

INNOVATIVE OR INEFFECTIVE? REASSESSING ANTI-CORRUPTION LAW ENFORCEMENT IN NIGERIA

GI-ACE PROJECT:
Fighting High-Level Corruption in Africa:
Learning from Effective Law Enforcement

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LIST OF ABBREVIATIONS

ACJA	Administration of Criminal Justice Act
ADR	Alternative Dispute Resolution
AFFA	Advanced Fee Fraud Act
AGF	Attorney General of the Federation
CCB	Code of Conduct Bureau
CCT	Code of Conduct Tribunal
EFCC	Economic and Financial Crimes Commission
FATF	Financial Action Task Force
FBI	Federal Bureau of Investigation (United States)
FHC	Federal High Court
IATT	Inter-Agency Task Team
ICPC	Independent Corrupt Practices and Other Related Offences Commission
MLAT	Mutual Legal Assistance Treaty
MLPA	Money Laundering Prohibition Act
N	naira
NBA	Nigerian Bar Association
NCA	National Crime Agency (UK)
NFIU	Nigerian Financial Intelligence Unit
NPF	Nigeria Police Force
PACAC	Presidential Advisory Committee Against Corruption
PSFU	Special Fraud Unit, Nigeria Police Force
TUGAR	Technical Unit on Governance and Anti-Corruption Reforms
UNCAC	United Nations Convention Against Corruption

EXECUTIVE SUMMARY

This report presents the findings of a study on the dynamics of law enforcement in high-level corruption cases in Nigeria. It is one of two country case studies of the project ‘Fighting high-level corruption in Africa: Learning from effective law enforcement’ funded by the Global Integrity-FCDO Anti-Corruption Evidence Program (2019-21). The research project is the first systematic study of law enforcement efforts targeting high-level (grand) corruption in Africa, presenting case studies of Nigeria and Malawi. It aims at identifying both enabling and constraining factors for effective law enforcement. The focus on the specifics of enforcement practice is new and provides evidence that has been missing in anti-corruption research.

Nigeria’s anti-corruption law enforcement efforts are incrementally growing more effective as practitioners adapt, innovate, and leverage recent legislative reforms as they navigate many persistent challenges. Sometimes caricatured as sclerotic, politicized, or error-prone, high-level anti-corruption efforts are becoming noticeably more innovative and pragmatic.

Instead of being abandoned under pressure or grinding to a standstill, high-profile corruption cases increasingly involve new, more pragmatic resolutions. These include plea bargains and asset forfeiture as well as probationary and non-custodial sentences. In instances where political stakes are high and the likelihood of conviction is low, these tools are now seen as faster, more straightforward, and more viable than traditional criminal prosecutions.

Despite these modest gains, however, anti-corruption law enforcement still faces significant challenges. Some are age-old, such as attempts by senior politicians to derail or influence agencies’ efforts. Others are still coming into focus, such as the use of cryptocurrencies. By drawing upon this balanced look at both the progress made and the obstacles remaining—rather than apocryphal accounts or stereotypes—policymakers, practitioners, civil society, and international partners can work together to support anti-corruption law enforcement in Nigeria more effectively.

KEY TAKEAWAYS

- The prosecution of high-level corruption cases in Nigeria has progressed somewhat in recent years, yet many shortfalls and obstacles to additional gains remain. Key legislative reforms as well as innovations and adaptations like a greater use of non-conviction-based asset forfeiture and plea bargains have helped maximize success.
- The relative effectiveness of Nigerian anti-corruption efforts defies simple definition. Undue focus on a single metric such as conviction rates ignores other vernacular measures of effectiveness. These include making recoveries, satisfying domestic perceptions, ensuring deterrence and prevention, promoting the rule of law and developing anti-corruption institutions.
- Inter- and intra-agency cooperation is improving but remains inadequate. Prosecutors and investigators do not always work together effectively, especially during the early stages of a case when close cooperation can help ensure that prosecutions do not flail or founder in court, as happened in the three high-level corruption prosecutions examined in this report (see page 16).

- Shortfalls in judicial integrity and independence also impede effective anti-corruption law enforcement efforts in Nigeria. Many judges also lack familiarity with money laundering and other complex issues that arise during corruption trials. Some judges are skeptical or even hostile toward anti-corruption prosecutions.
- Anemic budgets and staffing limitations also hurt the effectiveness of Nigeria's anti-corruption agencies. Nigeria's anti-corruption agencies suffer from a deficit of skilled, apolitical, independent oversight. They function more effectively when led by non-partisan practitioners and decline when run by stop-gaps or political proxies.
- The politicization of anti-corruption prosecutions is a double-edged sword. Political interference happens often and is highly disruptive. But while powerful high-level suspects are often untouchable, they can suddenly become vulnerable when political winds invariably shift. Such strategic patience leads to more successful prosecutorial outcomes.
- Nigeria's anti-corruption agencies have yet to strike a stable, sustainable equilibrium in their high-level corruption investigations by seeking both 'easy wins' like non-conviction-based asset forfeitures as well as undertaking riskier prosecutions that aim to secure convictions.
- The EFCC is a robust and effective organization but risks becoming a bloated bureaucracy that loses its elite reputation. The agency's mandate to fight cybercrime, for example, distracts from its core mission of fighting high-level corruption and strategically significant economic crime. The EFCC is also too vulnerable to disruptive high-level political influence.
- The ICPC and CCB possess significant untapped potential but are constrained by legislative shortcomings, political interference, inadequate interagency collaboration, staff and budgetary shortfalls, and unmet training and equipment needs.
- Western and other international financial actors and government institutions tolerate—or even actively facilitate—corruption in Nigeria. Therefore, any international efforts to improve the effectiveness of anti-corruption law enforcement in Nigeria will require domestic policy changes in those jurisdictions where Nigerian kleptocrats stash their ill-gotten gains.

FEASIBLE, TAILORED POLICY RECOMMENDATIONS

This research points toward several feasible recommendations that Nigerian decision makers, international policy makers, and other key stakeholders can act upon:

- The Presidency should foster greater judicial independence by giving the judiciary real financial autonomy by releasing all funding immediately after the annual budget is passed into law. It should institute a zero-tolerance policy toward executive branch interference with the courts and anti-corruption agencies. This policy should ideally be supported by enforcement legislation and credible monitoring mechanisms. It should also support efforts by the judiciary to meet spiraling demands for court time by filling judicial vacancies proactively, instead leaving them vacant for several months as is now the norm.
- The Presidency should ensure the timely release of budgeted funds to anti-corruption agencies and work with them to develop strategic, multi-year spending plans that aim to build long-term capacity. It should appoint

respected technocrats, jurists, and civil society figures to serve on the boards of these agencies and invite civil society groups working on anti-corruption issues groups to help interview candidates for these roles.

- The National Assembly should partner with anti-corruption agencies and the Nigerian Law Reform Commission to harmonize, consolidate, and modernize legislation, thereby realizing needed improvements to their establishing acts and other key laws that they routinely use to prosecute cases. These include fixes to the Evidence Act that help streamline procedures, laws that enable the agencies to track and seize crypto-assets and witness protection legislation. It should also amend the CCB Act to codify the use of online asset declarations, modernize them to reflect new types of assets, set guidelines for their public disclosure, and increase penalties for those who fail to make them.
- The EFCC should avoid ‘mission creep’ and refocus its resources on high-level corruption cases. It should relinquish secondary mandates by transferring most cybercrime cases to the police. The agency should also improve case management and provide additional help to prosecutors to ensure they try cases to a higher standard. It should institutionalize increased cooperation between investigators and prosecutors from the start of an investigation through the end of a prosecution.
- The EFCC should balance the agency’s increased focus on non-conviction-based asset forfeiture with the continuing need to secure high-profile convictions. It should systematically disclose to the public synopses of all conviction- and non-conviction-based asset forfeiture, plea bargains, and deferred prosecution agreements on an annual basis. It should increase transparency while reining in publicity-seeking, along with increasing collaboration and information sharing with a wider range of partners.
- The ICPC should sustain and deepen collaboration between prosecutors and investigators. It should also forge closer partnerships with state governments willing to allow closer scrutiny of their ministries, departments and agencies or allow the agency to conduct systems studies of them. The ICPC should also work with the Attorney General to launch an appeal to the Supreme Court aimed at restoring key sections of its establishing act struck down by lower courts.
- The CCB should partner with legislators to amend or pass new legislation aimed at strengthening the CCB as well as formulate guidelines—and any legislative amendments—needed to create a transparent, searchable online database of asset declaration information. It should also make its website more functional and provide an online platform for public office holders to publish their asset declarations on a voluntary basis.
- International partners should reinvigorate financial and technical assistance to Nigeria’s anti-corruption agencies and judiciary akin to the level provided in the early 2000s. They should also rethink their permissive attitude toward suspicious spending on high-end property, luxury goods and private education by politically exposed Nigerians suspected of corrupt practices. Partners should leaven discussions of how Nigeria is able to ‘push’ proceeds of corruption into the international system with how partners’ policies and practices exert a strong ‘pull’ on those monies.

INTRODUCTION

This report presents the findings of a study on the dynamics of law enforcement in high-level corruption cases in Nigeria. It is one of two country case studies of the project ‘Fighting high-level corruption in Africa: Learning from effective law enforcement’ funded by the Global Integrity-FCDO Anti-Corruption Evidence Program (2019-21). The research project is the first systematic study of law enforcement efforts targeting high-level (grand) corruption in Africa, presenting case studies of Nigeria and Malawi. It aims at identifying both enabling and constraining factors for effective law enforcement. The focus on the specifics of enforcement practice is new and provides evidence that has been missing in anti-corruption research.

As well as being Africa’s largest economy and most populous country, Nigeria also ranks among the world’s most complex and dynamic corruption landscapes. Top-dollar, high-profile corruption scandals make daily headlines, embarrassing and demoralizing hardworking Nigerians. The country’s anti-corruption prosecutors operate in a target-rich environment, triaging cases like emergency room doctors, tackling both the most severe—as well as the easiest to resolve—first. The steady stream of high-level corruption cases has strained the capacity and tested the integrity of Nigeria’s anti-corruption agencies for almost two decades. Often repeated but worn-out narratives paint these investigations and prosecutions as anemic, ham-fisted, and easily politicized.

This report, however, challenges that conventional wisdom, by taking a deeper look at the legal frameworks, prosecutorial strategies, institutional constraints, and external influences that shape Nigeria’s anti-corruption efforts in the here and now. It shows that, far from being easily stymied and prone to missteps, Nigerian anti-corruption officials continue to adapt and innovate as they investigate and prosecute high-profile suspects. Making use of new legal tools and expanding the use of existing ones, they have pragmatically ramped up the use of civil asset forfeiture and plea bargains. In instances where political stakes are high and the likelihood of successful criminal prosecution is low, these tools are now seen as faster, more straightforward, and more viable than criminal prosecutions.

Drawing on the views and experiences of the law enforcement officials on the ground, this report examines the factors that enable and inhibit effective law enforcement practice in Nigeria. In doing so, it will contribute to a more comprehensive understanding of what is needed to successfully target those involved in grand corruption, the theft of large sums of government money by well-connected conspirators often with foreign connections. This report analyzes the various investigative and legal tools available in criminal proceedings but also innovative legal strategies, such as asset recovery and civil litigation. Specific attention is paid to the international dimension of anti-corruption law enforcement practice.

This report is therefore structured around the following overarching research questions: what enabling and inhibiting factors have affected anti-corruption law enforcement in Nigeria since the country’s 1999 return to civilian rule? In particular, what challenges face high-level corruption prosecutions and what innovations, adaptations, and new tools have practitioners used to mitigate them?

To answer these questions, this report develops an analytical and comparative framework structured around five principal factors shaping law enforcement activities: the legal framework governing law enforcement; the institutional setting and dynamics of law enforcement; defendant characteristics; external influences; and international involvement. This research builds on the insights of recent study into the deterrent effects of law enforcement in Malawi conducted by Gerhard Anders (Anders et al. 2020). The study showed that civil servants observe the actions of the law enforcement

agencies and are less likely to engage in corruption if they perceive a credible threat of swift punishment. This suggests that effective law enforcement has an important role to play in a comprehensive anti-corruption strategy. The study also highlighted the importance of asset recovery and plea bargaining in the context of deterrence. Building on Anders' research, this report provides new evidence about the emerging dynamics and evolving structures that are shaping the prosecution and investigation of high-profile corruption cases in Nigeria.

METHODS

Significantly, this research is anchored by two dozen semi-structured, in-country interviews conducted in September 2019 with those most knowledgeable about anti-corruption law enforcement in Nigeria: serving and retired anti-corruption practitioners, including prosecutors, investigators, policymakers, as well as legal scholars, journalists and civil society members. It also draws upon detailed, difficult to obtain court documents from three archetypal high-profile corruption prosecutions in order to examine the salience of these factors. They include a successful conviction, an acquittal, and an ongoing case.

This research focuses exclusively on federal-level anti-corruption law enforcement, as opposed to state or local law enforcement. Law enforcement in Nigeria is predominantly a federal affair; the country's constitution clearly states that the federal government has the lead responsibility for policing.¹ Although a few states—i.e. Kano and Zamfara—have established state-level anti-corruption commissions, the scope and impact of their activities is very limited.

Differing perceptions among officials as to what constitutes *effective* law enforcement are important considerations framing this research. These vernacular frameworks vary between practitioners and are influenced by several factors, including the role they occupy (e.g. investigator or prosecutor), their career position (e.g. junior, senior, or retired), and agency affiliation. As such, they reflect certain biases and parochial perspectives. They are also influenced by universalized standards espoused by other actors, such as political leaders, foreign donors, international groups like Transparency International, domestic civil society and the news media.

In weighing a broader spectrum of criteria, this report differs from Onyema et al (2018) which uses two metrics—successful prosecutions and public education—to gauge the effectiveness of Nigeria's anti-corruption agencies.² Focusing on successful prosecutions has its limitations, especially when examining the EFCC, which secures many more convictions for cybercrime than high-level corruption (see page 9)³. Using a range of vernacular criteria, in contrast, allows for a more holistic measure of success.

It must be noted that vernacular frameworks overlap, and at times clash, with international standards and indices that assess levels of corruption in Nigeria. Though by no means infallible or tailored to local realities, these external paradigms represent an important yardstick by which to judge Nigeria's long-term progress and its performance compared to similar jurisdictions. Implicit in these measures—which include Transparency International's Corruption Perception Index (CPI)—are indications of the relative effectiveness of anti-corruption law enforcement. In other words, some practitioners view Nigeria's perennially poor rating in the CPI as an unfair reflection of their perceived law enforcement gains.⁴

¹ Constitution of the Federal Republic of Nigeria (1999), Section 214.

² E. Onyema, P. Roy, H. Oredola, and S. Ayinla, *The EFCC and the politics of (in)effective implementation of Nigeria's anti-corruption policy* (London: School of Oriental and African Studies, 2018), <https://ace.soas.ac.uk/wp-content/uploads/2018/11/ACE-WorkingPaper007-EFCC-Nigeria.pdf>, 10-11.

³ Author interview with senior EFCC official, September 25, 2019; Author interview with senior EFCC official, September 23, 2019.

⁴ Author interview with senior EFCC and ICPC officials, September 23 and 27, 2019.

BACKGROUND: NIGERIA'S ANTI-CORRUPTION INSTITUTIONS

Nigeria's law enforcement landscape consists of several anti-corruption law enforcement agencies. Pre-eminent is the Economic and Financial Crimes Commission (EFCC). The Independent Corrupt Practices and Other Related Offences Commission (ICPC) and the Code of Conduct Bureau (CCB) have narrower anti-corruption mandates and are not as operationally oriented as the EFCC and are primarily staffed by civil servants, not law enforcement officers. Several other entities—including the Ministry of Justice, the Nigerian Financial Intelligence Unit (NFIU), the Nigeria Police Force's Special Fraud Unit, the Presidency's Technical Unit on Governance and Anti-Corruption Reforms (TUGAR)—play a coordinating or supporting role. This patchwork of entities (see Figure 1)—each with distinct but sometimes overlapping or ambiguous mandates—is itself a reason why anti-corruption law enforcement in Nigeria is less effective than it could be.

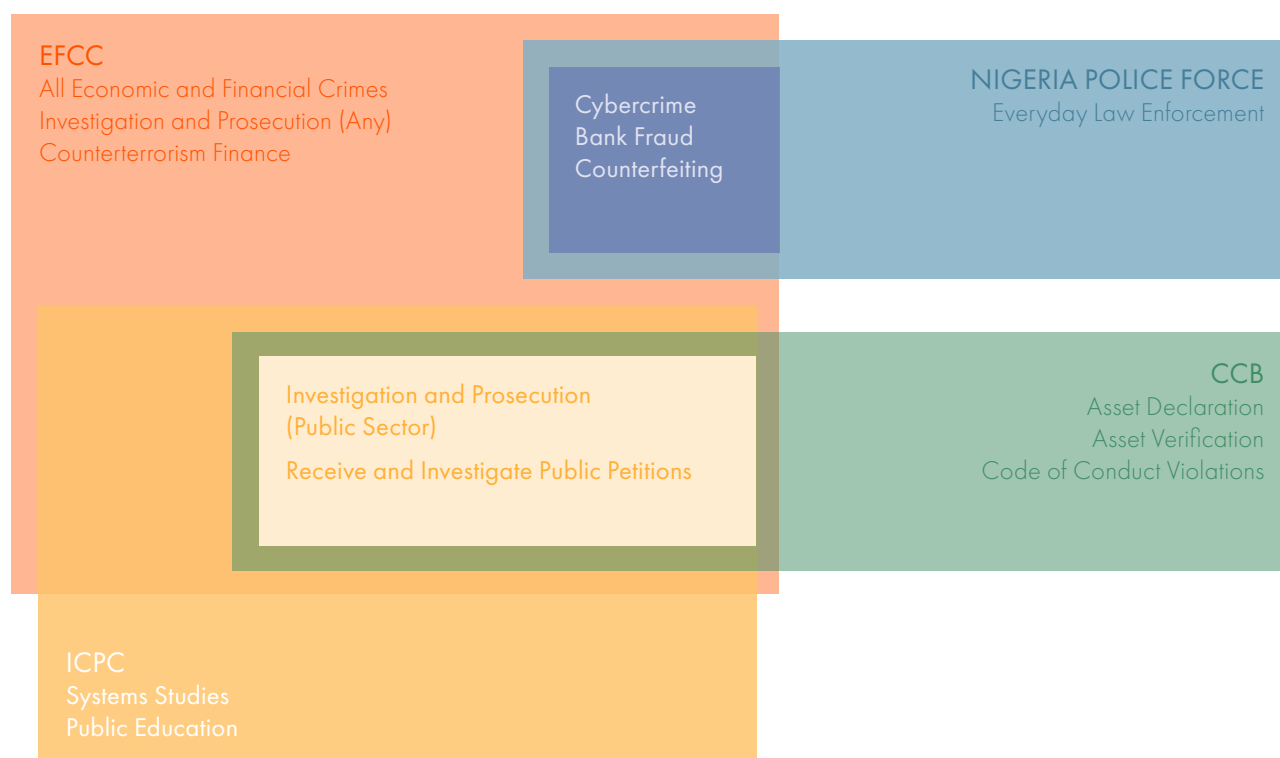


FIGURE 1: OVERLAPPING MANDATES OF ANTI-CORRUPTION AGENCIES

THE ECONOMIC AND FINANCIAL CRIMES COMMISSION (EFCC)

Established in 2003, the EFCC is larger and better funded than the ICPC and CCB, and enjoys a broad range of investigative and forensic powers. Roughly 3,000-strong, the EFCC is predominantly staffed by seconded police personnel. While it has made headlines by arresting prominent politicians and powerful bureaucrats, the commission also routinely investigates and prosecutes individuals involved in internet scams, currency counterfeiting and other economic and financial crimes. It is empowered to prosecute independently but must, in practice, have the consent of the Attorney General to do so because he is empowered by the constitution to take over and discontinue any prosecution undertaken by the federal government.⁵ Most anti-corruption cooperation with foreign law enforcement agencies and international organizations involves the EFCC but is coordinated by the Office of the Attorney General.

