

THE REGULATION OF ECONOMIC CRIMES IN NIGERIA: OLD PROBLEM, NEW CHALLENGES AND RESPONSES

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Introduction

Economic crimes are those offences that are sometimes committed in the course of legitimate duties or transactions but which invariably have negative impact on the economy. Although such crimes do not have the tag of social reprehensibility attached to them, they usually have far-reaching adverse effects on the economic health of any nation.¹ Since they are not *mala in se* crimes,² their perpetrators hardly see themselves as committing criminal offences. They rather perceive themselves and are even seen by the society as sharp, fast, intelligent and crafty citizens who have been able to maximally and beneficially exploit the available economic opportunities.³

Economic crimes are diverse and come in different forms: the Customs officer who undervalues duties on imported goods with the objective of sharing a reasonable part of the waived duty with the importer, the accountant who alters figures in the preparation of vouchers and pockets the difference, the bank official who connives with a money launderer to conceal the origin and source of the funds deposited in his bank are all involved in economic crimes. A corollary of this multi-faceted nature of economic crimes is the diverse and cancerous effect it has on the economy of any state.

Economic crimes have a close connection with changes in the socio-economic level of any society. Thus, a society in economic transition from primitive to modern or industrial state often experiences a marked increase in the level of economic crimes.⁴ Although this is a general phenomenon, the ugly effect of such transformations is usually more pronounced in dependent economies where the struggle for material benefits often precipitates the commission of various economic crimes. In the case of Nigeria, it has been said that before the attainment of independence in 1960, the level of economic crimes was considerably low.⁵

Some of the economic crimes such as foreign exchange abuses became manifest upon the attainment of political independence. It was therefore not surprising that barely two years after independence, the Federal Government enacted the Exchange Control Act of 1962, to deal with exchange control matters and related infractions.

The discovery of crude oil in commercial quantities in Nigeria precipitated enormous industrial activities in the country in the mid 1960s and 1970s. This was the

¹ See Popoola, A O and Ajai, O O, "The Military and Economic Crimes in Nigeria," *Proceedings of the 27th Annual Conference of the Nigerian Association of Law Teachers* held at Nike Lake Resort Hotel, Enugu, April 9-12, 1989, 130, 134.

² These are offences that are not traditionally regarded as morally reprehensible by the society. They therefore do not normally attract the type of stigma of moral condemnation attachable to other crimes. It is however, doubtful whether this distinction was properly made in traditional Nigerian societies. See Owoade, M A, "Criminal Law and Social Control in Nigeria," a paper presented at the seminar on Crime and Social Control in Nigeria held at Obafemi Awolowo University on July 30, 1987, 8.

³ Ubeku, A K, "The Social and Economic Foundations of Corruption and Other Economic Crimes in Nigeria," in Kalu, A U and Osinbajo, Y (eds) *Perspectives on Corruption and Other Economic Crimes in Nigeria*, Lagos, Federal Ministry of Justice, 1991, 39, 46-47.

⁴ Oputa, C A, "Crime and the Nigerian Society," in Elias, T O, *et al* (eds), *African Indigenous Laws: Proceedings of Workshop*, Enugu, Government Printer, 1975, 14.

⁵ *Ibid* at 18.

period of the oil boom, and the attendant upsurge in economic activities led to a dramatic increase in economic crimes. These included oil bunkering, armed robbery, currency trafficking, banking and other frauds, corruption etc. The military government at the time, in the usual military fashion, wasted no time in responding to such challenges with the enactment of a horde of Decrees with very heavy penalties for offenders. In this connection, mention may be made of the Counterfeit Currency (Special Provisions) Decree 1974 the Exchange Control (Anti-Sabotage) Decree 1977 and the Special Tribunal (Miscellaneous Offences) Decree 1984. The increased sophistication in economic crimes in terms of methods, scope of operation, international dimension and the diverse nationalities of the perpetrators has created new challenges and necessitated the adoption of other methods and strategies of combating these offences.

The central focus of this paper is to appraise the regulatory framework for dealing with economic crimes in Nigeria from independence to the present time. Within this compass, an attempt will be made to examine some of these crimes and the measures taken over the years to deal with them and assess the effectiveness of such mechanisms. Suggestions will also be proffered on how to improve the existing regulatory mechanisms to make them more functional and responsive to the dynamics and realities of contemporary times.

