostracized*⁴⁶

⁴⁵ See < <http://www.thisdayonline.com/archive/2002/07/23/20020723news27.html> > last checked on 17-7-2017.

⁴⁶ C. Odinkanu, Ibid P. 35

6.0 CONCLUSION

Most nations of the world experience corruption and corrupt practices. It is like a recurring decimal that continues to feature in various governments. The difference between their regime of corruption and Nigeria's own is in the enforcement of their laws which is primarily in the hands of the Judiciary. While corruption in various sectors can be dealt with, judicial corruption is *viral* because it further spreads to the other sectors of the economy, causing depreciation in growth and development and reduced businesses. The saying that the Judiciary is the last hope of the common man is so true. The man on the street is being deprived of a belonging due to corruption; he approaches the Court for redress but cannot be restituted because the Judge has been compromised. Nothing is more heart rending than suffering hardship while being denied justice.

Our economy is in need of a purge from corruption at the judicial level. The impact of Judicial corruption enumerated in this paper is scary! No investor would want to invest in an economy filled with inconsistencies or worse still, national insecurities.

There is a need for the President to sign the Proceeds of Crime Bill into law. This will reassure individual investors and deter prospective financial criminals. The EFCC/ICPC as it were is doing great jobs but need an *oversight lord* to ensure absolute accountability. If we succeed ridding the Judiciary of corruption in Nigeria, we have succeeded by more than half in curbing corruption from our system because no one will engage in corrupt practices when they know the law will be enforced on them!