The EFCC’s core mandate is to investigate and prosecute economic and financial crimes.⁶ These include, but are not limited to, corruption-related offences.⁷ The Act also provides the EFCC with a broad mandate to enforce the provisions of “any other law or regulation relating to economic and financial crimes”.⁸ For a comprehensive list and explanation of the laws that the EFCC can prosecute under (see page 14).

The Act also specifically empowers the EFCC to investigate “advance fee fraud, money laundering, counterfeiting, illegal charge transfers, futures market fraud, fraudulent encashment of negotiable instruments, computer credit card fraud and contract scams, etc”.⁹ As such, it is the lead agency that investigates and prosecutes cybercrime. The agency’s broad remit—and large statutory toolbox—

FIGURE 1: EFCC CONVICTIONS¹

2019	1,246
2018	312
2017	189
2016	182
2015	103
2014	126
2013	117
2012	87
2011	67
2010	68
TOTAL	2,497

SOURCE: EFCC

means that its activities often overlap and intersect with those of the ICPC, CCB, NPF and other entities. Although this situation sometimes results in stove-piped investigations and duplication of effort, these agencies generally avoid turf battles with the EFCC because of its statutory and political preeminence (see page 34).

The EFCC at times struggles to convert its investigations and arrests into successful prosecutions, but claims to have secured over 2,300 convictions since 2010. It obtained just under half of these convictions in 2019 alone due to a sharp increase in the number of cybercrime prosecutions. The increased number of cybercrime convictions should not be conflated with its conviction rate in high-profile corruption cases. Indeed, the EFCC secures roughly 50 cybercrime convictions for every corruption case involving a politically-exposed person, according to a senior agency official.¹⁰ The EFCC’s strong focus on cybercrimes—prompted by a spike in such crimes by specialized groups known as “Yahoo

⁵ Constitution of the Federal Republic of Nigeria (1999), § 174.
⁶ Section 46 Economic and Financial Crimes Commission (Establishment) Act of 2004: “Economic and Financial Crimes” means 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 and piracy, open market abuse, dumping of toxic wastes and prohibited goods, etc.
⁷ Economic and Financial Crimes Commission (Establishment) Act of 2004, § 14-18, § 32.
⁸ Ibid., § 7.
⁹ Economic and Financial Crimes Commission (Establishment) Act of 2004, § 6.
¹⁰ Author interview with senior EFCC official, September 25, 2019; Author interview with senior EFCC official, September 23, 2019.

Boys”—has unavoidably impacted its investigation and prosecution of high-profile corruption cases.¹¹

Prolific in Nigeria, the complex, cross-border and highly technical nature of cybercrime will continue to challenge the EFCC, demanding more and more of its time and resources. The EFCC does not necessarily appear to have all of the policing and legal tools it needs to combat it effectively. Like in many other countries, legislators have struggled to amend and pass new laws to account for technological developments like crypto-assets or advanced encryption that is now widely available.

At ease with occupying its preeminent position in Nigeria’s anti-corruption law enforcement landscape, the EFCC is demonstrating increasing confidence and dynamism. Inherent in that energetic approach, however, are some pitfalls, including rapid organizational growth, a disproportionate focus on cybercrime, and a growing appetite for media attention. To be effective moving forward, the EFCC will need to balance these concerns while strengthening its focus on high-level corruption prosecutions.

THE INDEPENDENT CORRUPT PRACTICES AND OTHER RELATED OFFENCES COMMISSION (ICPC)

The ICPC’s primary mandate is to investigate whistleblower complaints and public petitions and prosecute public officials accused of corruption offenses as defined by the agency’s establishing act and other relevant laws (see page 14).¹² The agency can also initiate its own investigations.¹³ Established in September 2000, the ICPC is primarily staffed by a permanent cadre of civil servants supplemented by some seconded law enforcement personnel, the ICPC must work through Attorney General’s office to prosecute cases. As of March 2020, the ICPC has a staff strength of about 780, thirty percent of which are support personnel.¹⁴

The ICPC also has two important, but often overlooked, secondary mandates: partnering with civil society and the general public on anti-corruption efforts, and working with other government agencies and some state governments to help them identify vulnerabilities and reduce corruption risks (‘systems studies’).¹⁵ As of late 2019, the agency had completed 110 such studies, many of which uncovered significant revenue diversion and staff malfeasance.¹⁶ It is these ‘soft power’ capabilities that somewhat differentiate the ICPC from the more operations-oriented EFCC.

With an investigatory and prosecutorial function that overlaps with that of the better resourced EFCC, the ICPC has since its inception struggled to secure corruption convictions.¹⁷ In 2018, the agency obtained 14 convictions. In 2016, for example, the ICPC received 1,569 petitions and secured 11 convictions out of 70 cases it filed that year; 303 other cases remained in the courts.¹⁸ Over a ten-year period from 2002 to 2012, the ICPC made just 60 convictions.¹⁹ Moreover, the ICPC has convicted very few high-profile cases, most of which the EFCC has taken the lead in prosecuting because of its greater resources and higher tolerance for political risk. In sum, the strength of the ICPC stems from its well-rounded focus on both law enforcement and prevention. With high-level political support, more resources and

¹¹ Ibid.

¹² The Corrupt Practices and Other Related Offences Act (2000), §6.

¹³ In *Mela Yakubu v FRN*, an appellate court held that ICPC does not need to wait for petitions or complaints before it can launch investigations.

¹⁴ Text message from senior ICPC official received by author, March 3, 2020.

¹⁵ The Corrupt Practices and Other Related Offences Act (2000), §6.

¹⁶ Author interview with senior ICPC official, September 27, 2019.

¹⁷ Nigeria 2018 Human Rights Report (Washington DC: US Department of State, 2019), 30, <https://www.state.gov/wp-content/uploads/2019/03/Nigeria-2018.pdf>.

¹⁸ Evelyn Okakwu, “ICPC filed 70 cases, secured 11 convictions from 1,569 petitions in 2016”, Premium Times, February 13, 2017, <https://www.premiumtimesng.com/news/top-news/223425-icpc-filed-70-cases-secured-11-convictions-1-569-petitions-2016.html>.

¹⁹ “ICPC secures 60 convictions in 10 years”, The Nation, December 11, 2012, <https://thenationonline.net/icpc-secures-60-convictions-in-10-years/>.

sustained capable leadership, the agency will become more effective over time. Looking ahead, the ICPC and EFCC must strive to work together better and share information more in order to avoid duplicating effort or straying outside their core competencies. Doing so will free up the ICPC to be a more effective anti-corruption law enforcement entity.

THE CODE OF CONDUCT BUREAU (CCB)

Less dynamic than its sister agencies, the CCB is a governmental watchdog with significant unrealized potential. It also has a narrower anti-corruption mandate: investigating suspected violations of the code of conduct for public officials enshrined in Nigeria's constitution. The CCB prosecutes in its own separate and independent court: The Code of Conduct Tribunal. The agency has roughly 800 staff—15 percent of which is support personnel—and an annual budget of about N2.9 billion (\$8 million).²⁰

First established in 1979 at the tail end of years of military rule, the CCB lacked a solid legal foundation until 1990 when the National Assembly passed The Code of Conduct Bureau and Tribunal Act. Four decades later, the CCB's primary function is to gather asset declarations made by all public officeholders—from the President down to the lowliest functionary—at prescribed intervals during their careers. CCB officials recently noted, however, that too few officials complete asset declarations as required by law.²¹

The CCB is also tasked with checking the accuracy of these declarations, which it only began doing in 2013 and remains unable to sustain on a widespread basis.²² As of late 2019, the agency focused its asset verification efforts on governors, state commissioners and federal legislators; ministers and civil servants did not undergo routine asset verification.²³ Prior to Nigeria's 1999 return to civilian rule, however, the CCB hardly ever verified asset declarations and did not require them from junior officials—a significant loophole that allowed senior officials to use them as conduits for corruption.²⁴ An equally significant flaw is that the CCB's work takes place in secret: officials' asset declarations are not subject to public disclosure, including via Freedom of Information Act requests.²⁵

The CCB also tasked with ensuring public officials abide by a 14-point code of conduct that prohibits them from having conflicts of interests, collecting more than one official salary, holding foreign bank accounts, or accepting gifts, private loans, or kickbacks.²⁶ The CCB reports any breaches of this code to the Attorney General for prosecution in the Code of Conduct Tribunal (CCT), an independent court.²⁷ Public officials possessing legal immunity while in office (e.g. president and vice president, governors, deputy governors) can be investigated by the CCB but cannot be prosecuted until they leave office.²⁸ Officials convicted by the CCT can be forced to leave office, stripped of illicit assets, or made ineligible to hold public office for up to ten years.²⁹

²⁰ Text message from senior CCB official to author, March 3, 2020; Federal Republic of Nigeria, 2019 Appropriation Act, 1317.

²¹ "Many Nigerian Public Officials Not Complying With Asset Declaration Law - CCB", Premium Times, October 6, 2019, <https://allafrica.com/stories/201910060063.html>.

²² Author interview with senior CCB official, September 25, 2019.

²³ Ibid.

²⁴ Author interview with senior CCB official, September 26, 2019.

²⁵ Yusuf Akinpelu, "Why CCB Will Not Release Asset Declarations of Buhari, Osinbajo, Others - Official", Premium Times, October 7, 2019, <https://allafrica.com/stories/201910070400.html>.

²⁶ Constitution of the Federal Republic of Nigeria (1999), Fifth Schedule, Part I.

²⁷ Code of Conduct Bureau and Tribunal Act (1990), Part II, <https://lawsofnigeria.placng.org/laws/C15.pdf>.

²⁸ Author interview with senior CCB official, September 26, 2019.

²⁹ Code of Conduct Bureau and Tribunal Act (1990), §23 (2), <https://lawsofnigeria.placng.org/laws/C15.pdf>.

OTHER ENTITIES

Other government entities play a role in Nigerian anti-corruption law enforcement efforts. These include:

- **Ministry of Justice.** As the Nigeria's chief law officer, the Minister of Justice and Attorney General of the Federation (AGF) oversees all public prosecutions, including anti-corruption cases.³⁰ This function is handled on his behalf by the Director of Public Prosecutions, a department head within the ministry. All mutual legal assistance, extradition, and other cooperation requests from international anti-corruption agencies like the United States' Federal Bureau of Investigation (FBI) and the UK's National Crime Agency (NCA) are handled by the Central Authority Unit, a busy directorate within the AGF's office.³¹
- **Technical Unit on Governance and Anti-Corruption Reforms (TUGAR).** A tiny office within the Presidency, TUGAR facilitates interagency coordination, cooperation and information sharing on corruption-related issues. Skeletally staffed and minimally funded, TUGAR has relied on international donors to sustain its work. TUGAR also serves as the secretariat for the Inter-Agency Task Team (IATT), an interagency coordinator body that brings together the heads of 21 different Nigerian government ministries, departments and agencies with anti-corruption roles.³² TUGAR was set up by President Obasanjo in 2006 for the purpose of monitoring government anti-corruption initiatives, evaluate their structures and effectiveness, encourage cooperation through the IATT and enable reforms.³³
- **Nigerian Financial Intelligence Unit (NFIU).** Previously part of the EFCC, the NFIU is now domiciled within the Central Bank of Nigeria. The unit plays a support function to anti-corruption law enforcement, gathering and analyzing intelligence on money laundering and terrorist financing activities involving Nigeria. It receives and analyses suspicious transaction reports filed by financial institutions and other designated non-financial businesses and professional entities as well as other information (e.g. currency transaction reports and wire transfer data) as needed.³⁴ The NFIU also provides intelligence and analysis on money laundering to law enforcement agencies for use in investigations and prosecutions. The Obasanjo government established the unit in 2004 to comply with both the UNCAC and FATF recommendations, but also to give the EFCC greater access to investigate domestic institutions that they lacked.³⁵ Since its inception, international donors have provided over US\$10 million in financial and technical support to the NFIU.³⁶
- **Police Special Fraud Unit (PSFU).** The PSFU is a section within the Force Criminal Investigation Department of the Nigeria Police Force (NPF). Based in Lagos, the PSFU investigates cases of fraud before referring them to NPF prosecutors or the EFCC for prosecution, as appropriate.³⁷ In recent years, the unit has investigated cases relating to visa, employment, internet, insurance and banking fraud. Its activities appear limited and primarily focused on Lagos.

³⁰ Constitution of the Federal Republic of Nigeria (1999), § 174.

³¹ Implementation Review Group, "Fifth Session, Review of Implementation of the United Nations Convention Against Corruption, Executive Summary: Nigeria", June 4, 2014, <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/2-6June2014/V1403646e.pdf>, 10.

³² Author interview with TUGAR representative, September 30, 2019.

³³ "Thematic Compilation of Relevant Information Submitted by Nigeria: Article 6 UNCAC – Preventative Anti-Corruption Body or Bodies", Federal Government of Nigeria, undated, 11, https://www.unodc.org/documents/corruption/WG-Prevention/Art_6_Preventive_anti-corruption_bodies/Nigeria.pdf.

³⁴ Nigerian Financial Intelligence Unit Act (2018), <https://placng.org/wp/wp-content/uploads/2018/07/Nigerian-Financial-Intelligence-Unit-Act-2018.pdf>

³⁵ Nigerian Financial Intelligence Unit, <https://www.nfiu.gov.ng/>; Author interview with former senior EFCC official, September 26, 2019.

³⁶ Author interview with former senior EFCC official, September 24, 2019.

³⁷ Police Special Fraud Unit, Nigeria Police Force, "About Us", http://www.specialfraudunit.org.ng/en/?page_id=84.

HISTORY OF HIGH-LEVEL ANTI-CORRUPTION EFFORTS IN NIGERIA

Prior to Nigeria's 1999 return to civilian rule, successive governments made scant effort to combat corruption. In 1969, military ruler Yakubu Gowon enacted the Investigations of Assets (Public Officers and Other Persons) Decree aimed at identifying and seizing corruptly acquired assets of those who held political office prior to the July 1966 coup.³⁸ Gowon's successor, Murtala Muhammed, promulgated a Corrupt Practices Decree in 1975 that established a powerful Corrupt Practices Investigation Bureau and made it an offence to corruptly solicit, offer or receive gratification or inducements with 'corrupt intent'.³⁹ This decree was repealed by his successor, then-General Olusegun Obasanjo and replaced with the Code of Conduct for Public Officers in the 1979 Constitution.⁴⁰ During his time as military head of state, Muhammadu Buhari is widely remembered for mounting a hands-on nationwide anti-corruption campaign—the War Against Indiscipline—that involved cracking down on the black market as well as imprisoning hundreds of officials from his civilian predecessor Shehu Shagari's toppled government.⁴¹

Following Buhari's 1985 ouster, corruption blossomed under his successors: Ibrahim Babangida and Sani Abacha. Even as the Babangida and Abacha governments looted Nigeria's treasury with impunity, they dissimulated by enacting key laws that laid the groundwork for future anti-corruption efforts. These included the Code of Conduct Bureau and Tribunal Act (1990), the Failed Banks (Recovery of Debts) and Malpractice Act (1994), and the Advance Fee Fraud and Other Related Offences Act (1995). Although prosecutors used these new laws against 419 fraudsters, they rarely prosecuted other financial crimes or cases of official corruption.⁴²

By 1999, Nigeria's international reputation had been indelibly tarnished by corruption. In 2000, Nigeria ranked dead last in Transparency International's Corruption Perception Index.⁴³ Following through on a campaign pledge, President Olusegun Obasanjo pushed to set up the ICPC. Around the same time, the Financial Action Task Force in 2001 blacklisted Nigeria for having weak protections against money laundering.⁴⁴ The blacklisting prompted Nigeria to hastily create the NFIU and EFCC, to avoid being ostracized from the mainstream global financial system.⁴⁵

Despite its meager budget, basic facilities, and relatively few staff, the EFCC recorded some early successes under the leadership of Nuhu Ribadu. In 2005, it prosecuted Inspector General of Police Tafa Balogun, prompting him to step down and accept a plea bargain.⁴⁶ Two powerful ministers were also removed and prosecuted, sending a strong message that no presidential appointee was untouchable.⁴⁷ The EFCC also pursued those responsible for one of the largest bank frauds of all time—the \$242 million Banco Noroeste scam—successfully locating some of the stolen funds.⁴⁸

The transfer of power from Obasanjo for Musa Yar'Adua in May 2007 ushered in a period of stagnation. By 2008,

³⁸ Esa O. Onoja, *Economic Crimes in Nigeria: Issues and Punishment* (Abuja: Lawlords Publications, 2018), 202.

³⁹ Abel A. Emiko, "A Reflection on the the Nigerian Corrupt Practices Decree" *Journal of the Indian Law Institute*, vol. 19, no. 1, 1977, pp. 17–43, www.jstor.org/stable/43950461.

⁴⁰ Onoja, 203.

⁴¹ Folarin, 454.

⁴² Author interview with former senior EFCC official, September 24, 2019.

⁴³ "Transparency International Releases the Year 2000 Corruption Perceptions Index," Transparency International, September 12, 2000, https://www.transparency.org/news/pressrelease/transparency_international_releases_the_year_2000_corruption_perceptions_in.

⁴⁴ Nuhu Ribadu, *Ribadu: My Story* (Abuja: AFRICMIL, 2016), 50.

⁴⁵ Author interview with senior EFCC official, September 24, 2019.

⁴⁶ Chris Albin-Lackey and Eric Gutschuss, *Corruption on Trial? The Record of Nigeria's Economic and Financial Crimes Commission*, (New York: Human Rights Watch, 2011), <https://www.hrw.org/reports//nigeria0811WebToPost.pdf>, 10.