Economic Crimes under the Criminal and Penal Codes

Both the Nigerian Criminal Code⁶ and the Penal Code⁷ contain a number of provisions dealing with economic crimes. This is because although both enactments were made during the colonial era, there was already in existence, an understanding of the adverse effects of such crimes on the economic development efforts of the territory. Moreover, as a colony under British suzerainty, the Nigerian codes derived principally either directly or indirectly from existing British laws on crimes.⁸ Although this historical connection is sometimes given as the main reason for the ineffectiveness of these codes by ardent nationalists and legal historians,⁹ the fact remains that it was a necessary development arising from such colonial contact.

The Criminal Code thus contains a number of provisions dealing with economic offences. These include, Chapter 12 on corruption and abuse of office, Chapter 17 on offences relating to posts and telecommunications, Chapter 34 on offences relating to property and other fraudulent activities, Chapters 43, 44, and 45 on forgery and related offences, Chapter 48 on offences relating to copyrights and Chapter 49 on secret commissions and corrupt practices.

The same scenario is replicated in the Penal Code.¹⁰ As representative of these offences already provided for in these Codes, we will in this section examine corruption and abuse of office, false pretences and making or counterfeiting of currency.

(i) Corruption and Abuse of Office

The Criminal Code makes a number of provisions dealing with corruption in Nigeria. In section 98 it provides:¹¹

⁶ The Criminal Code applies in the southern states of Nigeria consisting of Abia, Akwa Ibom, Anambra, Bayelsa, Cross River, Delta, Ebonyi, Edo, Ekiti, Enugu, Imo, Lagos, Ogun, Ondo, Osun, Oyo, and Rivers States.

⁷ This Code is operative in the northern states of Nigeria: Adamawa, Bauchi, Benue, Borno, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Kogi, Kwara, Nasarawa, Niger, Plateau, Sokoto, Taraba, Yobe and Zamfara.

⁸ Okonkwo, C O, *Criminal Law in Nigeria*, 2nd ed, London, Sweet & Maxwell, 1980, 4-10.

⁹ For example, Okunniga, A A O, *Transplants and Mongrels and the Law: The Nigerian Experiment*, University of Ife Inaugural Lecture, 1982, 23-24; Yadudu, A H, "Customary Law and the Nigerian State, in Kalu, A U and Osinbajo, Y, *Towards a Restatement of Nigerian Customary Laws*, Lagos, Federal Ministry of Justice, 1991, 76.

¹⁰ See chapters X, XIX, XX of the Penal Code.

¹¹ The equivalent provision is contained in s.115 of the Penal Code. The significant thing however, is that the Penal Code provision is much simpler and direct.

Any person who-

(1) being employed in the public service, and being charged with the performance of any duty by virtue of such employment, not being a duty touching the administration of justice, corruptly asks, receives, or obtains or agrees or attempts to receive or obtains, any property or benefit of any kind for himself or any other person on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him in the discharge of the duties of his office; or

(2) corruptly gives, confers, or procures or promises or offers to give or confer, or to procure or attempt to procure, to, upon, or for, any person employed in the public service, or to, upon, or for, any other person, any property or benefit, of any kind on account of any such act or omission on the part of the person so employed,

is guilty of a felony, and is liable to imprisonment for seven years.

Unfortunately, there has been very few instances of prosecutions for such offences and even in those rare cases, not many have been successful, largely because of the consensual nature of the offence coupled with the status of the offenders. Moreover, the stringent conditions and hedges provided for this crime has, in alliance with the professional craft of some defence counsel, made it difficult for successful prosecutions of the offence.

Most Nigerians who engage in such crimes see nothing wrong in them as they regard their official positions as avenues for enriching themselves at the expense of the national interest.

While the political leaders are often the worst offenders in this category,¹² other public servants, in the absence of exemplary leadership from the political class, also use their offices and positions to line their own pockets.

If the requirements for general corruption are onerous, those specified for judicial corruption are even more exacting as can be seen from an examination of the relevant provisions. Thus section 114 of the Code provides:¹³

Any person who

(1) being a judicial officer, corruptly asks, receives, or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him in his judicial capacity; or

(2) corruptly gives, confers, or procures, or promises or offers to give or confer, or to procure or attempt to procure, to, upon, or for, any judicial officer, or to, upon, or for, any other person, any property, or benefit of any kind on account of any such act or omission on the part of such judicial officer;

is guilty of a felony, and is liable to imprisonment for fourteen years.