⁴⁷ Author interview with former senior EFCC official, September 26, 2019; "EFCC Quizzes Fasawe, Obasanjo's Associate", *Vanguard*, September 24, 2005, <https://allafrica.com/stories/200509260429.html>.

⁴⁸ Ellis, 166–168.

Ribadu's anti-corruption zeal had made many enemies and "[he] had several powerful foes to contend with, and some of them were baying for blood."⁴⁹ Yar'Adua's Attorney General Michael Aondoakaa tried to exert greater control over the EFCC, removing Ribadu and hounding him out of the police force.⁵⁰ Yar'Adua subsequently appointed Farida Waziri —the wife of a ruling party politician—to head the agency.⁵¹ Widely seen as less zealous and more malleable than Ribadu, Waziri performed poorly and undermined the EFCC's international credibility. Following Yar'Adua's death, President Goodluck Jonathan removed Waziri and Aondoakaa, heeding widespread domestic and international criticism. Jonathan also signed into law both the Administration of Criminal Justice Act (ACJA) and the Freedom of Information Act, two key pieces of legislation that have made positive contributions to anti-corruption prosecution and prevention efforts.⁵²

Elected as civilian president in 2015, Muhammadu Buhari made the fight against corruption one of his signature issues. Nevertheless, his record defies simple characterization. While he has empowered anti-corruption agencies, freeing them up to pursue high-level prosecutions, he has largely failed to pursue more durable institutional reforms. He has also turned a blind eye to allegations of corruption directed toward his inner circle and prominent ruling party figures. His cabinet includes several individuals tainted by accusations of corruption and he has increased his government's use of corruption-prone slush funds known as 'security votes'.⁵³ It has also continued the practice of awarding crude oil lifting contracts to middlemen firms implicated in the 2010 fuel subsidy fraud scandal.⁵⁴ In summary, while Buhari has recorded some modest, halting progress toward combating corruption, he has broadly failed to address many fundamental drivers and enablers.

LEGAL FRAMEWORK

Nigeria is a signatory of both the United Nations Convention against Corruption and the UN Convention against Transnational Organized Crime. It also ratified the African Union Convention on Preventing and Combating Corruption. Its national legal framework relevant to anti-corruption law enforcement consists of the following laws: The main offences covering corrupt practices include bribery (Criminal Code, §98, 99, 103, 104; CPC Act), money

LAW	ENACTED	ACRONYM
Economic and Financial Crimes Commission (Establishment) Act	2004	EFCC Act
Corrupt Practices and Other Related Offences Act	2000	CPC Act
Money Laundering (Prohibition) Act (as amended)	2011	MLPA
Code of Conduct Bureau and Tribunal Act	1990	CCB Act
Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act (as amended)	1994	–
Advance Fee Fraud and Other Related Offences Act	2006	AFFA
Banks and Other Financial Institutions Act (as amended)	1991	BOFIA

Miscellaneous Offences Act	2004	–
Administration of Criminal Justice Act	2015	ACJA
Cybercrime (Prohibition, Prevention, etc) Act	2015	–
Evidence Act (as amended)	2011	–
Public Procurement Act	2007	PPA
Criminal Code Act / Penal Code (Northern States) Federal Provisions Act	1960	–
Nigerian Correctional Services Act	2019	–
Nigerian Financial Intelligence Unit Act	2018	NFIU Act

laundering and concealment (MLPA, EFCC Act, CPC Act, AFFA), financial malpractices (EFCC Act, MLPA, BOFIA), retention of the proceeds of an economic or financial crime (EFCC Act), criminal breach of trust (Penal Code, §311), embezzlement (Criminal Code), abuse of office (Criminal Code, §97; CPC Act, PPA), illicit enrichment (CPC Act, CCB Act), theft (Criminal Code, §382, 383, 390), fraud (Criminal Code, §421, 422; Miscellaneous Offences Act), handling or receiving stolen property (Criminal Code, §427), forgery (Criminal Code, §465, 468; Miscellaneous Offences Act), obtaining by false pretenses (Criminal Code, §419), obstruction of anti-corruption investigations (Criminal Code, CPC Act, EFCC Act, MLPA) and conspiracy (Criminal Code, §516, 517, 519).

Under provisions contained in the EFCC and CPC Acts, the EFCC and ICPC have the authority to conduct in *rem forfeiture* of assets—either following a conviction or when a prosecution is initiated (CPC Act, §47). The agency can also apply to a judge to order the interim forfeiture of an asset if it suspects it is the proceeds of corruption (CPC Act, §48). If after twelve months the owner of the property does not step forward and prove to the judge that the asset was

⁴⁹ Olusegun Adeniyi, *Power, Politics and Death: A Front-Line Account of Nigeria Under the Late President Yar'Adua* (Lagos: Prestige, 2011), 29.

⁵⁰ Albin-Lackey and Gutschuss,, 29-30.

⁵¹ "PDP Primaries - Gombe Dep Gov, Others Lose Out", *Leadership*, January 9, 2011, <https://allafrica.com/stories/2011010101012.html>.

⁵² Ibid.

⁵³ Nigeria's Buhari Faces Flak Over Cabinet Picks", *AFP*, August 2, 2019, <https://www.voanews.com/africa/nigerias-buhari-faces-flak-over-cabinet-picks>; "The Gang of 43 Breaks Cover", *Africa Confidential*, July 26, 2019, https://www.africa-confidential.com/article/id/12703/The_Gang_of_43_breaks_cover; Ini Dele-Adedeji, "Why Buhari's long-awaited cabinet leaves a lot to be desired", *The Conversation*, August 14, 2019, <http://theconversation.com/why-buharis-long-awaited-cabinet-leaves-a-lot-to-be-desired-121446>; Matthew T. Page, *Camouflaged Cash: How 'Security Votes' Fuel Corruption in Nigeria* (London: Transparency International, 2018), http://ti-defence.org/wp-content/uploads/2018/05/DSP_Nigeria_Camouflage_Cash_Web2.pdf.

⁵⁴ Ben Ezeamalu, "Firms facing trial for multi-billion subsidy fraud to lift Nigerian crude in 2017", *Premium Times*, January 12, 2017, <https://www.premiumtimesng.com/news/headlines/220227-shocking-firms-facing-trial-for-multi-billion-subsidy-fraud-to-lift-nigerian-crude-in-2017.html>.

acquired legitimately, the asset is forfeited to the government.

The chart above illustrates the complex patchwork of laws that shape anti-corruption law enforcement in Nigeria. This laundry list suggests that Nigerian lawmakers have taken an *ad hoc*, stovepipe approach toward formulating anti-corruption laws. It also reveals that legislators have done little to reexamine, rationalize, and modernize the country's criminal statutes, many of which date back to colonial times or the era of military rule.

THREE CASE STUDIES

As important as the above assessment of Nigeria's anti-corruption institutions and legal framework are to this study, equally important is an analysis of how they perform in the context of real-life, high-level corruption prosecutions. This section examines three such cases using original, difficult-to-obtain court proceedings as a primary source. Long running and contentious, these prosecutions illustrate the many pitfalls Nigeria's prosecutors face.

SUCCESSFUL: THE DARIYE CASE

A grassroots politician with a popular touch, Joshua Dariye was elected governor of Plateau State in 1999 and again in 2003. He subsequently fell out with then-President Obasanjo, sparking a political crisis that led to his impeachment in late 2006. In April 2007, the Supreme Court declared the impeachment process unlawful and reinstated Dariye.⁵⁵

Immediately after he left office in 2007, the EFCC arraigned him on multiple corruption charges stemming from his time in office. Prosecutors accused Dariye of embezzling over N1.16 billion from Nigeria's Ecological Fund, channeling funds meant for Plateau State into accounts he controlled. The EFCC also accused him of misappropriating various sums he diverted from Plateau State accounts and using them to purchase a £395,000 flat in London.⁵⁶ Following his arraignment, Dariye filed a motion to dismiss the case; a motion that delayed his trial for eight years until the Supreme Court dismissed it in 2015. Dariye subsequently won election to the Senate three times, serving through the end of his term (May 2019) from prison.⁵⁷

After resuming in January 2016, Dariye's trial proceeded relatively rapidly because of the Supreme Court ruling and the judge's unwillingness to allow further delays. In May 2016, he was re-arraigned on 23 charges: fourteen counts of criminal breach of trust under Section 315 of the Penal Code Act (1990) and nine counts of criminal misappropriation under Section 309 of the same act.⁵⁸ As the prosecution presented its case, Dariye and his lawyers attempted to stall

⁵⁵ "Wanted Nigeria governor wins case", BBC News, April 27, 2007, <http://news.bbc.co.uk/1/hi/world/africa/6599133.stm>.

⁵⁶ FRN v Chief Joshua Chibi Dariye, In the High Court of the Federal Capital Territory in the Abuja Judicial Division, Holden at Abuja, Before His Lordship Hon. Justice A.A.I. Banjoko (Judge), Delivered on the 12th of June 2018, Charge No. FCT/HC/CR/81/07, 9 and 144.

⁵⁷ Henry Umoru, "Senator Dariye co-sponsors motion from prison", Vanguard, April 25, 2019, <https://www.vanguardngr.com/2019/04/breaking-senator-dariye-co-sponsors-a-motion-from-prison/>.

the trial, prompting criticism from the judge.⁵⁹ In December 2016, they filed a motion accusing the trial judge of “manifest and undisguised bias”, demanding that she disqualify herself and asking that his case be reassigned to another court.⁶⁰ The judge denied these requests.

Numerous longshot defense objections were meticulously rebutted and dismissed by the judge in her final ruling. These included the defense counsel’s assertion that Dariye’s unregistered shell company—Ebenezer Retnan Ventures—did not legally exist and thus could not have been used to misappropriate funds. In response, the judge asserted:

...It is clear from the evidence adduced, that the defendant is the owner and sole authority of the account opened in the name of Ebenezer Retnan Ventures. Therefore, the defendant who irregularly opened the account, transacted on the account, received monetary property into the account and expended monies from the account, cannot now turnaround to argue that Ebenezer Retnan Ventures being unincorporated and unregistered, could not own property...In view of all the above, the Court is satisfied that Ebenezer Retnan Ventures and Chief Joshua Chibi Dariye, are one and the same...⁶¹

Nevertheless, the judge ruled that the prosecution failed to provide sufficient evidence to convict Dariye on eight of the charges, admonishing the prosecution for being “lazy”.⁶² This assessment of the EFCC’s case suggests that, despite the assertions of those interviewed for this research that they have the legal tools they need and that investigators and prosecutors work together seamlessly (see page 31), they may not do so in every case.

Convicting Dariye of the remaining fifteen charges, the judge sentenced him to fourteen years in prison. During sentencing, she lamented not only the financial cost of Dariye’s malfeasance, but also the human cost—specifically the ruined reputations of individuals who helped the former governor misappropriate funds:

I cannot imagine such brazen act[s] of systematic looting and stealing, as what occurred in this case... [It] left a litany of woes and a devastating trail of victims, who even though they were adults capable of making rational choices, ended up being scarred. How do we count the physical, moral and sociological costs of the people involved in this tragedy of corruption? ⁶³

In these closing remarks, the judge signals that the negative impact of Dariye’s corrupt acts extended beyond himself, corrupting people around him and destroying the reputation and livelihoods of many of his associates. The Dariye case highlights the degree to which effective anti-corruption law enforcement can help deter or prevent acts of elite corruption that have both high financial and human multiplier effects.

The Dariye case demonstrates that procedural and substantive missteps can weaken prosecutions by Nigeria’s anti-corruption agencies, even if they result in a conviction. Specifically, EFCC prosecutors appear to cut corners when calling witnesses and presenting evidence, thus creating openings for defense lawyers to launch aggressive,

⁵⁸ FRN v Chief Joshua Chibi Dariye, 9.

⁵⁹ “Court Warns Nigerian Senator - Don’t Stall Your N1.1 Billion Corruption Trial”, Premium Times, October 20, 2016, <https://allafrica.com/stories/201610210017.html>.

⁶⁰ “N1.2 Billion Fraud - Court Adjourns Trial of Ex-Plateau Governor Dariye”, Premium Times, February 15, 2017, <https://allafrica.com/stories/201702150665.html>.

⁶¹ Ibid, 53-54.

⁶² Ibid, 187.

⁶³ Ibid, 206.

procedure-based objections and judges to conclude that prosecutors have failed to substantiate a charge beyond a reasonable doubt. Prosecutors cannot rely on judges to make inferences or assumptions about their case and must instead painstakingly choose the witnesses best suited to testifying in respect to each individual charge.

UNSUCCESSFUL: THE LADOJA CASE

The failed prosecution of former Oyo State Governor Rasheed Ladoja also demonstrates how high-level prosecutions can be hampered by prosecutorial missteps. In 2008, the EFCC charged Ladoja with money laundering and conspiracy. In the decade-long trial that followed, prosecutors struggled to prove their case. The EFCC accused Ladoja of diverting public funds realized from the sale of state-owned shares. He then allegedly laundered it through private firms before using it to buy property and gift it to family.⁶⁴

EFCC prosecutors struggled from the outset, hampered by their unwieldy 33-count case against Ladoja and seven other defendants. Attempting to correct this, the agency re-arraigned Ladoja three times within the space of a few months.⁶⁵ Prosecutors eventually settled on an 11-count indictment spanning four separate laws—the MLPA, the EFCC Act, the CPC Act and the Criminal Code Act—against the former governor and his former finance commissioner.⁶⁶

After a decade-long trial, a Federal High Court judge dismissed the charges against Ladoja. In a detailed and thoughtful ruling, the judge criticized the EFCC prosecutors for presenting such a weak case. Like in the Dariye case, the judge's admonishment suggests prosecutors and investigators did not work together as frequently, closely, or effectively as some interviewed for this paper claimed. The judge noted, for example, that EFCC prosecutors failed to explain contradictory testimony by their key witnesses, particularly with regard to the amount allegedly stolen.⁶⁷ He asserted that the prosecution failed to call sufficient witnesses or otherwise demonstrate links between Ladoja and any alleged proceeds of corruption.⁶⁸ In his ruling, the judge told the EFCC:

There is a thin line between failure and success. That thin line is called credible evidence. Credible evidence is not evidence that is necessarily true but it is evidence that is worthy of belief, that is worthy to be considered by the court. It is often natural, reasonable and probable to make it easy to believe where a court in a criminal trial thinks that there is a greater than fifty percent chance that a crime was committed, then the Court must return a verdict of "guilty". The highest burden of proof before getting to beyond reasonable doubt is of course clear and convincing evidence. The case of the prosecution is too low on credible evidence...And the failure on the part of the Prosecution to prove even one out of several ingredients of an offence means it has failed to prove the guilt of the Defendant beyond all reasonable doubt.⁶⁹

In addition to revealing several prosecutorial missteps, the Ladoja case also demonstrated how laborious it is for prosecutors to enter documents into evidence. Bank documents and even some official records must be painstakingly certified by specific individuals.⁷⁰ Those individuals who are the "makers" of those documents must also be called as witnesses to testify to their authenticity and correctness.⁷¹ Under Section 84 of the Evidence Act (2011, as amended),

⁶⁴ Adelanwa Bamgboye, "N4.7 Billion Fraud - EFCC Rearraigns Ladoja", Daily Trust, November 6, 2018, <https://allafrica.com/stories/201811060639.html>.

⁶⁵ Davidson Iriekpen, "EFCC Re-Arraigns Ladoja for Money Laundering", This Day, 11 November 2008, <https://allafrica.com/stories/200811110413.html>.

⁶⁶ FRN v Rasheed Ladoja and Waheed Akanbi, FHC/L/336c/2008, 98-105.

⁶⁷ FHC/L/336c/2008, 281, 286.

⁶⁸ FHC/L/336c/2008, 383, 385, 393-394.

⁶⁹ FHC/L/336c/2008, 395-396, 398.

tendering documents produced by computers requires a further step. Prosecutors must not only produce a witness to lay the “proper foundation” for the document, they must also prove that the computer used to produce the document is reliable and in good working condition.⁷²

In summary, the Ladoja case exhibits many of the features of unsuccessful high-profile corruption trials, including the prosecution’s failure to adequately establish key elements of its case, poor witness performance, and a disproportionate focus on technicalities such as the admissibility of particular official documents and electronic records. In the end, prosecutors ran out of steam, leaving the judge no option other than to acquit former governor Ladoja.

UNDECIDED: THE SUSWAM CASE

The ongoing prosecution of former Benue State Governor Gabriel Suswam (2007-2015) and former state finance commissioner Omodachi Okolobia illustrates some of the other challenges facing anti-corruption prosecutors in Nigeria, including undue procedural delays and intrusive political influence.

In November 2015, the EFCC arraigned Suswam and Okolobia on nine money laundering and conspiracy charges under the MLPA. The EFCC alleged that the two men laundered N3.1 billion (\$18.2 million in 2014 dollars) in proceeds from the sales of shares by the state’s investment parastatal.⁷³ They allegedly directed the firm that sold the shares to deposit a portion of the N9 billion (\$52.9 million in 2014 dollars) sale into accounts that belonging to a bureau de change.⁷⁴ The moneychanger then converted the sum in \$15.8 million in cash and allegedly delivered it to Suswam at his Abuja residence.⁷⁵

As of January 2020, the Suswam case was progressing slowly, weighed down by various delays including prosecution missteps and stalling tactics by the defendant and his team. According to a detailed examination of court records, these include:

CAUSE OF ADJOURNMENT	DELAY (APPROX.)
Lack of electricity in courtroom ⁷⁶	Three weeks
Suswam seeks medical treatment abroad ⁷⁷	One month

⁷⁰ FHC/L/336c/2008, 252.

⁷¹ Evidence Act (2011, as amended), §90; FHC/L/336c/2008, 252.

⁷² FHC/L/336c/2008; Evidence Act section 84.

⁷³ Soni Daniel, “EFCC Arraigns Suswam Over N3.1 Billion Fraud Today”, *Vanguard*, November 4, 2015, <https://allafrica.com/stories/201511040946.html>; 2014 exchange rate calculated as N170=\$1.

⁷⁴ FRN v Gabriel Torwua Suswam and Omodachi Okolobia, In the Federal High Court of Nigeria in the Abuja Judicial Division Holden at Abuja on Wednesday, the 8th Day of December, 2015 before His Lordship Hon. Justice A.R. Mohammed (Judge), Suit No. FHC/ABJ/CR/362/2015.

⁷⁵ Ibid.

⁷⁶ FHC/ABJ/CR/362/2015, March 2, 2016.

⁷⁷ FHC/ABJ/CR/362/2015, March 22, 2016.