Not only will an offender under this section not be arrested without a warrant, prosecution of alleged offenders in subsection (1) cannot be done except by a law officer. Again, the consensual nature of the offence, the status of the officers involved, coupled with the statutory requirements and the secretive nature of this offence have conspired to reduce the number of prosecutions for the offence notwithstanding the fact that the crime is being committed on regular basis. The cumulative effect of these factors

¹² According to Professor Chinua Achebe, "The trouble with Nigeria is simply and squarely a failure of leadership. There is nothing basically wrong with the Nigerian land or climate or water or air or anything else. The Nigerian problem is the unwillingness or inability of its leaders to rise to the responsibility, to the challenge of personal example which are the hallmarks of true leadership:" *The Trouble with Nigeria*, Enugu, Fourth Dimension, 1. This problem is, unfortunately, still with us.

¹³ See also s.125 of the Penal Code.

and the provisions under the Criminal and Penal Codes has been to constitute a fundamental draw back in the quest for the regulation of judicial corruption. These provisions seem to have provided veritable escape routes for the offenders at a time when the political leaders themselves lacked the political will and determination to tackle such crimes. It was therefore left for the succeeding military administration to approach the issue from a more drastic perspective.

(ii) False Pretences

Section 419 of the Criminal Code provides for the offence of false pretences. This offence has become so pervasive and common place in Nigeria that it is now tagged "419" in reference to the section of the law creating the offence.¹⁴

It provides that any person who by any false pretence, and with intent to defraud, obtains from any other person, anything capable of being stolen, or induces any other person to deliver to any person anything capable of being stolen, or induces any other person to deliver to any person anything capable of being stolen, is guilty of a felony, and is liable to imprisonment for three years.¹⁵

False pretence is defined in section 418 as follows:

Any representation made by words, writing or conduct, of a matter of fact, either past or present, which representation is false in fact, and which the person making it knows to be false or does not believe to be true, is a false pretence.

There is no doubt that this definition has a number of limitations which has rendered it inadequate to grapple with the realities of contemporary times. Limiting the subject matter of the offence to only "things capable of being stolen" has on its own created some problems in terms of scope of coverage, as land and other intangible things such as job do not come within its purview.¹⁶

Moreover, the false pretence must relate to a matter of fact, past or present, such that any false representation of a future matter does not constitute false pretence, a requirement that has also affected the effectiveness of the enforcement measures.

(iii) Making or Counterfeiting Currency

There are also provisions in the Criminal and Penal Codes prohibiting the making or counterfeiting of Nigerian currency. Indeed, the whole of chapter 16 of the Criminal Code is devoted to such offences. Thus, S. 147 (1) provides:

Any person who makes or begins to make any counterfeit current gold or silver coin is guilty of a felony and is liable to imprisonment for life.

Moreover, any person who utters any counterfeit currency gold or silver coin, knowing it to be counterfeit, is guilty of a misdemeanor and is liable to imprisonment for two years.¹⁷ This position is equally replicated in the Penal Code. It can thus be seen that there are sufficient provisions under the Nigerian Codes for the regulation of economic crimes, and yet the political leaders preferred the use of new statutory instruments to regulate such activities.

¹⁴ That is, s.419 of the Criminal Code; see also Okonkwo, C O, "Advance Fee Fraud and Other Related Offences Decree: 1995 An Appraisal," Ayua, I A, (ed) *Law, Justice and the Nigerian Society: Essays in Honour of Hon Justice Mohammed Bello*, Lagos, Nigerian Institute of Advanced Legal Studies, 1995, 306 (hereafter Okonkwo, "Advance Fee Fraud").

¹⁵ This offence is referred to as 'cheating' under the Penal Code and is defined in s.321 as follows: "Whoever by deceiving any person (a) fraudulently or dishonestly induces the person so deceived to deliver any property to any person or to consent that any person shall retain any property; or (b) intentionally induces the person so deceived to do or omit to do anything which he would not do or omit to do if he were so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to cheat."

¹⁶ Okonkwo, "Advance Fee Fraud," 307.

¹⁷ Section 151 of the Criminal Code.

(iii) *Other Statutory Mechanisms*

The Nigerian legal scene is replete with statutory enactments on subject matters already covered in existing statutes. In respect of economic crimes, a number of reasons have been advanced to justify this use of new statutory instruments to deal with crimes otherwise provided for in the Criminal and Penal Codes.

It is often said that this approach is adopted to emphasise the determination of the government to tackle such crimes untrammelled by the intricacies and procedural niceties involved in the existing laws. The contention is that this is the only way to underscore and demonstrate the government's commitment to eradicate or reduce such crimes.¹⁸ Secondly, this approach has been found useful where the penalties in existing statutes are considered weak and ineffective as a deterrent to potential offenders. The perceived inadequacies of existing judicial mechanisms have also been given as a justification for the incorporation of tribunals in the handling of economic crimes rather than the regular courts. It is often said that the use of tribunals is motivated by the need to ensure speedy disposal of such cases.¹⁹

The use of such statutory interventionist measures in Nigeria can be traced to the first military government in 1966. Soon after the overthrow of the civilian government in 1966, the succeeding military administration did not waste time in enacting a number of decrees dealing with economic crimes.

This emphasis on combating economic crimes was perhaps foreshadowed by the broadcast of Major Chukwuma Nzeogwu on January 15, 1966 when he declared:²⁰ ... The aim of the Revolutionary Council is to establish a strong, united and prosperous nation, free from corruption and internal strife. Our method of achieving this is strictly military but we have no doubt that every Nigerian will give us maximum co-operation by assisting the regime and not disturbing the peace during the slight changes that are taking place.... *Our enemies are the political profiteers, the swindlers, the men in high and low places that seek bribes and demand ten percent: those that seek to keep the country divided permanently so that they can remain in office as ministers or VIPs at least the tribalists, the nepotists, those that make the country look big for nothing before international circles; those that have corrupted our society and put the Nigerian political calendar back by their words and deeds*²¹

It necessarily follows that a government that sees itself in this light will approach the problem of economic crimes in a manner demonstrative of this commitment. This explains the hard-line attitude and rather stern methods and punishments contained in their statutory enactments.

It was against this background that the Military Government enacted the Public Officers (Investigation of Assets) Decree 1966 on the basis of which the assets of a number of political or other public office holders who could not justify the sources of such assets were forfeited to the Federal Military Government.

As a manifestation of the commitment of that government not to be hampered by legal niceties, the valiant and commendable attempt by the Supreme Court to invalidate some sections of the decree in the case of *E. O Lakanmi & Anr. Vs. Attorney-General of Western State & Ors*²² was overruled by legislative fiat by the Military Government.²³

¹⁸ Karibi-Whyte, A G, "An Examination of the Criminal Justice System, Kalu, A U and Osinbajo, Y (eds), *Law Development and Administration in Nigeria*, Lagos, Federal Ministry of Justice, 1990, 55, 79-80.

¹⁹ Ibid.

²⁰ Ademoyega, A, *Why We Struck: The Story of the First Nigerian Coup*, Ibadan, Evans, 1981, 87-88.

²¹ Such messianic statements have become the norm in military political adventurism in Nigeria and Africa as a whole. See the recent statement by the military junta in Mauritania upon their overthrow of the civil government of Ould Sid Ahmed Taya: *The Guardian*, Thursday, August 4, 2005, p 1.

²² (1971) 1 UILR 201.

This determination to tackle corruption also led to the enactment of the Corrupt Practices Decree 1975 by the succeeding military government. This Decree provided in section 1 that “any person who by himself or by or in conjunction with any other person:

(a) corruptly solicits or receives or agrees to receive for himself or for any other person, or

(b) corruptly gives, promises or offers to any person whether for the benefit of that person or of another person; any gratification as an inducement or reward for, or otherwise on account of :-

(i) any person doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed; or any member, officer or servant of the government or any public body doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which such government or public body is concerned;

shall be guilty of an offence under this section and shall be liable on conviction to imprisonment for seven years or to a fine of five thousand naira or to both such imprisonment and fine.

It can be seen that these provisions are substantially in tandem with the existing provisions under the Criminal Code, a comment that also arises in respect of subsequent enactments dealing with the same subject matter of corruption. This punishment is similar to that contained in section 98 of the Criminal Code and section 115 of the Penal Code.

In respect of currency offences, the Counterfeit Currency (Special Provisions) Decree was enacted in 1974. It made it an offence to deal in, and make counterfeit banknotes. Again, this Decree did not also materially alter the law but basically imposed heavier punishment for offenders.

As symptomatic of the Nigerian political environment then, the Military Government handed over power back to the civilians in 1979 and the latter remained in power for only four years before they were overthrown in December, 1983.²⁴ Unfortunately, throughout the tenure of that government, there was no conscious effort to tackle corruption and related offences apparently because key elements of the government were also culpable and so incidents of economic crimes continued to be on the increase. This was exacerbated with the flaunting of unmerited public wealth by political and other office holders. The military in their self-given cleansing mission,²⁵ had to intervene again in the political life of the country when economic crimes such as corruption, exchange control violations, drug and currency trafficking, had become so pervasive and eaten into every segment of the society like a cancerous virus.