Prosecution's lead counsel must appear in another corruption trial ⁷⁸	One month
Judge requests reassignment after press report claims he took bribes ⁷⁹	One month
Judge involved in serious car accident ⁸⁰	Six months
Lead prosecution/defence counsels absent from court ⁸¹	One month
Suswam detained by DSS, unable to appear ⁸²	Six weeks
Suswam cannot appear, purportedly for medical reasons ⁸³	Six weeks
Okolobia cannot appear because he has been remanded in prison on separate charges ⁸⁴	Four months
Defence lead counsel absent ⁸⁵	Two weeks
Prosecution asks judge to rule on hostile witness; judge takes weeks to rule/reconvene ⁸⁶	Seven weeks
Defence asks judge to rule on admissibility of witness statement ⁸⁷	Ten months
Prosecution witness feels unwell ⁸⁸	Six months
Lead defence counsel is ill ⁸⁹	Two months
Lead defence counsel is still ill ⁹⁰	Six weeks
Trial judge reassigned, replaced by new judge ⁹¹	Seven weeks
Defendants re-arraigned ⁹²	Five weeks
Suswam must attend to "important matters" in Senate ⁹³	Three months
Appeal Court ruling reassigns case to previous trial judge ⁹⁴	Three weeks

⁷⁸ FHC/ABJ/CR/362/2015, May 9, 2016.

⁷⁹ FHC/ABJ/CR/362/2015, June 6, 2016.

⁸⁰ FHC/ABJ/CR/362/2015, January 17, 2017.

⁸¹ Ibid.

⁸² FHC/ABJ/CR/362/2015, March 28, 2017.

⁸³ FHC/ABJ/CR/362/2015, May 9, 2017.

⁸⁴ FHC/ABJ/CR/362/2015, June 21, 2017.

⁸⁵ FHC/ABJ/CR/362/2015, November 9, 2017.

Four years after arraigning Suswam, the prosecution still had several more witnesses to call before resting its case.⁹⁵ In early 2018, one of those witnesses claimed that Suswam and his legal team had pressured him into giving contradictory evidence in order to undermine the prosecution's case. Suswam's lawyer dismissed the claim as "trash" and inadmissible.⁹⁶ Whether or not the claim was true, prosecutors interviewed for this research are deeply concerned about witness integrity, given that the Nigerian judicial system does not provide for safeguards to protect witnesses from intimidation or inducements.⁹⁷

The Suswam trial—which is still struggling to gain steam after five years—demonstrates how repeated delays bog down high-level corruption prosecutions. Even in the post-ACJA environment, lengthy adjournments—prompted by both defendants' gambits and prosecutors' unforced errors—complicate and thus weaken the process. The case also shows how high-profile suspects still receive special treatment when requesting adjournments for overseas medical treatment or to attend to important matters at their workplace (the Senate), privileges that judges clearly would not afford to less eminent defendants. This suggests that, both procedurally and substantially, it is much more difficult for anti-corruption prosecutors to gain convictions in high-profile cases than against those who lack political connections and the best legal counsel money can buy.

⁸⁶ FHC/ABJ/CR/362/2015, January 31, 2018.

⁸⁷ FHC/ABJ/CR/362/2015, March 14, 2018.

⁸⁸ FHC/ABJ/CR/362/2015, October 9, 2018.

⁸⁹ FHC/ABJ/CR/362/2015, March 26, 2019.

⁹⁰ FHC/ABJ/CR/362/2015, May 22, 2019.

⁹¹ Ade Adesomoju, "Judge withdraws from Suswan's N3.1 bn fraud case", Punch, August 7, 2019,

<https://punchng.com/judge-withdraws-from-suswans-n3-1bn-fraud-case/>.

⁹² "EFCC Re-Arraigns Suswam", This Day, October 1, 2019, <https://allafrica.com/stories/201910010088.html>.

⁹³ "Court adjourns Suswam's Trial Till November 6", EFCC Media and Publicity, November 5, 2019, <https://efccnigeria.org/efcc/news/5092-court-adjourns-suswam-s-trial-till-november-6>.

⁹⁴ Halimah Yahaya, "Alleged N3.1 billion Fraud: Appeal Court orders judge to withdraw from Suswam's trial", Premium Times, February 20, 2020, <https://www.premiumtimesng.com/news/top-news/378202-alleged-n3-1-billion-fraud-appeal-court-orders-judge-to-withdraw-from-suswams-trial.html>.

⁹⁵ "Alleged N3.1 bn Fraud: Court adjourns ex-Gov Suswam's trial until Nov. 25", News Agency of Nigeria, November 19, 2019, <https://www.premiumtimesng.com/news/more-news/364122-alleged-n3-1bn-fraud-court-adjourns-ex-gov-suswams-trial-until-nov-25.html>.

⁹⁶ Ade Adesomoju, "Alleged N3bn fraud: How Suswam pressured me to change my statement, says witness", Punch, February 2, 2018, <https://punchng.com/alleged-n3bn-fraud-how-suswam-pressured-me-to-change-my-statement-says-witness/>.

⁹⁷ Author interview with EFCC officials, September 24, 2019; with senior ICPC officials, September 27, 2019.

FIGHTING HIGH-LEVEL CORRUPTION: KEY THEMES

LEGAL FRAMEWORK

In Nigeria, high-level corruption prosecutions take place within a complex and overlapping legal framework. Prosecutors and legal scholars agree that these overlaps, and even redundancies, are helpful, giving them an expansive legal toolbox to draw upon.⁹⁸ Unless prosecutors build their cases carefully, however, cases can become overly complicated and less viable if they consist of charges from many different overlapping statutes. Nevertheless, practitioners at the EFCC, ICPC and CCB all expressed confidence—with only minor caveats—in the strength and coherence of their respective establishing laws (see page 14 for more details)⁹⁹. In the words of one former agency head, “there are very few missing pieces”.¹⁰⁰ Yet while Nigeria’s anti-corruption legal framework may not be missing many pieces, it is possible that it could fit together more efficiently and effectively.

FITNESS AND EFFECTIVENESS

Anti-corruption prosecutors, legal scholars, and other practitioners broadly agreed that Nigeria’s legal framework is fit for purpose. “We have all the tools we need,” said one senior prosecutor.¹⁰¹ “They provide a strong foundation for the agency,” said another.¹⁰² They agreed that this legal framework has evolved and grown stronger over the last two decades, one piece of legislation at a time. The 2015 ACJA, in particular, is the most significant recent addition to their toolbox.

As described on page 16, Nigeria’s anti-corruption legal framework remains of somewhat convoluted patchwork of laws, some of which are decades old. Likewise, the degree to which the three high-level anti-corruption prosecution case studies examined in this paper were affected by legal obstacles and prosecutorial failures demonstrate that this framework could be improved and streamlined. Although muted in their criticism of the existing framework, a few interviewees recognized that some laws—particularly the ICPC and CCB establishment acts—need tweaking but lamented that the National Assembly has resisted entreaties to do so.¹⁰³

For example, one prosecutor commented that laws relating to illicit enrichment need to be clarified and strengthened.¹⁰⁴ Currently, these laws lack teeth. Section 7 of the EFCC Act, for example, empowers the agency to investigate the properties of any person if “his lifestyle and extent of his properties are not justified by his source of income”. Section 19 of the same Act lays out a labored explanation of how prosecutors might use evidence from such an investigation in court, but its language is unclear and open to interpretation. Section 54 of the CPC Act also establishes grounds for proving illicit enrichment, but again does not unequivocally criminalize it.¹⁰⁵ Noting this, the prosecutor suggested that,

⁹⁸ Author interview with senior EFCC officials and legal scholar, September 23 and 30, 2019.

⁹⁹ Author interviews with senior EFCC, ICPC and CCB officials, September 23-27, 2019.

¹⁰⁰ Author interview with former head of a Nigerian anti-corruption agency, September 26, 2019.

¹⁰¹ Author interview with senior ICPC official, September 27, 2019.

¹⁰² Author interview with senior EFCC official, September 24, 2019.

¹⁰³ Author interviews with senior EFCC, ICPC and CCB officials, September 23-27, 2019.

¹⁰⁴ Author interview with EFCC prosecutor, September 24, 2019.

¹⁰⁵ Ibid.

as a template, Nigerian legislators should emulate a bill recently introduced in Morocco that specifically criminalizes illicit enrichment by stating: “any public official who has increased his financial assets without justification, as compared to his financial earnings after his arrival in office, shall be guilty of the crime of illicit enrichment”.¹⁰⁶ Likewise, Ethiopia’s criminal code more comprehensively defines and criminalizes illicit enrichment than Nigerian law does.¹⁰⁷

Some interviewees also pointed to the issue of restitution as an area for legal reform and improvement. They noted that Nigerian anti-corruption practitioners increasingly view the restitution of the proceeds of corruption to its victims is both a key part of their mission and an important measure of success. This shift indicates that anti-corruption law enforcement is maturing beyond the ‘investigate, prosecute, seize’ model to one that incorporates elements of restorative justice.

Treating restitution as a priority has yet to gain widespread traction, partly because of procedural issues, and partly for cultural reasons. For example, although Section 6 of the AFFA empowers courts to order restitution as a supplement to criminal conviction, there is no harmonized process for doing so; judges and prosecutors sometimes do not know or can’t agree at what stage in the process (i.e. beginning or end) restitution should be considered.¹⁰⁸ The lack of explicit legal guidance on restitution thus appears to be having a negative impact on the effectiveness of anti-corruption law enforcement in Nigeria, suggesting that it should be addressed holistically and explicitly in future legislation.

PROSPECTIVE LEGISLATION

Looking ahead, the prospect of creating modern and effective anti-corruption laws will depend on legislative action and the high-level political will. The plight of Nigeria’s newest proposed anti-corruption law—the Proceeds of Crime bill—illustrates this. Proposed in 2016, the bill addressed two main gaps in the country’s existing anti-corruption framework by establishing a new asset management agency (the Proceeds of Crimes Recovery and Management Agency) and harmonizing civil forfeiture laws. According to one practitioner, the bill will “clear up confusion” around civil forfeiture laws and give them “real backbone”.¹⁰⁹

Despite its reform potential, passage of the bill has been waylaid by bureaucratic turf battles. In July 2019, President Buhari refused to assent to the bill, which had been passed at his government’s strong urging by the National Assembly in May 2019. He balked after the EFCC expressed concerns that creating a separate asset management agency would infringe upon their mandate.¹¹⁰ The agency argued that the bill would “cripple the operations and the efficiency of the EFCC and other law enforcement agencies...and reverse the gains already recorded by this administration.”¹¹¹ It also claimed that the bill would:

*...Allow suspects to benefit from the proceeds of his crime by providing for the reasonable expenses for himself, dependents and legal team to be settled from the said proceeds and...make it very difficult and financially burdensome for the anti-graft agencies to initiate and execute the process leading to asset recovery is not the type of law that this country needs at this time.*¹¹²

Because it was sponsored by the executive, responsibility for the dispute over, and demise of, the Proceeds of Crime bill ultimately rests with the Buhari government. Rather than win the support of its own anti-corruption agencies, the government pressed ahead with a bill that lumped in a contentious issue (establishing a new agency) with a widely

¹⁰⁶ Tamba François Koundouno, “Moroccan MPs Block Bill Condemning Corruption, Embezzlement”, Morocco World News, December 31, 2019, <https://www.morocccoworldnews.com/2019/12/290226/moroccan-mps-bill-corruption-embezzlement/>.

¹⁰⁷ Mesay Tsegaye, “Criminalizing and Prosecuting Illicit Enrichment in Corruption Cases”, Abyssinia Law – Criminal Law Blog, June 24, 2019, <https://www.abysiniyalaw.com/blog-posts/item/1567-criminalizing-and-prosecuting-illicit-enrichment-in-corruption-cases>.

¹⁰⁸ Author interview with EFCC prosecutor, September 24, 2019.

¹⁰⁹ Author interview with EFCC prosecutor, September 24, 2019.

¹¹⁰ Tolutope Agunloye, “Nigeria, Anti-Corruption and Asset Recovery Bill: Matters Arising”, BudgIt, July 29, 2019, <https://medium.com/@BudgItTng/nigeria-anti-corruption-and-asset-recovery-bill-matters-arising-cd9cd4c35a3e>.

¹¹¹ Tony Amokeodo (EFCC Special Assistant on Media and Publicity), “Re: EFCC and the Proceeds of Crime”, This Day, July 29, 2019, <https://allafrica.com/stories/201907290033.html>.

welcome one (harmonization and strengthening of asset forfeiture laws). A clear path forward for the National Assembly would be to separate the failed bill into two halves and pass its uncontroversial portion. In the meantime, the executive branch should work to resolve internal disagreements over the need for an agency tasked with managing seized assets.

Beyond passing the Proceeds of Crime bill in some form, anti-corruption practitioners believe other legislative action is needed. Senior ICPC officials, for example, are frustrated by the legislators' unwillingness to consider amendments to the agency's establishing act that they have proposed.¹¹³ The CCB's establishing act likewise needs amending to provide the agency a framework for publicly disclosing officials' asset declarations.¹¹⁴ CCB officials also think it should be updated so that asset declarations cover assets belong to officials' extended family, adult children, and companies in which they own a significant stake.¹¹⁵ Some EFCC officials, meanwhile, suggest that some sections of the agency's establishing act could be strengthened because they are "not being used" or make certain offenses (e.g. illicit enrichment) too difficult to prove.¹¹⁶ Anti-corruption experts also argue that the growing sophistication, clandestine nature, and ever-shifting tactics of corruption in Nigeria will require new and responsive laws that give prosecutors the tools they need to combat it.¹¹⁷

There is ample scope to increase the effectiveness of anti-corruption law enforcement in Nigeria through new legislation. These new laws must be carefully crafted, however, to ensure they strike a balance between new authorities for law enforcement with the need to protect civil liberties and also preserve existing tools upon which practitioners rely. If the National Assembly proactively partners with the three main agencies to update, augment and reform key anti-corruption laws, it can bolster anti-corruption efforts by eliminating some of vulnerabilities and ambiguities they still contain.

CONTESTED ISSUES AND LEGAL AMBIGUITIES

Unresolved ambiguities and unsettled disputes over particular legal provisions risk hampering some anti-corruption prosecutions. To some extent, these challenges stem from small but sometimes significant weaknesses in the patchwork of laws upon which prosecutors rely (see page 14 for more details). Once passed by the National Assembly and assented to by the President, laws are rarely amended to close loopholes or shore up weaknesses in their original language. The 2004 revision of the 2002 EFCC Establishment Act is a notable exception; it corrected key omissions from the original law, allowing the EFCC to enforce a range of other laws related to its broad mission.¹¹⁸ Nevertheless, some legal scholars believe that the vagueness and ambiguity reflected in parts of key anti-corruption laws such as those outlined above—and legislators' unwillingness to remedy them—is deliberate, rather than inadvertent.¹¹⁹

Controversies surrounding new laws are another challenge. Prosecutors and many lower court judges are wary to use new laws until they have been run-in and tested by higher court decisions. Concerns over the constitutionality or applicability of new laws—or a simple lack of familiarity with them—often slows their domestication. These uncertainties offer defense lawyers fresh opportunities to dispute them in court, especially given the overly bureaucratic character of the Nigerian judicial system. Some state high courts, for example, have insisted that the federal ACJA should not dictate

¹¹² Ibid.

¹¹³ Author interview with senior ICPC officials, September 27, 2019.

¹¹⁴ Author interview with senior CCB officials, September 26, 2019.

¹¹⁵ Author interview with senior CCB official, September 26, 2019.

¹¹⁶ Author interview with EFCC prosecutor, September 24, 2019.

¹¹⁷ Author interview with anti-corruption expert, September 30, 2019.

¹¹⁸ Wale Adebawale, *A Paradise for Maggots: The Story of a Nigerian Anti-Graft Czar* (Abuja: AFRICMIL, 2010), 42.

¹¹⁹ Author interview with Nigerian legal scholar, September 30, 2019.

state criminal legal procedure, forcing a constitutional stalemate that only a Supreme Court ruling can resolve.¹²⁰ Such pitfalls are not uncommon; as of March 2020, the Supreme Court has, for example, yet to rule on a lower court's decision to strike down two sections of the CPC Act as unconstitutional.¹²¹

Clashes over perceived or exaggerated legal ambiguities are readily taken up by Nigerian judges, who frequently administer technical or formal justice (i.e. deciding cases on minor procedural technicalities instead of substantive merits). This tendency, combined with the inconsistency of rulings at different levels of the judiciary, gives a clear advantage to lawyers who take an opportunistic approach to making their case. In other words, invoking repeated technical and procedural objections, rather than addressing the substance of the case, can be a highly effective defense strategy in criminal cases where the burden of proof ultimately rests with the prosecution.

Even the relatively straightforward work of the CCB is hampered by technical loopholes in the agency's establishing act. The agency, for example, does not have the ability to update its asset declaration forms to reflect new forms of investments or assets. Crypto-assets represent a particular loophole: because the Central Bank of Nigeria does not recognize their validity, the CCB cannot consider them to be an asset.¹²² Officials also exploit the CCB's inability to verify the overwhelming majority of asset declaration forms it receives. They routinely engage in anticipatory corruption by listing assets they do not own—but intend to acquire later using stolen public funds—on their declaration forms.¹²³ Doing so makes it easier for officials to pay for assets they listed on their asset declaration in advance of actually acquiring them using embezzled funds.

The ambiguities and avenues of contestation outlined above impinge on effective law enforcement in Nigeria. Courtroom disputes from these legal and procedural flashpoints sometimes waylay—or even derail—prosecutions, depending on the circumstances and the willingness of the presiding judge to indulge them. Meanwhile, administrative and procedural vulnerabilities, such as the CCB's inability to verify the vast majority of the asset declarations it receives—also undermines the effectiveness of Nigeria's anti-corruption agencies.

TIMELINESS AND INTEGRITY OF JUDICIAL PROCESSES

Anti-corruption prosecutions in Nigeria often become multi-year affairs due to the country's congested and overstretched judiciary, burdensome evidentiary and trials procedures as well as frequent delays. The glacial pace of anti-corruption prosecutions can put them at greater risk of failure. Recognizing this problem, Nigerian jurists and legal scholars frequently use the aphorism “justice delayed is justice denied” to describe the current state of affairs.¹²⁴ As our three case studies of high-level corruption prosecutions demonstrate, such proceedings are slow and subject to long—often avoidable—delays. The ACJA has helped reduce these, but their deeper structural causes persist.

Courts also spend a disproportionate amount of time on basic procedural actions, particularly attestation to documents to be entered into evidence, according to prosecutors. Corruption prosecutions frequently rely on many documents—corporate documents, bank records, financial data—to build a case. One senior EFCC official interviewed for this research described how the agency's investigators must painstakingly testify in open court to the authenticity of every document, including government records and official correspondence between two government agencies, before

¹²⁰ Author interview with senior ICPC official, September 27, 2019.

¹²¹ Ibid. ¹²² Author interview with senior CCB official, September 26, 2019.

¹²³ Ibid.

¹²⁴ Fred Shapiro, “You Can Quote Them”, Yale Alumni Magazine, September/October 2010, <https://yalealumnimagazine.com/articles/2967-you-can-quote-them>; T. Aver and W. Orban, “Judiciary and Democracy, Issues in Contemporary Nigerian Society”, Global Journal of Arts, Humanities and Social Sciences, March 2014, 93, <http://www.eajournals.org/wp-content/uploads/Judiciary-and-Democracy-Issues-in-Contemporary-Nigerian-Society.pdf>.

they are entered into evidence.¹²⁵ For their part, defense lawyers will seek to waylay this process by making what EFCC officials see as “frivolous objections” to the admissibility of each document, perhaps arguing that they are not formatted correctly or certified properly.¹²⁶ In some instances these objections succeed, embarrassing prosecutors.

Although ACJA limits the number and length of adjournments, many judges have not adopted or adhered to this requirement because their dockets are overcrowded.¹²⁷ Some Federal High Court judges hear more than 70 cases in a single day.¹²⁸ Many judges’ dockets are crowded with cases that in other countries would be heard by magistrate courts or resolved via alternative dispute resolution (ADR) mechanisms. Beyond Lagos and Abuja, however, ADR is underdeveloped and under-utilized, thereby forcing most legal disputes into already overcrowded courts. As a result, judges pragmatically use adjournments to gain the ‘bandwidth’ they may need to conclude particular cases or undertake time-sensitive actions on others. This practice often slows the progress of specific high-profile trials.

These delays and derailments fuel periodic calls for the creation of ‘special courts’ or criminal divisions to try corruption cases. In November 2019, President Buhari announced his support for pending legislation that would create such courts.¹²⁹ Similar legislation introduced in 2008, however, failed to pass.¹³⁰ Critics of the bill argue that special courts would lead to the ‘balkanization’ of Nigeria’s judiciary and note that Nigeria’s constitution does not provide for separate corruption courts.¹³¹ One EFCC prosecutor was wary of setting up special anti-corruption courts absent a constitutional amendment, citing a similar decision in Uganda that led to such courts’ convictions being appealed on constitutional grounds.¹³² Furthermore, prospective special courts almost certainly would be hamstrung by the same challenges (integrity, resourcing, external influence) endemic to Nigeria’s judiciary. At the state level, however, the High Court of Lagos State has already created a special offences court within its Ikeja Judicial Division to try economic crimes.¹³³

LEGAL STRATEGIES AND TACTICS

How do Nigerian anti-corruption agencies’ legal strategies and tactics impact high-level prosecutions? Operating amongst the many challenges outlined in the previous section, prosecutors must adapt and innovate as they attempt to prove their case—*beyond a reasonable doubt*—to impartial judges. Indeed, those interviewed for this research appeared to take a cafeteria-style approach to selecting which sections of which law they used to charge suspects. Because, as one EFCC official noted, there is no “one law that covers all aspects of economic and financial crimes”, prosecutors must leverage those best suited to each case.¹³⁴

In some cases, the traditional ‘prosecute, convict, seize’ strategy is a prosecutor’s most difficult avenue of approach, perhaps for evidentiary or political reasons. In such instances, anti-corruption agencies will—from the outset of an investigation—pursue a civil forfeiture strategy. This, according to a senior EFCC official, shifts the burden of proof

¹²⁵ Author interview with senior EFCC official, September 30, 2019.

¹²⁶ Ibid.

¹²⁷ Author interview with senior ICPC official, September 27, 2019.

¹²⁸ Ibid.

¹²⁹ “Buhari Asks NASS To Speedily Pass Special Crimes Court Bill”, Channels TV, November 19, 2019, <https://www.channelstv.com/2019/11/19/corruption-buhari-asks-nass-to-speedily-pass-special-crimes-court-bill/>.

¹³⁰ Laide Akinboade, “Senate Set to Create Anti-Corruption Court”, Vanguard, May 12, 2008, <https://allafrica.com/stories/200805120540.html>.

¹³¹ Author interview with EFCC prosecutor, September 24, 2019.

¹³² Ibid.

¹³³ Author interview with EFCC prosecutor, September 24, 2019; see also: “Lagos State High Court Specialised Divisions”, <https://lagosjudiciary.gov.ng/divisions.html>, accessed January 2, 2020.

onto the suspect, compelling them to provide evidence that unexplained wealth or significant assets were obtained legitimately.¹³⁵ Anti-corruption agencies' widespread use of such forfeitures is relatively new, having increased significantly since 2015, according to prosecutors.¹³⁶ Describing this innovation, one EFCC official remarked that, until the agency can rely on a foolproof criminal justice system, "prosecutors must be creative".¹³⁷

RESPONDING TO DELAYS, APPEALS, AND LEGAL CHALLENGES

Delaying tactics, procedural appeals, and legal objections can work to prosecutors' advantage, giving them additional time to strengthen their case, prepare key witnesses or strategize in response to defense counsels' motions. A normal part of any defense counsel's toolbox, delays should only be seen as an obstacle to effective anti-corruption law enforcement when they result in unduly long postponements or severely disrupt the prosecution's ability to present its case.

Prior to the passage of ACJA in 2015, corruption trials involving high-profile defendants were stymied by repeated delays, often resulting from procedural objections or the unexplained absence of defendants or their lawyers. This, according to one EFCC prosecutor, was "a major loophole".¹³⁸ Under ACJA, the number, timing, and justification for adjournments are clearly outlined.¹³⁹ For example, if a defendant fails to appear in court, a judge may only adjourn twice before proceeding with the trial *in absentia*.¹⁴⁰ The new law also stipulates that objections must be resolved during the course of the trial, instead of triggering additional adjournments.¹⁴¹ In this sense, Nigerian law has, in the words of a former senior EFCC official, become "more friendly to prosecutors" in recent years.¹⁴²

Prosecutors complain that these new requirements are too difficult for many judges to meet due to their grueling caseloads and crowded dockets. Some judges are also reluctant to try missing defendants *in absentia*, because of the relatively newness of the law.¹⁴³ Anti-corruption officials also lament how they have been constrained by the Nigerian Bar Association's (NBA) decision to challenge to a provision in the MLPA. After the NBA's court win, lawyers are no longer considered "designated non-financial entities" under the law, thereby exempting them from key regulatory provisions aimed at preventing money laundering. This has stymied efforts to hold lawyers more accountable for their professional conduct with respect to suspected financial crimes.

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RESPONDING TO DELAYS, APPEALS, AND INNOVATIVE LEGAL TOOLS

More and more, Nigerian corruption prosecutors are turning to a set of relatively new and still-evolving legal tools. These include informally-agreed, deferred prosecution arrangements, voluntary repayment of unexplained wealth,

¹³⁴ Author interview with senior EFCC official, September 24, 2019.

¹³⁵ Author interview with senior EFCC official, September 29, 2019.

¹³⁶ Author interview with EFCC prosecutor, September 24, 2019.

¹³⁷ Author interview with senior EFCC official, September 29, 2019.

¹³⁸ Author interview with EFCC prosecutor, September 24, 2019.

¹³⁹ Administration of Criminal Justice Act (2015), §396.

[https://www.policinglaw.info/assets/downloads/2015 Administration of Criminal Justice Act.pdf](https://www.policinglaw.info/assets/downloads/2015%20Administration%20of%20Criminal%20Justice%20Act.pdf).

¹⁴⁰ Administration of Criminal Justice Act (2015), §352.

¹⁴¹ Administration of Criminal Justice Act (2015), §396.

¹⁴² Author interview with former senior EFCC official, September 24, 2019.

¹⁴³ *Ibid.*

¹⁴⁴ Author interview with senior ICPC official, September 27, 2019.

restitution to victims, and non-custodial sentencing. Increased use of these tools is a reflection of the continuous and iterative innovation by anti-corruption law enforcement in Nigeria. Because some of these tools lack a firm legal basis, however, relying on them carries risks.

The use of non-custodial sentencing is notable. Though still limited in scope, it likely will increase following passage of the Correctional Service Act of 2019. The new law creates a non-custodial service within the Nigerian Correctional Service (formerly the Nigerian Prison Service) responsible for the administration of probation, parole, community service, restorative justice, and any other non-custodial measures.¹⁴⁵ With this new law in place, at least one EFCC prosecutor believes the use of non-custodial sentences will expand significantly over the next five years.¹⁴⁶ The prosecutor notes that some judges are already embracing the use of counseling and rehabilitation, as opposed to lengthy prison sentences, especially for young men convicted of cybercrimes.¹⁴⁷

Restitution is another tool seeing increasing use. The ICPC, for example, is piloting an investigative effort focused on Nigerian legislators' constituency projects. These projects, many of which function as poorly disguised conduits for political patronage, add up to N200 billion (\$556 million) annually.¹⁴⁸ In three months, ICPC investigators identified over 400 projects; most were partially implemented (started but later abandoned) while others never materialized.¹⁴⁹ The purpose of their investigation was not to gather evidence to charge legislators or contractors involved in the projects, but rather to exert pressure on them to finish the projects and provide restitution in the form of promised benefits to the communities meant to benefit from the projects. Investigators noted that failure to do so would open up legislators to prosecution under the CPC Act, which prohibits public office holders from using their position to confer undue advantage (i.e. political gain from constituency projects that are never implemented).¹⁵⁰

This innovative effort has already yielded results. One legislator linked to a project the ICPC found abandoned rapidly completed it, along with fifteen other unfinished or uninitiated projects, in order to avoid further scrutiny.¹⁵¹ The agency was also able to redistribute stockpiled items and equipment—including motorcycles, medical equipment, and agricultural tools—it found that legislators failed to hand over to their intended beneficiaries.¹⁵² ICPC officials noted that, if they opted to prosecute the legislators, this equipment would have been impounded for the duration of the trial, thus becoming unusable and of no benefit to the intended recipients. In the end, the agency chose restitution over prosecution.¹⁵³

ASSET RECOVERY AS A STRATEGY

The recovery of stolen assets is a key objective of Nigeria's anti-corruption agencies, especially the EFCC.¹⁵⁴ It views asset forfeiture, whether as a consequence of a criminal conviction or via separate civil legal action, as the primary mechanism for depriving suspects of the material gain from their alleged financial or economic crime.¹⁵⁵ Asset recovery appears to be one of the cornerstones of the Buhari government's anti-corruption strategy.¹⁵⁶ Since 2009, the Nigerian

¹⁴⁵ Nigerian Correctional Service Act (2019), §37, <https://placng.org/wp/wp-content/uploads/2019/08/Nigerian-Correctional-Service-Act-2019.pdf>.

¹⁴⁶ Author interview with EFCC prosecutor, September 24, 2019. ¹⁴⁷ Ibid.

¹⁴⁸ Matthew T. Page and Celestine Okeke, *Stolen Dreams: How Corruption Negates Government Assistance to Nigeria's Small Businesses*, (Washington DC: Carnegie Endowment for International Peace, 2019), 20, <https://carnegieendowment.org/2019/03/26/stolen-dreams-how-corruption-negates-government-assistance-to-nigeria-s-small-businesses-pub-78679>.

¹⁴⁹ Author interview with ICPC investigators, September 25, 2019.

¹⁵⁰ Author interview with ICPC investigators, September 25, 2019; Corruption Practices and Other Related Offences Act (2000), §19.

¹⁵¹ Author interview with ICPC investigators, September 25, 2019.

¹⁵² Ibid; Kunle Sanni, "ICPC recovers items worth N117 million from senator," *Premium Times*, August 4, 2019, <https://www.premiumtimesng.com/news/top-news/344835-icpc-recovers-items-worth-n117-million-from-former-senator.html>.

¹⁵³ Author interview with ICPC investigators, September 25, 2019.

government claims it has recovered over 70 percent of the naira denominated seizures—roughly N900 billion (\$2.5 billion in 2019 dollars) out of N1.28 trillion (\$3.56 billion) seized.¹⁵⁷ Reflecting this strategic shift in emphasis, the EFCC now painstakingly seeks to identify assets from the start of any corruption investigation in order to freeze them and see if they can be linked to a defendant's alleged predicate crimes.¹⁵⁸

Pre-ACJA, forfeiture provisions in the EFCC and CPC Acts as well as the AFFA were cautiously leveraged by prosecutors but were, according to one former senior official, “not well run-in or tested”.¹⁵⁹ Since ACJA, however, “civil forfeiture represents the second generation of modern forfeiture laws. It is obvious that the *in rem* character of civil forfeiture which avoids the need to prove a person's guilt beyond a reasonable doubt would have an obvious appeal to policymakers”, according to one Ministry of Justice official.¹⁶⁰

The increasing rate of asset forfeiture is, however, straining the capability of the EFCC and ICPC to manage and dispose of those assets. Whether they are buildings, active businesses, vehicles, or luxury goods, seized items must be accounted for, managed, maintained, and/or safely stored until they can be auctioned or repurposed for public gain. Unfortunately, many of these assets deteriorate before they can be sold, losing some or all of their value while agencies navigate bureaucratic and legal obstacles preventing their quick disposal.¹⁶¹ In a few instances, the EFCC has innovated by turning over seized buildings to other government agencies to use as office space; that way, the government can gain use from the property even if the legal process surrounding its final forfeiture has yet to be resolved.¹⁶²

A controversial new directive promulgated by the AGF in October 2019 likely will complicate anti-corruption agencies' asset forfeiture strategy, at least in the short term. The directive, the Asset Tracing, Recovery and Management Regulations of 2019, includes a stipulation that all non-conviction based forfeiture shall be conducted by the Office of the AGF, directing that law enforcement and anti-corruption agencies should transfer any such cases to this office for action.¹⁶³ The AGF quickly clarified the directive, however, stating that he was not usurping the powers of the agencies to seize assets, but rather asserting a coordinating and oversight function over asset forfeitures.¹⁶⁴ He also made clear his office would begin overseeing the recording, management and disposal of forfeited assets on behalf of all government agencies.¹⁶⁵

Looking longer term, some anti-corruption practitioners interviewed for this paper warned that anti-corruption agencies' increasing use of civil forfeiture may become more and more high-handed. If the courts or the general public come to view government forfeiture efforts as overzealous or politically motivated, the laws underpinning them could be

¹⁵⁴ National Anti-Corruption Strategy (NACS) 2017-2021. (Abuja: Federal Republic of Nigeria, 2016), 20. Accessed December 1, 2020 via: <https://auabc-rc.org/uploads/pdfs/NG/legal/National-Anti-Corruption-Strategy-NACS-2017-2021.pdf>.

¹⁵⁵ Author interview with senior EFCC prosecutor, September 24, 2019.

¹⁵⁶ Jan Philipp Wilhelm, “President Buhari's fight to recover Nigeria's stolen assets”, Deutsche Welle, May 19, 2018, <https://www.dw.com/en/president-buharis-fight-to-recover-nigerias-stolen-assets/a-43853588>.

¹⁵⁷ Author interview with senior EFCC official, September 23, 2019.

¹⁵⁸ Ibid.

¹⁵⁹ Author interview with former senior EFCC official, September 24, 2019.

¹⁶⁰ “Understanding the Proceeds of Crime Bill”, Leadership, October 11, 2018, <https://leadership.ng/2018/10/11/understanding-the-proceeds-of-crime-bill/>.

¹⁶¹ Ibid.

¹⁶² Ibid; Kunle Sanni, “VON takes over building seized from Nigeria's ex-military chief accused of corruption”, Premium Times, July 17, 2019, <https://www.premiumtimesng.com/news/top-news/341477-von-takes-over-building-seized-from-nigerias-ex-military-chief-accused-of-corruption.html>

¹⁶³ Eniola Akinkuotu, “Malami reduces EFCC, ICPC's powers, scraps asset recovery committees”, Punch, November 7, 2019, <https://punchng.com/malami-reduces-efcc-icpcs-powers-scraps-asset-recovery-committees/>.

challenged or adverse judicial rulings could make them more difficult to use in high-level corruption cases.

The expanding use of asset forfeiture is helping to make anti-corruption law enforcement in Nigeria more effective and impactful. This strategy has exposed new pitfalls, such as anti-corruption agencies' lack of asset management capacity. There is also a risk that prosecutors could become overconfident and conduct hasty asset seizures that are vulnerable to legal challenge. That said, asset forfeiture is a leading example of how anti-corruption law enforcement is becoming more pragmatic and innovative in its approach.

'QUICK WIN' STRATEGIES

An enduringly popular strategy is attempting to record speedy resolution of corruption cases (quick wins), according to prosecutors interviewed for this study. Agencies pursue quick wins, according to them, in order to avoid getting bogged down in years of litigation, to justify additional resources, and to show senior officials, the public, and international partners that they are making progress in the fight against corruption.

To this end, the EFCC has increased its use of plea bargains, especially in cybercrime cases. Though plea bargains have been informally used for decades and introduced into Lagos State law in 2007, the 2015 codification of plea bargains as part of the ACJA has popularized their use among prosecutors.¹⁶⁶ EFCC prosecutors also like plea bargains because they save time and resources and frequently result in shorter prison sentences for defendants, especially for those involved in cybercrime.¹⁶⁷ They note that plea bargains are carefully entered into and that restitution is almost always required for any deal.¹⁶⁸

Quick win tactics are not without their detractors. The EFCC, for example, has been criticized for arresting suspects before it has gathered enough evidence to charge them, playing, in the words of one anti-corruption expert, "too fast and loose" in building cases.¹⁶⁹ Likening the EFCC's fast-paced arraignment of suspects to serving undercooked food, the expert noted that the EFCC sometimes levels charges before properly carrying out the investigations to support them.¹⁷⁰ The EFCC also reportedly seeks to get its cases heard in front of 'friendly' judges it considers staunchly anti-corruption, in order to maximize its chances of a successful convictions.¹⁷¹ This strategy can falter, however, if a conviction is appealed, because at the appeals stage a panel of three judges make a ruling, rather than a single, 'friendly' judge.¹⁷²

Seeking quick wins, either by astutely leveraging legal tools like plea bargains or seeking to try cases in front of sympathetic judges, are seen by Nigeria's anti-corruption agencies as a pathway toward more effective law enforcement. If they rush investigations or prosecutions in the pursuit of quick wins, agencies could be jeopardizing cases or increasing the chance convictions would be overturned on appeal. This suggests such a strategy should be used carefully and sparingly.

¹⁶⁴ Yusuf Alli, "EFCC's, ICPC's asset recovery powers remain, says Malami", The Nation (Nigeria), November 8, 2019, <https://thenationonline.ng/efccs-icpcs-asset-recovery-powers-remain-says-malami/>.

¹⁶⁵ Ibid.

¹⁶⁶ Author interview with senior EFCC official, September 24, 2019; Author interview with senior EFCC official, September 29, 2019; Administration of Criminal Justice Law (Lagos State, 2007), §75.

¹⁶⁷ Author interview with senior EFCC official, September 29, 2019.

¹⁶⁸ Author interview with EFCC prosecutor, September 24, 2019.

¹⁶⁹ Author interview with anti-corruption expert, September 30, 2019.

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

¹⁷² Author interview with anti-corruption expert, September 30, 2019.