In furtherance of this mission, a number of Decrees, most of them evidently draconian in nature, were rolled out by the military government. These included the Exchange Control (Anti-Sabotage) Decree 1984,²⁶ Recovery of Public Property (Special Military Tribunals) Decree 1984 Special Tribunal (Miscellaneous Offences) Decree 1984

²³ Supremacy and Enforcement of Powers Decree 1970 (No 28). See also the Forfeiture of Assets (Validation) Decree No 45 of 1968 which validated the forfeiture of assets of certain public officers by the military government.

²⁴ Through a military coup led by Major-General Muhammadu Buhari who was himself overthrown by his former Chief of Army Staff, Major-General Ibrahim B Babangida. On the consequences of these intrigues in military circles on the political stability and growth of the country, see Tolofari, S, *Exploitation and Instability in Nigeria: The Orkar Coup in Perspective*, Lagos, Press Alliance Network, 2004, 28-29.

²⁵ They have always asserted that having seen the deterioration in the political and economic life of the country, they had deemed it necessary to intervene to prevent the collapse of the country. Surprisingly, the incidents of corruption and other economic crimes did not reduce, but rather grew in number and complexity during such regimes. See Popoola, A O and Ajai, O O, “The Military and Economic Crimes in Nigeria,” *Proceedings of the 27th Annual Conference of the Nigerian Association of Law Teachers, 1989*.

²⁶ This was a re-introduction of a Decree that had been promulgated in 1977 as Exchange Control (Anti-Sabotage) Decree 1977 (No 57).

the Code of Conduct Bureau and Tribunal Decree 1989 Counterfeit Currency (Special Provisions) Decree, the Foreign Currency (Domiciliary Accounts) Decree 1985 and the octopus-like State Security (Detention of Persons) Decree 1984. The last mentioned decree had a novel provision which conferred on the Chief of General Staff,²⁷ the power to detain anyone who had contributed to the “*economic adversity*” of the nation. Such a person could either be detained in a civil prison or police station or such other place as may be specified by the Chief of General Staff and it shall be the duty of the person or persons in charge of such place or places, if an Order made in respect of any person is delivered to him, to keep that person in custody until the order is revoked.²⁸

There is no doubt that involvement in any of the aforementioned economic crimes may constitute a ground for the detention of a person under the Decree since such activities invariably contribute to the “*economic adversity*” of the nation.

Significantly, Chapter IV of the 1979 Constitution on Fundamental Rights was suspended for the purposes of the Decree, and this gave the military rulers the opportunity to perpetrate gross violations of the human rights of Nigerians.²⁹

New Challenges Posed by Contemporary Developments

One of the major challenges confronting the regulation of economic crimes in Nigeria today is the marked change in the socio-economic condition of the country. Not only has the economy witnessed a serious down-turn in recent times with the attendant consequences, the rate of unemployment have grown to patently unacceptable levels.³⁰ The result is that a large crop of young men and women who have graduated from colleges and universities are not engaged in productive activities. This has forced a large number of them into all kinds of economic crimes, perhaps as a means of survival.

This has been aggravated by the unfortunate collapse of corporate morality in the country, such that the society is hardly interested in ascertaining the source of wealth of Nigerians. Not surprisingly, it is a common feature in the country to see a clerical officer in the Accounts Department of a government ministry owning several houses in choice areas of the town and cars without question from either his superiors in the office or the entire society. On the contrary, such a person will be hailed and even given chieftaincy titles and other honours either by his community or the state itself.³¹ It is a truism that a large proportion of people in this category are either money launderers or those engaged in advance fee frauds.³²

Reference must also be made to the increased complexity and sophistication introduced into economic crimes in recent times. The availability and use of high technology, computer and Internet has brought with them fundamental advances in

²⁷ The equivalent of a Vice President under a civilian dispensation. The Decree conferred so much powers on the Chief of General Staff that he could easily direct the detention of any person purporting to act under the provisions of the Decree.

²⁸ The stipulation is that such detention would normally be for six months in the first instance, subject to review thereafter. The period of detention before review was later reduced to six weeks by virtue of State Security (Detention of Persons) Amendment Decree 1990.

²⁹ Such violations have been well-documented, and it eventually led to the setting up of the Oputa Panel on Human Rights Violations by the present civilian government. The panel was dogged by controversy and its report could not be published. See *Fawehinmi v Babangida* [2003] 3 NWLR (pt 808) 604.