INSTITUTIONAL ARCHITECTURE

How does the institutional architecture of Nigeria’s anti-corruption agencies impact their ability to conduct effective law enforcement? Through a number of factors, including their internal dynamics and friction points, the caliber of their senior leadership cadre, staffing and budget constraints, and their level of interagency cooperation. The independence and integrity of the judiciary—another critical component of Nigeria’s anti-corruption landscape—is also important.

1. INTERNAL DYNAMICS AND STRUCTURES

Internal cooperation within each of Nigeria’s anti-corruption agencies is, for the most part, excellent. Different elements of the EFCC, in particular, cooperate quite well.¹⁷³ Every senior EFCC officer essentially works on a nationwide level, routinely communicating and sharing tasks with colleagues at the EFCC’s headquarters in Abuja and the agency’s other locations.¹⁷⁴ Zonal offices willingly pay travel costs for their staff, even if they are traveling to another part of the country to testify.¹⁷⁵ Internal correspondence takes place electronically, with a high volume of operational orders transmitted via email to ensure they are rapidly actioned.¹⁷⁶ State-level ICPC offices also cooperate well with the agency’s Abuja headquarters, routinely following through on their directives. State directors can conduct their own investigations and prosecutions, subject to the approval of the ICPC chairman, but must coordinate them with their colleagues at headquarters.¹⁷⁷

Interface between investigators and prosecutors is especially important, as closer cooperation results in more coherent and comprehensive prosecutions that are more likely to succeed in court. Prosecutors’ experiences in each of the three high-profile cases examined in this report (see pages 16-18) suggest that despite assertions that intra-agency interactions are seamless, cooperation between investigators and prosecutors has been inadequate in recent years. That said, both the EFCC and ICPC appear to understand the need to improve these interactions. In 2019, both agencies integrated prosecutors into their investigative teams in order to advise and guide investigators as they gather evidence to build cases.¹⁷⁸ Because this is a relatively new arrangement it is likely that sustained and systematic communication and cooperation between investigators and prosecutor will take time to deepen and develop.

Workflow at the CCB, in contrast, is more unwieldy, anchored as it is by an inefficient, paper-based asset declaration process. All asset declarations are stored centrally in hard copy, though in recent years they have been digitized and stored on servers in Abuja.¹⁷⁹ Its records are kept indefinitely—even after officials die—because there is no law to govern their retirement and disposal.¹⁸⁰ This has left the CCB with tens of thousands of paper documents to organize and manage, making its verification and investigation work more difficult.

Effective anti-corruption law enforcement in Nigeria does not appear to be significantly undermined by intra-agency cooperation challenges. While red tape and bureaucratic friction can slow down their workflow—as it does in many other governments around the world—Nigeria’s anti-corruption agencies are generally efficient and tightly knit. Partially attributable to their small size and hands-on leadership, this collaboration also reflects well on these agencies’ values and organizational culture.

¹⁷² Ibid.

¹⁷³ Author interview with current and former senior EFCC officials, September 23-30.

¹⁷⁴ Author interview with senior EFCC official, September 29, 2019.

¹⁷⁵ Ibid.

¹⁷⁶ Ibid.

¹⁷⁷ Text message received by author from senior ICPC official, April 6, 2020.

¹⁷⁸ Abuja roundtable participant comments, March 12, 2020.

¹⁷⁹ Author interview with senior CCB official, September 25, 2019.

¹⁸⁰ Author interview with senior CCB official, September 25, 2019.

2. CALIBER OF LEADERSHIP

The capacity and effectiveness of Nigeria's anti-corruption agencies are to a large extent a reflection of the skill and integrity of their leadership cadre and veteran employees. This stems from the fact that they remain relatively small and close-knit organizations. Like other governments bodies, or indeed Nigerian society writ large, they are also very hierarchical. Few decisions are delegated to subordinates, creating unnecessary bottlenecks and delays. Even skilled and dynamic agency leaders tend to value personal loyalty over institutional cohesion; they often replace, remove, or marginalize officers deemed too close to their predecessors.¹⁸¹

In the Nigerian context, such highly personalized institutional leadership is a double-edged sword. If led well, agencies tend to show sudden performance improvement despite long-standing institutional challenges. Led poorly, they generally atrophy or behave problematically. As one senior ICPC official noted, the recent appointment of a capable new chairman immediately changed the tone within the organization; before the new chairman, he complained, staff attitude was poor and a number of "bad eggs" within the commission showed indiscipline.¹⁸²

Yet, even if top leaders are capable, their idiosyncrasies, leadership style, and political connections affect agencies' institutional culture and operational focus. In the case of the EFCC, for example, founding chairman Nuhu Ribadu was a risk-taker who had the benefit of building the institution from the ground up and staffing it with "his foot soldiers".¹⁸³ Farida Waziri was more of a political pawn, appointed to rein in Ribadu's creation. Ibrahim Lamorde, in contrast, was more pragmatic, seniority-conscious, and cautious about his investigations, according to one anti-corruption expert.¹⁸⁴ Veteran anti-corruption investigator Ibrahim Magu exhibited a more prescriptive, personalized, and public-facing style of leadership that differed from his three predecessors.¹⁸⁵ Looking ahead, the effectiveness and dynamism of Nigeria's anti-corruption agencies, and the prosecutions they pursue, will continue to vary depending on the caliber of their top leaders.

3. STAFFING AND BUDGET LIMITATIONS

Financial and manpower shortfalls are also key challenges facing Nigerian anti-corruption institutions. Cash-strapped and handicapped by Nigeria's byzantine budgeting and appropriation process, they struggle to fund their day-to-day operations, nevermind build long-term capacity. Competing narratives describe the reasons for this funding shortfall. One posits that the National Assembly systematically underfunds anti-corruption agencies in order to keep them weak. Another dismisses this explanation as too simplistic, pointing to the fact that the EFCC, ICPC, and CCB currently craft and present their own budget requests to the National Assembly.¹⁸⁶ If their budgets are too low, they should ask for and seek to justify more funding. Furthermore, anti-corruption agencies should press the executive branch to release already budgeted funds to them more rapidly and fully, as it habitually fails to do so. Yet another narrative suggests that both issues are problematic and that anti-corruption agencies should be financed by a first-line expenditure (i.e. be exempt, like the judiciary, from presenting a budget to the National Assembly for approval) or be allowed to keep a certain percentage of the assets they seize.¹⁸⁷

Of the three main anti-corruption agencies, the CCB is most visibly impacted by a lack of funding (see page 11). Spread across multiple floors of the ramshackle Federal Secretariat complex, the CCB is still a small-scale operation four decades after it was established. "We are squatting" observed one senior CCB official, noting the agency's

¹⁸¹ Author interview with former senior EFCC official, September 29, 2019.

¹⁸² Author interview with senior ICPC official, September 27, 2019.

¹⁸³ Author interview with anti-corruption expert, September 30, 2019.

¹⁸⁴ Ibid.

¹⁸⁵ Ibid.

¹⁸⁶ Author interview with former senior EFCC official, September 25, 2019.

¹⁸⁷ Author interview with senior ICPC officials, September 27, 2019.

¹⁸⁸ Author interview with senior CCB official at the Federal Secretariat in Abuja, September 25, 2019.

overcrowded, ill-equipped office spaces did not even have functioning toilet facilities nearby.¹⁸⁸ A contract to build a new CCB headquarters complex became a source of strife between the agency and the National Assembly.¹⁸⁹

Funding shortages also constrain the CCB's core functions, preventing it from verifying more than a tiny percentage of the asset declarations it receives. This is significant because asset verification not only leads to prosecution opportunities, it also has a strong deterrent and preventive effects. A senior official intimated that the CCB's financial woes were part of a deliberate strategy by legislators to limit its effectiveness because "we have secrets on everybody—including them."¹⁹⁰

While budget shortfalls beget some staffing challenges, others stem from problematic recruitment and management practices. Recruitment of new staff is too often influenced by "personal and sectional interests" than "professional human resources principles".¹⁹¹ At the two smaller anti-corruption agencies—the ICPC and CCB—recruitment happens less regularly than at the larger EFCC. These hiring decisions are heavily influenced by these agencies' board members, who are presidential political appointees. One of the CCB's board members ('commissioners'), for example, previously served as a state coordinator for President Buhari's 2015 election campaign.¹⁹² A senior CCB official noted their inability to influence who was hired into their own department and thus ensure they have the right experience and qualifications; instead, "board members will decide".¹⁹³

The EFCC, on the other hand, does not suffer from a personnel shortage. On the contrary, some EFCC officials interviewed for this paper commented that the agency was growing "too large" and is "spread too thin", having expanded from roughly 500 staff fifteen years ago to over 3,000 in 2019.¹⁹⁴ Most EFCC officials interviewed for this paper believed that the rapid growth of the agency's staff cadre has diminished the elite character of the agency and led to lower professional standards especially among lower ranking officers.¹⁹⁵ One former official dismissed this rationale, arguing that the EFCC is not a large agency by Nigerian bureaucratic standards and is not too unwieldy if it is managed well.¹⁹⁶

4. INTERAGENCY RELATIONSHIPS

Good interagency cooperation is widely regarded as a feature of effective anti-corruption law enforcement. Yet practitioners and experts interviewed for this paper broadly agreed that such cooperation among Nigerian anti-corruption institutions is generally poor and infrequent.¹⁹⁷ Though rarely, if ever, adversarial, Nigeria's three main anti-corruption agencies tend to stovepipe information flows and strictly limit their day-to-day operational and investigatory collaboration. This shortcoming has several causes, including the EFCC protectiveness of its preeminent status, agencies' overlapping mandates and missions, and the idiosyncrasies and egos of senior leaders.

The EFCC ultimately sets the tone for interagency cooperation and greatly determines its scope and scale. The EFCC's

¹⁸⁹ Ismail Mudashir, "Why CCB Abandoned N9 billion Headquarters", Daily Trust, January 17, 2017, <https://www.pressreader.com/nigeria/daily-trust/20170117/281547995590022>.

¹⁹⁰ Author interview with senior CCB official, September 25, 2019.

¹⁹¹ Author interview with former senior EFCC official, September 25, 2019.

¹⁹² Senate of the Federal Republic of Nigeria, "Report of the Senate Committee on Ethics, Privileges and Public Petitions on the Screening of Nominees for the Code of Conduct Bureau", March 2018, <https://placng.org/wp/wp-content/uploads/2018/10/Report-of-the-Senate-Committee-on-Ethics-Privileges-and-Public-Petitions-on-the-Screening-of-Nominees-for-the-Code-of-Conduct-Bureau.pdf>.

¹⁹³ Author interview with senior CCB official, September 25, 2019.

¹⁹⁴ Author interview with current and former EFCC officials, September 24-29, 2019.

¹⁹⁵ Author interview with one current and one former EFCC official, September 24, 2019.

¹⁹⁶ Author interview with a former EFCC official, September 25, 2019.

¹⁹⁷ Author interviews with current and former officials from the EFCC, ICPC and CCB, September 23-30, 2019.

¹⁹⁷ Author interviews with current and former officials from the EFCC, ICPC and CCB, September 23-30, 2019.

perception that it should playing a leading role in anti-corruption law enforcement stems both from the coordinating mandate mentioned in its establishing act and the deference that its sister agencies have traditionally shown it.¹⁹⁸ Nevertheless, because it is the best resourced and most dynamic agency, the EFCC arguably has the least to gain from greater cooperation and information sharing with other agencies. As a result, its officials believe cooperation is beneficial on an “as necessary” rather than systematic basis.¹⁹⁹

Information exchange only takes place in response to specific, often urgent, requests, according to one former senior official.²⁰⁰ Such cooperation—typically relating to ongoing investigations—usually takes place at the very highest level or at the state director level.²⁰¹ Additionally, the ICPC, police, or State Security Service occasionally pass cases to the EFCC, either because those cases are outside their mandate or because they feel the EFCC is better positioned to investigate and prosecute them.²⁰²

Outside the EFCC, many regret the limited extent of interagency cooperation. According to a CCB official, “collaboration has withered...there is very little interagency cooperation taking place compared to a couple years ago. Anti-corruption agencies are handicapped by turf wars, infighting and unnecessary competition.”²⁰³ A senior EFCC officer disagreed with this assessment, playing down interagency squabbles while acknowledging that they arise and averring that agencies work together “when they need to, to get the job done”.²⁰⁴

The EFCC’s apparent reluctance to share information stems from its belief that Section 6 (c), the agency’s establishing act, which states that it shall be responsible for “the co-ordination and enforcement of all economic and financial crimes laws and enforcement functions conferred on any other person or authority”, makes all other anti-corruption agencies effectively subordinate to it.²⁰⁵ One senior EFCC official worried, for example, that the ICPC should pass certain cases that they believe are outside its mandate—such as those involving money laundering—to the EFCC for further investigation and prosecution.²⁰⁶ That said, another senior official suggested that the ICPC could actually help the EFCC, which has taken on more cybercrime cases in recent years, by taking the lead on more political corruption cases.²⁰⁷ Increased burden sharing may be difficult for agency heads to stomach, as they seek to maximize good publicity, presidential kudos, and personal prestige that comes with big anti-corruption victories.²⁰⁸

The ICPC, in contrast, has recently reinvigorated its collaboration and information sharing efforts. This change has been spearheaded by its chairman Bolaji Owasanoye who previously served as executive secretary of the Presidential Advisory Committee Against Corruption (PACAC). This sweeping cultural change at the agency has sent a strong signal to other agencies that the ICPC is willing to partner with them, according to a senior agency official.²⁰⁹ It is also seeking to formalize memoranda of understanding that spell out the modalities for increased information sharing with other agencies such as the CCB, NFIU, Customs and Immigration.²¹⁰

¹⁹⁸ Economic and Financial Crimes Commission (Establishment) Act of 2004, §1 (1c).

¹⁹⁹ Author interview with senior EFCC official, September 29, 2019. ²⁰⁰ Author interview with former senior EFCC official, September 24, 2019.

²⁰¹ Author interview with senior EFCC official, September 25, 2019.

²⁰² Ibid.

²⁰³ Author interview with CCB official, February 20, 2018.

²⁰⁴ Author interview with senior EFCC official, February 23, 2018.

²⁰⁵ Author interview with former senior EFCC official, September 24, 2019; Economic and Financial Crimes Commission Establishment Act (2004), §6(c).

²⁰⁶ Author interview with senior EFCC official, September 29, 2019.

²⁰⁷ Author interview with senior EFCC official, September 24, 2019.

²⁰⁸ Author interview with senior EFCC official, September 30, 2019.

²⁰⁹ Author interview with senior ICPC official, September 27, 2019.

²¹⁰ Ibid.

Meanwhile, two peripheral but well respected entities—TUGAR and PACAC have played a leading role promoting information sharing and better interagency cooperation. President Obasanjo’s government created TUGAR to give him a mechanism for assessing and bettering the coordination of his government’s anti-corruption efforts (see page 13). TUGAR chairs the Inter-Agency Task Team (IATT), an information sharing and collaboration forum attended by representatives of virtually every government entity with anti-corruption equities. Founded with nine participating entities, the IATT has since expanded to 21.²¹¹ For several years, TUGAR attempted to facilitate institutionalized information sharing agreements between government entities involved in anti-corruption work but has since shifted its work toward encouraging ad hoc sharing on thematic areas of mutual interest. Attitudes toward interagency cooperation vary significantly by agency and depend on agencies’ individual mandates and the personality of those involved in sharing information, according to TUGAR.²¹²

Established by President Buhari in 2015, PACAC has championed collaboration and the adoption of best practices by anti-corruption agencies, lending the President’s personal imprimatur to its efforts. Akin to a small, specialized think-tank, PACAC is a seven-person advisory committee that has produced policy and procedural guidance—such as case management, asset forfeiture and plea bargain manuals—to support the work of Nigeria’s anti-corruption agencies. Like TUGAR, it has also attempted to convene interagency roundtables on information sharing but has gained little traction.²¹³

To conclude, Nigeria’s anti-corruption agencies do not cooperate particularly well, especially at the working level. This lack of interagency cooperation is a feature of Nigeria’s sprawling government bureaucracy, similar to many other countries. These agencies, whose missions and mandates somewhat overlap, quietly compete with each other for political goodwill, dwindling budgetary allocations and professional talent. Even with major structural changes, such as the creation of permanent joint units or a rotational staffing system, interagency cooperation will remain an obstacle to more effective anti-corruption law enforcement.

5. INDEPENDENCE AND PROFESSIONALISM OF THE JUDICIARY

Judicial integrity and independence are key factors impacting the effectiveness of anti-corruption law enforcement. Yet in Nigeria they remain lacking. Judicial independence in Nigeria ranks lower than in Iran and Russia, according to the World Economic Forum’s Global Competitiveness Report.²¹⁴ It also ranks very poorly in the World Justice Project’s Rule of Law Index.²¹⁵ According to the U.S. State Department:

Although the constitution and law provide for an independent judiciary, the judicial branch remained susceptible to pressure from the executive and legislative branches. Political leaders influenced the judiciary, particularly at the state and local levels. Understaffing, underfunding, inefficiency, and corruption prevented the judiciary from functioning adequately. Judges frequently failed to appear for trials. In addition, the salaries of court officials were low, and they often lacked proper equipment and training...There was a widespread public perception that judges were easily bribed and litigants could not rely on the courts to render impartial judgments. Citizens encountered long delays and received requests from judicial officials for bribes to expedite cases or obtain favorable rulings.²¹⁶

²¹¹ Author interview with TUGAR officials, September 30, 2019.

²¹² Ibid.

²¹³ Author interview with EFCC prosecutor, September 24, 2019.

²¹⁴ Global Competitiveness Report 2019 (Geneva: World Economic Forum, 2019), http://reports.weforum.org/global-competitiveness-report-2019/competitiveness-rankings/?doing_wp_cron=1576147223.7066180706024169921875#series=EOSQ144.

²¹⁵ Rule of Law Index: Nigeria, (Washington DC: World Justice Project, 2019), <http://data.worldjusticeproject.org/pdf/rule-of-law-index-NGA.pdf>.

²¹⁶ Nigeria 2018 Human Rights Report (Washington DC: U.S. Department of State, 2018), <https://www.state.gov/wp-content/uploads/2019/03/Nigeria-2018.pdf>, 14.

Many Nigerian legal scholars, retired judges, and senior lawyers have criticized the judiciary for its lack of independence, probity, and professionalism. In the words of one scholar:

*The terrain of the Nigerian judiciary is dotted by many ills. Incidents of bribery, inordinate delays in adjudication, high cost of obtaining justice, abuse of court process and indiscriminate and arbitrary issuing of injunctions including 'ex parte' orders, go to show that the Nigeria judiciary is far from being the hope of Nigerian common masses. Other problems stem from nepotistic and sectional composition of the Federal Judiciary, lack of facilities, serious allegations of corruption, ineptitude, laziness, incompetence against judicial officers, charges of abuse of office against the judges. The effect is a deep loss of faith in the judicial process and the courts.*²¹⁷

Looking beyond these fundamental challenges, anti-corruption practitioners note that many judges lack familiarity—and thus require training—on money laundering, other complex issues that arise during corruption trials, and new tools such as probation and non-custodial sentences.²¹⁸ They also note that some judges—particularly those based outside Abuja or Lagos, or the state-level—remain skeptical or even hostile toward anti-corruption prosecutions, viewing them as examples of federal interference in sub-national affairs.²¹⁹ Until some judges' parochial hostility toward anti-corruption prosecutions diminishes, prosecutors will continue to face an uphill battle in many courtrooms.

In summary, judicial independence and integrity cannot be divorced from the issue of effective anti-corruption law enforcement. Indeed, anti-corruption practitioners depend on judges to complete the process which often is the product of years of painstaking investigation and prosecution. And even when they rule against prosecutors, skilled and objective judges sometimes impart useful feedback that anti-corruption agencies can leverage to strengthen future cases. Unfortunately, the level of judicial independence and integrity ranks far below international standards, a reality that makes effective anti-corruption law enforcement even more challenging.

DEFENDANT CHARACTERISTICS

What categories of individuals become the focus of high-level corruption prosecutions in Nigeria? A recent qualitative analysis of 100 high-level corruption prosecutions categorizes defendants into five groupings: former governors; former ministers and presidential advisers; senators; judges; and others (e.g. other legislators, agency heads, other high-ranking officials).²²⁰

Across the 100 cases assessed, this defendant typology breaks down as follows:

²¹⁷ Ikenga K.E. Oraegbunam, 'Judicial Independence: A Recipe for True Democracy in Nigeria' in E.T. Ogunjide and D.O. Popoola (eds.), *Oiling the Wheels of Justice* (Vol. 1): Essays in Honour of Sunday Olorundahunsi, Chief Registrar of the Supreme Court of Nigeria (2010-2014), (Abuja: Kings Red Wool Multiservice Ltd., 2014), pp. 56-76.

²¹⁸ Author interview with EFCC prosecutor, September 24, 2019; At least one former practitioner finds this purported lack of familiarity puzzling given the significant amount of training judges have received—and continue to receive—on corruption-related topics.

²¹⁹ Author interview with senior ICPC officials, September 27, 2019.

²²⁰ A Compendium of 100 High Profile Corruption Cases in Nigeria, (Lagos: Human and Environmental Development Agenda, 2018).

²²¹ *Ibid.*, 76.

²²² *Ibid.*, 80.

TOP 100 HIGH-PROFILE CORRUPTION CASES: BY DEFENDANT ²²¹

Former Governor	44
Others (Agency Heads, Senior State-Level Officials. etc.)	39
Former Minister / Presidential Adviser	12
Senator	3
Judge	2

These defendants were charged by prosecutors with a wide array of offenses under several different anti-corruption laws. Looking across the 100 cases, here is a list of how many cases centered around each primary charge:

TOP 100 HIGH-PROFILE CORRUPTION CASES: BY DEFENDANT ²²²

Fraud	40
Money Laundering	28
Corruption	11
Misappropriation	9
Embezzlement	3
Other Charges	9

By definition, high-profile corruption cases in Nigeria typically center on ‘big fish’: individuals who occupy, or previously held, senior government positions. A smaller share of those prosecuted are officials who could be considered ‘small fry’: individuals who are not household names but engaged in high-dollar corruption because of their privileged political

connections (i.e. aides) or high degree of access to public funds (i.e. contracting officials). The typology above shows that anti-corruption law enforcement in Nigeria is not skewed in its pursuit of particularly categories of high-level officials. It is unclear, however, whether this focus belies a deliberate strategy—or bias—on the part of the EFCC in particular or is more of an organic reflection of Nigeria’s target-rich corruption environment.

EXTERNAL INFLUENCES

As in all countries, anti-corruption agencies in Nigeria are exposed to undue external pressures. Though usually resolute in response to these influences, they occasionally become so acute that the leaders and staff of these agencies succumb to them, often because they lack the wherewithal and protections needed to resist them. This section examines how this unhelpful interference is vectored and by whom.

THE INFLUENCERS

Interference by actors aiming to sabotage a specific anti-corruption investigation, prosecution, or other type of enforcement action is common in the Nigerian context. This type of negative interference can be exerted by the targets of law enforcement actions themselves or their lawyers, political supporters, business associates, ethnic kinspeople, friends, relatives, or even sympathetic law enforcement officials.

Historically, political influence over anti-corruption investigations and prosecutions reached their height during the controversial tenure of Attorney General Michael Aondoakaa (2007-2010).²²³ He removed the EFCC’s founding chairman, Nuhu Ribadu, resulting in the appointment of Farida Waziri, allegedly at the behest of several governors under EFCC investigation, according to U.S. diplomats at the time.²²⁴ Aondoakaa also allegedly interfered with key corruption cases and frustrated a UK criminal investigation into former Delta State Governor James Ibori.²²⁵

Political interference lessened but remained a significant challenge during the Jonathan presidency (2010-2015). In March 2013, Jonathan nullified one of the EFCC’s highest profile prosecutorial successes—albeit constitutionally—by pardoning former Bayelsa State governor Diepreye Alamieyesiegha.²²⁶ Jonathan’s decision, which took the EFCC by surprise, embarrassed and demoralized the agency and drew rebukes from the U.S. and UK governments.²²⁷ Ribadu called it the “final nail” in the coffin in the fight against corruption under Jonathan.²²⁸

Though direct interference is unmistakable, high-level political pressure is often subtly conveyed; top anti-corruption officials carefully observe the ‘body language’ of the President and Attorney General as it relates to politically sensitive high-level cases they are pursuing.²²⁹ As one ICPC investigator recounted, hearing from a senior government official that “the President is interested in this case” spreads fear among working-level staff.²³⁰ Critics argue that successive

²²³ Author interview with former senior EFCC official, September 24, 2019.

²²⁴ “New EFCC Chair Appointed, Ex-Governors Rumored Involved”, U.S. Embassy Abuja, May 16, 2008.

²²⁵ Author interview with former senior EFCC official, September 24, 2019; “Ibori Case Hampered by EFCC-AG Rift”, U.S. Embassy Abuja, October 26, 2007.

²²⁶ “Nigeria pardons Goodluck Jonathan ally, Alamieyesiegha”, BBC News, March 13, 2013, <https://www.bbc.co.uk/news/world-africa-21769047>.

²²⁷ Author interview with former senior EFCC official, September 29, 2019; Adam Nossiter, “U.S. Embassy Criticizes Pardons in Nigerian Corruption Cases”, New York Times, March 15, 2013, <https://www.nytimes.com/2013/03/16/world/africa/us-embassy-criticizes-pardons-in-nigeria-corruption-cases.html>; Nnena Ibeh, “Nigerian Government silent on British request to extradite Alamieyesiegha”, Premium Times, April 3, 2013, <https://www.premiumtimesng.com/news/128107-nigerian-government-silent-on-british-request-to-extradite-alamieyesiegha.html>.

²²⁸ Bolaji Abdullahi, *On a Platter of Gold: How Jonathan Won and Lost Nigeria* (Lagos: Prestige, 2017), 339.

²²⁹ Author interview with former senior EFCC official, September 24, 2019.

²³⁰ Author interview with senior ICPC official, September 27, 2019.

presidents have used the EFCC in particular to go after their political rivals or have pressured it to turn a blind eye to their allies' misdeeds.²³¹

Moreover, strategic decisions about whether, when, or how to prosecute—often taken by agency heads, the Attorney General or influenced by the Presidency itself—shape the outcome of high-level corruption prosecutions. In June 2019, for example, the EFCC stepped back from its role in prosecuting former Gombe State governor Danjuma Goje, handing the prosecution over to the Office of the AGF.²³² The AGF then withdrew criminal charges from Goje, a ruling party senator who days earlier had dropped his ambition to run for the senate presidency and endorsed the candidate President Buhari reportedly preferred.²³³

TYPES OF INFLUENCE

Pressure directed toward anti-corruption law enforcement manifests itself in a variety of ways, from the overt and unashamed to the subtle and clandestine. Overt pressure—whether exerted directly or indirectly through media coverage—is common. A senior ICPC official recounted an incident when the agency arrested a federal permanent secretary and all of the other federal permanent secretaries descended on the anti-graft agency's headquarters to “rescue” their colleague.²³⁴

High-level corruption prosecutions can be initiated or promoted for partisan purposes. Although a less common and more difficult to execute strategy, this type of interference can nevertheless damage the credibility, integrity and effectiveness of anti-corruption efforts in Nigeria. Prosecutions that gain momentum in response to partisan considerations should be viewed with suspicion as they may be for settling political scores.

Junior personnel, many of whom earn meager salaries and may be early in their careers, are especially vulnerable to threats and/or bribes by senior officials or powerful outsiders. If compromised, these junior bureaucrats can become potent insider threats to sensitive anti-corruption investigations and prosecutions. This is a real concern at the EFCC, which has grown in size over the last several years, evolving from a small elite agency whose officers often knew each other personally to a larger bureaucracy where newer recruits outnumber veterans from the organization's formative days.²³⁵

Safeguarding key witnesses is another prosecutorial challenge as Nigeria lacks any sort of witness protection program. Compromising prosecutors is also an especially effective tactic, since a defendant automatically walks free if they fail to prove their case beyond a reasonable doubt. Prosecutors are especially vulnerable to intimidation: one prosecutor interviewed remarked that they were reluctant to travel to Lagos to try cases because they feel less safe from intimidation and attacks made to look like accidents than they do in Abuja.²³⁶ One agency removed all distinguishing markings from its staff vehicles after its staff were targeted for bribery and intimidation during the recent prosecution of a very senior official.²³⁷

²³¹ Onyema et al, 5; Patrick E. Igbinovia and Blessing A. Edobor-Igbinovia, *The Economic and Financial Crimes Commission in Nigeria: An Appraisal* (Ibadan: Safari Books, 2014), 71; Sheriff Folarin, “Corruption, Politics, and Governance in Nigeria” in Rotimi Ajayi and Joseph Olayinka Fashagba (eds), *Understanding Government and Politics in Nigeria* (Omu-Aran, Nigeria: Landmark University, 2014), 458.

²³² Timileyin Omilana and Mathew Ogune, “EFCC denies withdrawing alleged fraud case against Goje”, *The Guardian* (Nigeria), June 8, 2019, <https://guardian.ng/news/efcc-denies-withdrawing-alleged-fraud-case-against-goje/>.

²³³ Jonathan Nda-Isaiah, “Why Govt Withdrew Criminal Charges Against Me - Senator Goje”, *Leadership*, July 19, 2019, <https://allafrica.com/stories/201907190053.html>.

²³⁴ Author interview with senior ICPC official, September 27, 2019.

²³⁵ Author interview with senior EFCC official, September 24, 2019.

²³⁶ Author interview with EFCC prosecutor, September 23, 2019.

²³⁷ Author interview with senior anti-corruption agency official, September 26, 2019.

²³⁸ Author interview with senior ICPC official, September 27, 2019.

CAPACITY TO RESIST

Nigeria's anti-corruption agencies' apparent vulnerability to political interference should be qualified in two important ways. First, all have demonstrated some degree of resilience to outside pressure, depending on the integrity and influence of their chairpersons and board members. In the words of one senior agency official, if these individuals become conduits for political pressure, "there is nothing staff can do to resist".²³⁸ As the best resourced and most empowered, the EFCC has arguably demonstrated the greatest capacity to investigate and prosecute senior officials irrespective of political considerations. Meanwhile, multiple interviewees noted that the more marginalized, underfunded CCB has historically been more vulnerable to political pressure.²³⁹

Second, anti-corruption agencies appear to have taken political realities in stride as their investigation and prosecution timelines sometimes leverage them advantageously. This strategic patience is a particular strength of the EFCC, which appears to recognize that high-level corruption prosecutions are less likely to be derailed when their targets are no longer in office or associated with the party in power. In other words, the EFCC arguably has innovated in order to overcome a significant obstacle by targeting high-profile suspects when they are most vulnerable rather than when they are politically untouchable. Given the dynamic nature of Nigerian elite politics, the agency must continuously adapt as its targets climb or suddenly descend the country's political ladder. One risk associated with this strategy is that there is no formal mechanism or process for ensuring that prosecutions deferred for political reasons are actually initiated at a later date.

Politically sensitive corruption cases that involve perfunctory investigations, summary prosecutions, rapid trials, and quick convictions raise red flags that suggest interference. A recent example is the uncharacteristically swift investigation, arrest, and prosecution of individuals linked to a firm that won a multibillion-dollar award against the Nigerian government at an international arbitration tribunal.²⁴⁰ Political embarrassment of the size and irreversibility of the award was an "overriding factor" in the speed of the prosecution and conviction, according to one legal scholar. Another senior official described such prosecutions as "high handed" and "not strategic at all", arguing that the trials will not be seen as credible and objective when similar cases are "bogged down for years".²⁴¹

Other policy imperatives may also affect decisions to undertake high-level corruption prosecutions. Since 2015, Nigeria's cash-strapped government has increasingly seen the seizure and forfeiture of stolen assets as a mechanism for generating funds to help ease the country's budgetary challenges. President Buhari's Executive Order 6 of 2018 was widely seen within the EFCC as a set of "marching orders" directing the agency to seize more proceeds of corruption and return them to the national treasury.²⁴² Previous administrations, in contrast, were more interested in obtaining convictions than seizing assets.²⁴³

In conclusion, Nigeria's anti-corruption agencies demonstrate both significant vulnerability and latent resilience in the face of incessant attempts by an array of actors to dilute, disrupt and derail their investigations and prosecutions. Importantly, anti-corruption practitioners have adapted to this reality, deftly shifting their priorities to avoid insurmountable political pressures and take advantage of moments where those they are investigating suddenly lose political clout and are thus no longer insulated from prosecution. This pragmatism in the face of an immutable challenge arguably makes anti-corruption law enforcement in Nigeria more effective overall.

²³⁹ Author interview with former senior EFCC official and senior CCB official, September 25-26, 2019.

²⁴⁰ Evelyn Okakwu, "P&ID must forfeit all its assets to Nigeria, Court rules", Premium Times, September 19, 2019, <https://www.premiumtimesng.com/news/headlines/353194-breaking-pid-must-forfeit-all-its-assets-to-nigeria-court-rules.html>.

²⁴¹ Author interview with senior law enforcement official, September 29, 2019.

²⁴² Author interview with EFCC prosecutor, September 23, 2019.

²⁴³ Ibid.

²⁴⁴ David Pallister and Peter Capella, "British banks set to freeze dictator's millions", The Guardian (UK), July 8, 2000, <https://www.theguardian.com/uk/2000/jul/08/davidpallister?INTCMP=ILCNETTXT3487>.

²⁴⁵ "Anti-Corruption in Nigeria Programme", DFID, accessed March 6, 2020, <https://devtracker.dfid.gov.uk/projects/GB-1-204819>.

FOREIGN INVOLVEMENT

International engagement with Nigeria's anti-corruption law enforcement is long running but peaked during the Obasanjo government and the early years of the EFCC. Outsiders' interest in partnering with the EFCC and its sister agencies speaks to the international reach of Nigeria's kleptocratic elites and cybercriminals. International cooperation in connection with so-called 'Abacha Loot'—over \$4 billion that former head of state Sani Abacha (1993–1998) embezzled from Nigerian state coffers and stashed abroad—has been especially strong.²⁴⁴

Given the expansive international footprint of Nigeria-based corruption and the interconnectedness of the global financial system, foreign involvement in high-level corruption prosecutions in Nigeria is unavoidable. This involvement takes three main forms: operational help from international law enforcement; training assistance which these entities provide to Nigerian anti-corruption agencies; and direct financial or material assistance disbursed bilaterally or via multilateral institutions. Foreign assistance has the potential to positively influence anti-corruption outcomes by providing international 'top cover' for politically sensitive prosecutions or by helping anti-corruption champions gain internal leverage within domestic political operating environments. In the Nigerian context, however, the scope and scale of foreign assistance is relatively modest and has exerted minimal influence over high-level corruption prosecutions in recent years.

SHIFTING ASSISTANCE, STRENGTHENING COOPERATION

Foreign interactions with Nigeria's anti-corruption agencies has transitioned from a first phase involving more intense training and engagement as well as some direct financial assistance to a second, more mature phase characterized by more routine and reciprocal cooperation. Since the early 2000s, the UK, EU, and U.S. have provided the most anti-corruption law enforcement assistance. These programs include:

- Anti-Corruption in Nigeria (ACORN) Program (£20 million, 2017-2021): DFID-funded, implemented by UNODC and several local NGOs.²⁴⁵ One of ACORN's seven key intervention areas is working with the EFCC and ICPC to develop their capacity to detect, investigate, prosecute and convict those found guilty of corruption.²⁴⁶
- Rule of Law and Anti-Corruption (RoLAC) Program (€23.3 million, 2017-2021). This EU-funded program supports a range of anti-corruption activities in Nigeria.²⁴⁷ RoLAC is working with the ICPC, for example, to strengthen the capacity of Anti-Corruption and Transparency Units (ACTUs) established as corruption prevention mechanisms in over 40 government ministries, departments and agencies.²⁴⁸
- Support to Anti-Corruption in Nigeria Program (€35 million, 2012-2017): EU-funded and implemented by UNODC, this multi-year project focused on a range of strategic policy initiatives including the creation

²⁴⁶ "Anti-Corruption in Nigeria Programme - Annual Review – post April 2018", DFID, December 2019, http://iati.dfid.gov.uk/iati_documents/53673501.odt.

²⁴⁷ Senator Iroegbu, "EU Launches N10bn Programme against Corruption in Nigeria", This Day, November 29, 2017, <https://www.thisdaylive.com/index.php/2017/11/29/eu-launches-n10bn-programme-against-corruption-in-nigeria/>.

²⁴⁸ "The Rule of Law and Anti-corruption (RoLAC) October to December 2019", RoLAC, undated, accessed March 7, 2020, <https://www.justice-security.ng/rule-law-and-anti-corruption-rolac-october-december-2019>.

²⁴⁹ "Support to The Fight Against Corruption in Nigeria", European Union External Action Service, January 3, 2019, https://eeas.europa.eu/headquarters/headquarters-homepage/56145/support-fight-against-corruption-nigeria_hr.