³⁰ Amale, S, “The Impact of the Structural Adjustment Programme on Nigerian Workers,” in Olukoshi, A (ed) *Crisis and Adjustment in the Nigerian Economy*, Lagos, Jad, 123, 133-134. The economic reform programme of the Federal Government is also having adverse effects on the employment situation in the country: *The Guardian*, Sunday, August 21, 2005, p 1.

³¹ Okogbule, N S, “The Nigerian Factor and the Criminal Justice System, 2004 7 *University of Benin Law Journal*, 165; Abati, R, “How to be a Nigerian,” *The Guardian*, Sunday, November 2, 2003, p 18.

³² These are high flier economic crimes that give quick money to the perpetrators.

strategies and mechanisms of committing crimes. This explains the growing concern for, and calls for a concerted fight against computer and Internet facilitated crimes.³³

Allied to this is the effect of globalisation of economic relations with the attendant internationalization of economic crimes. In this category must be placed money laundering, drug and human trafficking, and economic terrorism that have assumed a frightening dimension in recent times.³⁴ The legal profession is thus saddled with the responsibility of formulating workable rules to effectively tackle these fall-outs of economic globalisation.³⁵

The complexity in these economic crimes has also led to an overwhelming need for effective enforcement machinery to scrupulously monitor and control the incidence of economic crimes in the country. This is because the ordinary machinery of the Nigeria Police Force has, sadly, proved to be incapable of handling some of these economic crimes. The crucial question that arises is: what has been the response of the government to challenges posed by this complexity and sophistication of economic crimes? It is here that an appraisal of the current efforts at regulating such crimes becomes appropriate.

Current Efforts against Economic Crimes in Nigeria

With the inauguration of the present civilian government on 29th May 1999, a new vista was opened in the fight against corruption and economic crimes in Nigeria. This is because from his inauguration speech, the President, Chief Olusegun Obasanjo highlighted the grave threat posed to the economy of the country by corruption and vowed to fight it. He made good this promise barely one year after assumption of office with the enactment of the Corrupt Practices and Other Related Offences Act 2000 which constituted the Ant-Corruption Commission in 2000. He also established subsequently, the Economic and Financial Crimes Commission. These two Commissions have become veritable arrow-heads of the current fight against economic crimes in the country. It is intended to examine briefly the provisions of these two laws and the Commissions established under them and how they can effectively perform the functions assigned to them in their enabling statutes.

Corrupt Practices and other Related Offences Act and the Anti-Corruption Commission

The Act provides in section 12(1):

Any person who corruptly –

(a) asks for, receives or obtains any property or benefit of any kind for himself or for any other person; or obtain any property or benefit of any kind for himself or for any other person, on account of ;

(i) anything already done or omitted to be done, or for any favour or disfavour already shown to any person by himself in the discharge of his official duties or in relation to any matter connected with the functions, affairs or business of a government department, or corporate body or other organization or institution in

³³ Salu, A O, "Cyber Laws – Its Application and Enforcement in Nigeria," 1998 2 (No 4) *Modern Practice Journal of Finance and Investment Law*, 10, 30-34; Osipitan, T, "Legal Impact of Technology on Rules of Evidence in Banking and Commercial Litigation," 1998 2 (No 4) *Modern Practice Journal of Finance and Investment Law*, 71, 81-87.

³⁴ The critical situation of money laundering in Nigeria is examined in Osinbajo, Y and Ajayi, K, "Money Laundering in Nigeria," in Kalu, A U and Osinbajo, Y (eds) *Perspectives on Corruption and Other Economic Crimes in Nigeria*, Lagos, Federal Ministry of Justice, 1991, 58, while the nature and extent of drug trafficking in the country was the subject of a National Conference resulting in the publication of Kalu, A U and Osinbajo, Y (eds), *Narcotics: Law and Policy in Nigeria*, Lagos, Federal Ministry of Justice, 1991.

³⁵ Usman, B Y, "Keynote Address: What Exactly is Globalisation?" in Guobadia, D A and Azinge, E (eds), *Globalisation, National Development and the Law*, Lagos, NIALS, 2005, xiv at xx.

which he is serving as an official, or (ii) anything to be afterwards done or disfavour to be afterwards shown to any person, by himself in the discharge of his official duties or in relation to any such matter as aforesaid, is guilty of an offence of official corruption and is liable to imprisonment for seven years”³⁶

Similarly, where a person ‘corruptly’

“(a) gives, confers or procures any property or benefit of any kind to, on or for a public officer or to , on or for any other person, or

(b) Promises or offers to give, confers, procures or attempts to procure any property or benefit of any kind to, on or for a public officer or any other person, on account of any such act, omission, favour or disfavour to be done or shown by the public officer,

is guilty of an offence of official corruption and shall on conviction be liable to imprisonment for seven (7) years.”³⁷

From the above, it is evident that the provisions of this Act relating to corruption are to a large extent a mere replication, and in some areas minor additions to the existing provisions of the Criminal Code, such that a mere amendment of the earlier law would have served the same purpose.

This Act was enacted in apparent compliance with the directive in section 15(5) of the 1999 Constitution that “the State shall abolish all corrupt practices and abuse of power.”³⁸ This is in recognition of the fact that as Ogwuegbu, JSC observed in the case of *Attorney-General of Ondo State v Attorney-General of the Federation and 36 others*,³⁹

Corrupt practices and abuse of power can, if not checked, threaten the peace, order and good government of the Federation or any part thereof.⁴⁰

It is significant to mention that the Act establishes the Independent Corrupt Practices and other Related Offences Commission⁴¹ which is charged with the primary responsibility of enforcing the provisions of the Act. The Act also makes it an offence for anyone to engage in the inflation of contract costs, prices of goods and services to be supplied or purchased, as well as any body who accepts or offers any advantage or inducement to another person.⁴²

It can be said that the Commission has, in spite of the initial controversy that trailed its establishment,⁴³ been able to make a mark in the quest for the eradication of corruption in the country . Its dangling hammer and the recent arraignment of some prominent Nigerians before the courts for corrupt practices is a continuous reminder that corruption is an evil that must be tackled with all amount of force to restore sanity to the Nigerian society.

The Economic and Financial Crimes Commission

³⁶ Again, the punishment here can be compared with the provisions under the Criminal and Penal Codes.

³⁷ Section 8 of the Act.

³⁸ Although this provision is non-justiciable since it is part of Chapter 2 of the 1999 Constitution on the Fundamental Objectives and Directive Principles of State Policy, it has been held to be an important goal or principle which should guide the activities of governments: *Attorney-General of Ondo State v Attorney-General of the Federation & 36 others*, [2002] 9 NWLR (pt 772) 222.

³⁹ Above.

⁴⁰ Above at 337.

⁴¹ Section 3 of the Act. It is otherwise known as the Anti-Corruption Commission.

⁴² Section 22 of the Act.

⁴³ The enactment of the Act had a chequered history. The members of the National Assembly were uncomfortable with some of the provisions of the bill, and it took about one year of political arm-twisting and public pressure before the law was passed. See Inegbedion, N A, “Corruption and Anti-Corruption Legislations in Nigeria: A Critique,” (2004) 7 *University of Benin Law Journal*, 139, 157-159; Peters, D, “Nigeria: Beyond Anti-Corruption Legislation,” (2004) 8 (Nos 1-2) *Modern Practice Journal of Finance and Investment Law*, 278.

It is in order to further the determination to tackle economic and financial crimes that the Economic and Financial Crimes Commission Act was enacted in 2004. Although the Act makes a number of provisions prohibiting certain economic crimes,⁴⁴ its provisions in section 46 which defines economic and financial crime deserve special mention here, particularly because of its wide coverage.

It defines economic and financial crime to mean “the non-violent criminal and illicit activity committed with the objective 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 practices, 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.”⁴⁵

The implication of this is that these diverse economic activities can be regulated by the Economic and Financial Crimes Commission established under section 6 of the Act. The Commission is given enormous regulatory powers over these activities including the investigation of all financial crimes such as advance fee fraud, money laundering, counterfeiting, illegal charge transfers, futures market fraud, fraudulent encashment of negotiable instruments, computer credit card fraud, contract scam etc.”⁴⁶

It is also to adopt “measures to eradicate the commission of economic and financial crimes.”⁴⁷ More importantly, the Commission is also to act as the co-ordinating agency for the enforcement of the provisions of the Money Laundering Act, the Advance Fee Fraud and other Related Offences Act, 1995, the Failed Banks (Recovery of Debt and Financial Malpractices in Banks) Act, 1994 the Banks and other Financial Institutions Act, Miscellaneous Offences Act, and any other law or regulation relating to economic and financial crimes, including the Criminal Code and Penal Code.⁴⁸