²⁵⁰ Ibid.; "Support to Anti-corruption in Nigeria (2012 - 2017)", UNODC, accessed March 6, 2020,

of a National Anti-Corruption Strategy.²⁴⁹ The program also funded Nigerian anti-corruption agencies' participation in UNCAC working groups, generated policy-relevant research such as a 2017 household survey on bribery and provided anti-corruption training for over 5,000 individuals.²⁵⁰ Another key aim of the program was to improve interagency coordination and cooperation.²⁵¹

- Support to Open Government Partnership (OGP) Activities (\$25 million, Ongoing): Though a joint grant from the U.S. State Department and U.S. Agency for International Development, Washington has provided anti-corruption assistance to the Nigerian government and civil society groups and facilitated the drafting of Nigeria's OGP National Action Plan.²⁵² From 2014 to 2017, the U.S. also assisted the EFCC with a project to mentor officials investigating and prosecuting money laundering crimes and on asset forfeiture issues.²⁵³
- Justice 4 All (J4A) Program (£47 million, 2010-2017): Funded by the UK Department for International Development and implemented by the British Council, the widely scoped J4A consisted of four main components, one of which involved assisting Nigeria's anti-corruption agencies. This included helping the EFCC and ICPC draft strategic and operational planning documents and develop monitoring and evaluation mechanisms as well as supporting the ICPC's efforts to set up ACTUs across government.²⁵⁴
- Support to the EFCC and the Nigerian Judiciary Program (€24.9 million, 2006-2010): EU-funded and implemented by UNODC, this program focused on improving the operational capacity of the EFCC—including the NFIU, which it housed at that time—and its training center. It also sought to develop a framework increasing judicial integrity and capacity and the federal level and in some states.²⁵⁵

Virtually all of these outside interactions, both currently and over the last two decades, have centered on the EFCC or on broader, government-wide policy initiatives. This reflects its preeminent position in Nigeria's anti-corruption law enforcement landscape and the efforts of EFCC leaders to win the confidence of international donors. Although ICPC and CCB personnel have been included in some short internationally sponsored training programs, their agencies were largely neglected by international donors seeking to further develop the capacity of the more assertive and capable EFCC. CCB officials, for example, noted that their agency has never received significant international assistance beyond a few local training opportunities and a handful of donated computers.²⁵⁶ Although disappointed by it, ICPC and CCB officials interviewed for this paper understood why donors disproportionately focused on the EFCC and did not resent their sister agency over the issue.²⁵⁷ Nevertheless, donors' near-singular focus on the EFCC is problematic insofar as it reinforces the secondary status of the ICPC and CCB and also further affirms pre-existing interagency inequities and latent rivalries. This uneven approach when viewed in terms of the broader spectrum of anti-corruption law enforcement

²⁵¹ "Support to The Fight Against Corruption in Nigeria", European Union External Action Service, January 3, 2019, https://eeas.europa.eu/headquarters/headquarters-homepage/56145/support-fight-against-corruption-nigeria_hr.

²⁵² "To Support 'Transparency and Anti-Corruption', US Donates \$25m To Nigeria", Sahara Reporters, August 28, 2018, <http://saharareporters.com/2018/08/28/support-transparency-and-anti-corruption-us-donates-25m-nigeria>.

²⁵³ "The Global Forum on Asset Recovery: Assistance for Combatting Corruption in Nigeria, Sri Lanka, Tunisia, and Ukraine – Fact Sheet", U.S. Department of State, December 5, 2017, <https://www.state.gov/the-global-forum-on-asset-recovery-assistance-for-combatting-corruption-in-nigeria-sri-lanka-tunisia-and-ukraine/>.

²⁵⁴ "Justice for All Programme – Annual Review Summary", DFID, January 2016, http://iati.dfid.gov.uk/iati_documents/5295131.odt.

²⁵⁵ Pieter du Plessis, Chijioke Iwuamadi and Bolanle Omotoso, "Final Evaluation, Support to the Economic and Financial Crimes Commission and the Nigerian Judiciary - Report of the Independent Evaluation Team", UNODC, November 2010, https://www.researchgate.net/publication/283713256_Support_to_the_Economic_and_Financial_Crimes_Commission_EFCC_and_the_Nigerian_Judiciary.

²⁵⁶ Author interviews with senior CCB officials, September 25-26, 2019.

²⁵⁷ Author interviews with senior CCB officials, September 25-26, 2019; Author interviews with senior ICPC officials, September 27, 2019.

²⁵⁸ Author interviews with multiple senior anti-corruption agency officials, September 23-30, 2019.

²⁵⁹ Author interview with EFCC prosecutor and retired senior EFCC official, September 24, 2019.

in Nigeria is counterproductive.

There appears to be a gap between foreign and domestic perceptions of the value of the value of international training assistance. While Nigerian officials interviewed for this paper acknowledged that such training was helpful and appreciated, they did not see it as indispensable or even catalytic.²⁵⁸ Many believed the U.S., which provided substantial assistance to the EFCC during its formative years, could be doing more to help Nigeria's anti-corruption agencies.²⁵⁹ The U.S., they argued, now "gave some of the least amount of help" compared to other donors.²⁶⁰

Washington's declining investment in Nigeria's anti-corruption agencies may help explain why the EFCC has developed a stronger and broader network of international relationships since the early 2010s. Most senior EFCC officers and even many working-level investigators have considerable experience engaging with a variety of foreign counterparts. For example, the EFCC has recently worked with counterpart agencies in two Scandinavian countries to investigate and prosecute a massive fraud scheme in order to ensure that stolen funds recovered in Nigeria are returned to the victims.²⁶¹ This, according to one senior agency official, "shows the maturity of the EFCC".²⁶² The EFCC works seamlessly with the Central Unit, a specialized office within the Ministry of Justice that coordinates information and cooperation requests submitted under Mutual Legal Assistance Treaties (MLATs).²⁶³

INTERNATIONAL ANTI-CORRUPTION POLICY SHORTCOMINGS

One of the most problematic aspects of international decisionmakers' involvement in Nigeria's anti-corruption space is their unwillingness to address ways in which their own shortcomings help fuel corruption in Nigeria. This challenge is monumental and consists of an array of policy inconsistencies, oversight weakness, and lax enforcement on the part of Western governments—particularly those of the United States and the UK. These failures create a permissive environment in which Nigerian kleptocrats can launder and spend their unexplained wealth. They also hinder Nigerian anti-corruption agencies' efforts to locate, seize and repatriate stolen public funds.

Instead of ratcheting up their support following the 2015 election victory of a candidate that ran on an anti-corruption platform, international partners' efforts remained broad-based, untargeted, and tunnel-visioned.²⁶⁴ For example, Western governments have been reluctant to deter official corruption using targeted travel bans and financial sanctions, thereby missing an opportunity to aid Nigerian anti-corruption efforts. Top officials interviewed for this report expressed frustration with this perceived inaction, observing that it "encouraged corruption" in Nigeria by allowing kleptocrats to send school their children abroad or buy luxury property in London, Dubai, New York and Miami with ease.²⁶⁵

Overall, Nigerian officials readily acknowledge their government's own failings but view that anti-corruption policy makers from the U.S., UK, and EU tend to overlook how their countries' policy and enforcement environments help drive and facilitate elite corruption globally. Nigerian interlocutors perceive Western governments as especially self-righteous when they attach conditions ("dictating terms") to the repatriation of assets seized in their jurisdictions.²⁶⁶ Together, these one-sided approaches reinforce perceptions that they are neo-colonial, treating corruption as a Nigerian problem that requires foreign training and professionalization to solve.

²⁶⁰ Author interviews with a senior EFCC official and a retired senior EFCC official, September 24, 2019.

²⁶¹ Author interview with senior EFCC official, September 24, 2019.

²⁶² Ibid.

²⁶³ Ibid.

²⁶⁴ Page, Matthew. Improving U.S. Corruption Policy in Nigeria (Washington DC: Council on Foreign Relations, 2016). <http://www.cfr.org/nigeria/improving-us-anticorruption-policy-nigeria/p38123>.

²⁶⁵ Author interviews with senior EFCC and CCB officials, September 24-26, 2019.

²⁶⁶ Ibid.

Given the substantial evidence that Western and other international financial actors and government institutions tolerate, or even actively facilitate, corruption in Nigeria, these views are reasonable. They suggest that international efforts to improve the effectiveness of anti-corruption law enforcement in Nigeria will require domestic policy changes in those jurisdictions where Nigerian kleptocrats stash their ill-gotten gains. Until this important dimension is reflected in Western countries' anti-corruption policy toward Nigeria, Nigerian practitioners likely will have reason to remain skeptical of their seriousness.

CONCLUSIONS AND RECOMMENDATIONS

Nigeria's anti-corruption law enforcement efforts are becoming more effective as practitioners adapt and innovate in response to many persistent challenges. Sometimes caricatured as sclerotic, politicized, or error-prone, high-level anti-corruption efforts are increasingly innovative and diversifying. Instead of being abandoned under pressure or resulting in decade-long, quixotic prosecutions, high-profile corruption investigations are finding new, more pragmatic resolutions such as plea bargains and asset forfeiture. Soon, probationary and other non-custodial sentences will become commonplace.

This shifting paradigm reflects a growing pragmatism among both Nigeria's anti-corruption agencies and its judiciary in their approach to high-profile cases. It also reflects increasingly nuanced views of what constitutes 'effective' anti-corruption law enforcement, broadening it beyond 'hard' metrics like arrests and convictions to include softer concepts like restitution and prevention. The following are several key takeaways and feasible recommendations for policy and decision makers seeking to bolster anti-corruption law enforcement in Nigeria.

KEY TAKEAWAYS

- The prosecution of high-level corruption cases in Nigeria has progressed somewhat in recent years, yet many shortfalls and obstacles to additional gains remain. Key legislative reforms as well as innovations and adaptations like a greater use of non-conviction-based asset forfeiture and plea bargains have helped maximize success.
- The relative success—or lack thereof—of Nigerian anti-corruption efforts defies simple definition. Undue focus on a single metric such as conviction rates ignores other vernacular measures of effectiveness. These include making recoveries, satisfying domestic perceptions, ensuring deterrence and prevention, promoting the rule of law and developing anti-corruption institutions.
- Inter- and intra-agency cooperation is improving but remains inadequate. Prosecutors and investigators do not always work together effectively, especially during the early stages of a case when close cooperation can help ensure that prosecutions do not flail or founder in court.

- Shortfalls in judicial integrity and independence also impede effective anti-corruption law enforcement efforts in Nigeria. Many judges also lack familiarity with money laundering other complex issues that arise during corruption trials. Some judges are skeptical or even hostile toward anti-corruption prosecutions.
- Anemic budgets and staffing limitations also hurt the effectiveness of Nigeria's anti-corruption agencies. Nigeria's anti-corruption agencies suffer from a deficit of skilled, apolitical, independent oversight. They function more effectively when led by non-partisan practitioners and decline when run by stop-gaps or political proxies.
- The politicization of anti-corruption prosecutions is a double-edged sword. Political interference happens often and is highly disruptive. But while powerful high-level suspects are often untouchable, they can suddenly become vulnerable when political winds invariably shift. Such strategic patience leads to more successful prosecutorial outcomes.
- Nigeria's anti-corruption agencies have yet to strike a stable, sustainable equilibrium in their high-level corruption investigations by seeking both 'easy wins' like non-conviction-based asset forfeitures as well as undertaking riskier prosecutions that aim to secure convictions.
- The EFCC is a robust and effective organization but risks becoming a bloated bureaucracy that loses its elite reputation. The agency's mandate to fight cybercrime, for example, distracts from its core mission of fighting high-level corruption and strategically significant economic crime. The EFCC is also too vulnerable to high-level political influence.
- The ICPC and CCB possess significant untapped potential but are constrained by legislative shortcomings, political interference, inadequate interagency collaboration, staff and budgetary shortfalls, and unmet training and equipment needs.
- Western and other international financial actors and government institutions tolerate—or even actively facilitate—corruption in Nigeria. Therefore, any international efforts to improve the effectiveness of anti-corruption law enforcement in Nigeria will require domestic policy changes in those jurisdictions where Nigerian kleptocrats stash their ill-gotten gains.

FEASIBLE, TAILORED POLICY RECOMMENDATIONS

TO THE PRESIDENCY

- Foster greater judicial independence by institutionalizing real financial autonomy for the judiciary by releasing all annual funding and allowances immediately after the annual Appropriation Act receives presidential assent. Institute a zero-tolerance policy toward executive branch interference with the courts. Support efforts by the judiciary to expand its capacity and capabilities to meet spiraling demands for court time. Fill judicial vacancies proactively, instead of neglecting to do so until several months after they retire as is now the norm. Begin these reforms immediately in order to yield positive changes in the short term (i.e. within one year).
- Commit to removing or otherwise sanctioning government officials and ruling party politicians who attempt to interfere or exert undue pressure on the EFCC, ICPC, and CCB. Anticipate political backlash from this stance, as it likely will complicate the Presidency's relationship with the National Assembly and senior members of the

ruling All Progressives' Congress. Change this approach immediately and make it clear in the short term that such interference will result in swift and significant repercussions.

- Ensure the timely release of budgeted funds to anti-corruption agencies, especially the ICPC and CCB. Work with anti-corruption agencies to develop strategic, multi-year spending plans that aim to build long-term capacity and are championed by the Presidency and monitored by the National Assembly. Require anti-corruption agencies to partner with civil society to develop and agree upon specific policy actions aimed at ensuring greater transparency and accountability for their expenditures and strategic decision making. Anticipate personal and institutional reluctance to embrace such measures and be prepared to replace senior leaders who oppose or undermine constructive changes. Aim to complete these reforms in the medium term (i.e. within the next one to three years).
- Appoint respected technocrats, jurists, and civil society figures to serve on the boards of anti-corruption agencies. Invite respected civil society groups working on anti-corruption groups to interview candidates for these positions and provide written feedback to the Presidency on their suitability for the role. Reduce the de facto control board members have over staffing and operational decisions by appointing an independent ombudsman to review hiring decisions and internal promotions aimed at preventing nepotism and other forms of favoritism. Aim to gradually introduce these reforms as board and senior leadership vacancies materialize over the long term (i.e. over the next three to five years).

TO THE NATIONAL ASSEMBLY

- Partner with the EFCC, ICPC, CCB, and the Nigerian Law Reform Commission to undertake needed legislative fixes and improvements to their establishing acts and other key laws that they routinely use to prosecute cases. If these changes are modest and pragmatic, balancing prosecutors' requirements with the rights of the accused, they likely will win broad support from legislators. Focus on the most urgent and impactful changes, namely:
- Common sense amendments to the Evidence Act that draw upon global best practices to help streamline procedures with the aim of ensuring speedier and fairer trials. Such changes should contain more modern and pragmatic rules about certifying the authenticity of electronic and digital evidence, especially bank records.
- Laws that enable anti-corruption agencies to better handle emerging challenges such as crypto-assets (i.e. BitCoin) and witness protection. Consult outside legal experts to help draft laws that allow for investigation and seizure of crypto-assets without compromising Central Bank edicts that such virtual currencies are not licensed or regulated for use in Nigeria.
- Changes to the CCB Act to provide a legal basis for online asset declarations, rationalize attestation requirements, modernize declaration forms to reflect new types of assets, set guidelines for the public disclosure of officials' asset declarations and increase penalties for public officeholders who fail to make asset declarations. Done carefully and according to guidelines in use in other countries, public disclosure of asset declarations is possible without putting officeholders' privacy or safety at risk.

TO THE EFCC

- Work with the Presidency to resubmit the uncontentious portions of the 2016 Proceeds of Crime Bill—an executive bill—to the National Assembly for speedy passage. Ensure passage of this already-drafted legislation as soon as possible in order to realize a 'quick win' in the short term (i.e. over the next year).

- Avoid ‘mission creep’ and refocus agency resources on high-level corruption investigations and prosecutions. Transfer all but a few of the most complex cybercrime cases to the police. Improve case management and provide additional training and resources to prosecutors to ensure that the agency prosecutes a more limited number of cases to a higher standard. Anticipate such efforts will achieve results over the medium term (i.e. over the next one to three years).
- Balance the agency’s increased use of non-conviction-based asset forfeiture with the continuing need to swiftly secure high-profile convictions that act as a powerful deterrent to aspiring kleptocrats. Systematically disclose to the public, on an annual basis, details of all conviction- and non-conviction-based asset forfeiture, plea bargains and deferred prosecution agreements concluded. Make these reforms immediately with the expectation that they will take hold in the medium term.
- Institutionalize increased cooperation between investigators and prosecutors at the working level from the very start of an investigation through the end of a prosecution. Sustain and systematize recent efforts to embed prosecutors within investigative teams to ensure that evidence and witness testimony comprehensively supports prosecutors’ trial strategies. Expand this cooperation—and hold both prosecutors and investigators accountable for its successful implementation—over the medium term (i.e. the next one to three years).
- Increase transparency and intensify collaboration and information sharing with other government agencies and non-governmental partners. Sign, update, or strengthen interagency memoranda of understanding (MOUs). Leverage best practices used by many other countries’ law enforcement agencies: the EFCC can manage and mitigate any operational security risks stemming from greater transparency. Initiate this change immediately in order to yield gains in the medium term.

TO THE ICPC

- Forge closer partnerships with state governments willing to allow closer ICPC scrutiny of their ministries, departments and agencies or allow the agency to conduct systems studies of them. Note that such partnerships will require sustained effort to deepen and develop over the medium term (i.e. over the next one to three years).
- Sustain and deepen the professional collaboration between prosecutors and investigators throughout high-level corruption cases (see recommendations to the EFCC above).
- Work with the AGF to follow-through on an appeal to the Supreme Court aimed at restoring the two sections of the Corrupt Practices and Other Related Offences Act struck down by lower courts. Anticipate that this legal challenge—even if initiated immediately—may take up to three years to conclude.

TO THE CCB

- Partner with legislators and the Nigerian Law Reform Commission to amend or pass new legislation aimed at strengthening the CCB (see recommendations to the National Assembly above).
- Formulate guidelines and any legislative amendments needed to create a transparent, searchable online database of asset declaration information that is consistent with existing privacy and data protection laws. Seek additional funding and technical assistance to create and maintain such a platform. Begin drafting these measures immediately in order to ensure they are implemented in the medium term (i.e. over the next one to three years).

- Encourage and provide an online platform for public office holders to publish their asset declarations on a voluntary basis. Implement this within the next year to realize a short-term ‘quick win’.

TO THE INTERNATIONAL COMMUNITY

- Reinvigorate financial and technical assistance to Nigeria’s anti-corruption agencies and its judiciary akin to the level provided in the early 2000s. Recognizing the time scales involved in securing new funding and developing programs, aim to prioritize such assistance over the long term (i.e. within the next three to five years).
- Identify international policies toward Nigeria that are inconsistent with ‘effective’ anti-corruption law enforcement and prevention. For example, examine the freedom politically exposed Nigerians suspected of corrupt practices have to spend unexplained wealth in the U.S. and UK on high-end property, private school and university tuition, and luxury goods. Aim to better enforce existing laws and regulations in the short term (i.e. over the next year) even if broader policy changes take longer to make.
- Acknowledge the degree to which the international financial system and structures—particular those enshrined in UK and U.S. policies—enable and facilitate corruption in Nigeria. Leaven discussions of how Nigeria is able to ‘push’ proceeds of corruption into the international system with how UK and U.S. policies and practices exert a strong ‘pull’ on those monies to the detriment of the Nigerian people.

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