It can be seen from the above, that the Economic and Financial Crimes Commission has enormous responsibilities in ensuring the enforcement of economic crimes in the country. This demands a lot of commitment on the part of the Commission to ensure that the on-going economic reforms of the government are not negatively manipulated and rendered ineffective by incidents of economic crimes. While it may be too early to assess the effectiveness of the Commission, it must be noted that it has taken giant strides in the direction of minimizing the prevalence of economic and financial crimes by the prosecution of a number of notable Nigerians for their alleged involvement in these crimes.⁴⁹

Conclusion

The devastating effects of economic crimes to the national economy have long been realized in Nigeria. This explains the several efforts that have been made from the early 1960s to grapple with this social malaise through the enactment of appropriate

⁴⁴ Such as s.14(1) which makes it an offence for any officer of a bank or other financial institutions who fails or neglects to secure compliance with the provisions of the Act, while s.15(2) provides that anybody who commits or attempts to commit a terrorist act or participates in or facilitates the commission of a terrorist act is guilty of an offence and is liable to imprisonment for life.

⁴⁵ If not sufficiently managed, such wide powers could result in a loss of focus by the Commission.

⁴⁶ Section 6(b).

⁴⁷ Section 6(e).

⁴⁸ Section 7(2) of the Act.

⁴⁹ In this connection, the Federal High Court's conviction of Mrs Anajemba over money-laundering offences must be seen as an important step in this direction as it is capable of giving the required assurance that the government's commitment in the tackling of corruption and economic crimes is unshaken and unwavering: *The Guardian*, Tuesday, June 12, 2005, p 1.

legislations. Initially, these efforts were channeled through the existing Criminal and Penal Codes but with increased sophistication in the modalities of these crimes, and the perceived inadequacies in the existing laws, there was need to enact other statutory instruments to tackle the problem.⁵⁰

While the civilian government was not forthcoming in taking decisive actions for the enforcement of such laws, probably because of their own connivance and culpability in economic crimes, the succeeding military regimes took the bull by the horns in furtherance of their self-avowed cleansing mission in governance. However, as draconian as some of the Decrees they enacted were, there was no marked reduction in such crimes, with the result that by the time the current civilian government came on board in May 1999, the situation had already degenerated to unacceptable levels. The efforts of the present government in dealing with economic crimes must therefore be applauded as a demonstration of its desire to stem the tide of deterioration arising from the effect of such crimes on the country's economy. In this connection, it is necessary to stress that the legislative measures to tackle such economic crimes as money laundering require further refinement to ensure that their provisions accord with contemporary international developments in this area. The recent proposal for the amendment of the law to establish an Investigation and Intelligence Monitoring Unit in the Economic and Financial Crimes Commission is therefore a welcome development and is a response to the suggestions for same to accord with international standards and prescriptions.⁵¹

There is equally an overwhelming need to strengthen the enforcement mechanisms contained in the existing laws to achieve maximum results. One of the banes of Nigerian criminal laws has been the inadequacy of enforcement measures, and, where they exist, the inability to sustain such measures from one government to the other. The common approach has been for each government to set and pursue its own agenda, and in the process, denigrate any scheme initiated by the previous government. This explains the absence of continuity in the fight against economic crimes in Nigeria, and this is where the enlightenment programme of the Economic and Financial Crimes Commission deserves support and encouragement so that Nigerians will be sufficiently sensitized on the need to work against such crimes, and insist on the sustenance of enforcement mechanisms.

It is also necessary to suggest that the frequent abandonment of existing legislations and the enactment of new ones each time there is a change of government be discontinued. There is great merit in the adoption of the well-known procedure of amendment of existing laws so that the focus will still be on those laws rather than a resort to new legislations containing substantially, the same provisions as the existing laws, which has been the pattern of legal development in this area.

It is hoped that the present efforts at tackling economic crimes in Nigeria will be sustained to create a culture of respect for legal rules and minimize the adverse effects of such crimes on the national economy.

⁵⁰ Yakubu, J A, "Democracy, Good Governance and the Phenomenon of Corruption in Nigeria," *Proceedings of the 39th Annual Conference of the Nigerian Association of Law Teachers*, October 13-15, 2003, 17 at 50.

⁵¹ Such as that contained in the forty recommendations adopted by the Financial Action Task Force on Money Laundering in 1990 and revised in 2003; see also s.5 of the *Zambian Prohibition and Prevention of Money Laundering Act 2001* establishing the Investigations Unit in the Anti-Money Laundering Authority with enormous investigative powers.