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## Reshaping the Amorphous Nature of the Offence of Corruption in Nigeria

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### **Abstract:**

*"Corruption in Nigeria is so notorious that data and statistics are no longer necessary to prove and establish that the proportion is endemic. Corruption, no doubts, has eaten deep into the fabrics of the Nigerian polity and system, so much so that it has become convenient to offer justification for some kind of public malfeasances in order to categorize them as a class of public misconduct outside corruption. Those who engage in the act of corruption now call it by different names in order to excuse themselves from the damning effect and opprobrium associated with corruption. Acts of stealing and embezzling public funds in Nigeria are now termed 'stealing' simpliciter, hence the ignoble coinage 'stealing is not corruption.' This has become convenient and common place in the public sphere because our laws failed to give a definite definition and make clear provision on the scope of the subject matter of corruption. This has compounded the confusion as to the scope of the offence of corruption in Nigeria, as the offence-creating statutes, in their provisions on corruption, fail to cover and integrate as corruption, various acts which are globally recognized as corruption. This paper is thus set out to critically examine the extent and scope of the offence of corruption in Nigeria and to determine its true scope. The paper undertook the examination of relevant statutes touching on the offence of corruption with a view to pointing out generally, the inadequacies of our laws in this regards and to clarify and identify certain class of corrupt practices that are not specifically provided for. The methodology is thematic, while the presentation approach is expository, analytical, critical and comparative. It undertook a discussion of the subject matter by way of critical analysis of relevant themes and examination and assessment on the relevant laws and opinions relating to the subject matter.*

**Keywords:** Amorphous, Corruption, Corrupt Practices, Crime, Offence

### **1. Introduction**

Corruption has become a prevalent and topical issue of daily notoriety in Nigeria. It has become so endemic in Nigeria that facts and figures are replete as to its extent and the adverse effect it has on the polity and economy.

The 2015 Transparency International Corruption Perception Index pegged Nigeria at 136 out of 168 countries, with a low score of 26/100;<sup>i</sup> while the 2016 Transparency International Corruption Perception Index pegged Nigeria at 136 out of 176 countries, with a low score of 28/100.<sup>ii</sup> In a 2016 Report of Reputation Institute, Nigeria ranked the 5<sup>th</sup> least reputable country out of 70 countries considered in the survey,<sup>iii</sup> while in that of 2017, Nigeria ranked a low 4<sup>th</sup> least reputable country out of 55 countries considered in the 2017 survey.<sup>iv</sup> In a very recent National Report on Corruption released by the National Bureau for Statistics, almost a third of Nigerian adults pay bribe when in contact with public officials and roughly N400billion is spent on bribe each year.<sup>v</sup> Only recently, the Department for International Development (DFID) of the United Kingdom claimed that in an independent report estimates that up to \$32bn (amounting to about 16% of state resources) was lost to corruption under the six (6) years administration of former President Goodluck Jonathan.<sup>vi</sup>

These facts and figures are evidence of the extent to which corruption and other related criminal activities have eaten in to the fabrics of Nigeria and translate to underdevelopment. Most of the incidences of corrupt practices that make up the above statistics are perpetrated in the public sector, through diversion and misappropriation of public funds or gratification. Funds that are basically meant for developmental projects are seen to be usually diverted and misappropriated by public officials for personal gains and self-aggrandizement. One needs no soothsayer to tell how much these have cost Nigeria and have negatively affected her development and advancement.

Corruption has become an integral part of the Nigerian system, so much so that it has become convenient to offer justification for some kinds of public malfeasances in order to categorize them to be outside the realm of corruption. Those who engage in these acts of corruption now call it by different names and sobriquets in order to excuse themselves from the damning effects and opprobrium associated with corruption. Acts of embezzlement, misappropriation and diversion of public funds in Nigeria are now termed 'stealing' simpliciter, hence the ignoble coinage 'stealing is not corruption.' This has become convenient and common place in the public sphere because our laws failed to give a definite definition and make clear

provision on the scope of the subject matter of corruption. This has compounded the confusing as to the scope of the offence of corruption in Nigeria.

This paper is thus set out to critically examine the extent and scope of the offence of corruption in Nigeria and to identify other acts of corrupt practices that do not find explicit expression in our anti-corruption laws. The paper will undertake the examination of relevant statutes touching on the offence of corruption with a view to pointing out generally, the inadequacies of our laws in this regards.

## 2. The Meaning and Scope of the Offence of Corruption in Nigeria

Literally speaking, corruption is an omnibus term for all manners of moral wrong. But for a misconduct or malfeasance to amount to a crime in Nigeria, it must transcend the realm of moral wrong to the sphere of legal wrong. The 1999 Constitution of Nigeria which is our *grundnorm* made this imperative by providing that:

A person shall not be convicted of a criminal offence, unless that offence is defined and the penalty therefor is prescribed in a written law and in this subsection, a written law refers to an Act of the National Assembly, or the Law of a State, any subsidiary legislation or instrument under the provision of a law.<sup>vii</sup>

Further to this, the Criminal Code Act provides that:

No person shall be liable to be tried or punished in any court in Nigeria for an offence except under the express provisions of the code or some Act or Law which is in force in, or forms part of law of Nigeria.<sup>viii</sup>

*A fortiori*, for an act or an omission to be considered a crime/offence in Nigeria, such an act or omission must have been provided for and designated as an offence/crime and the offence must be defined and punishment therefor prescribed by a written law in force in Nigeria.<sup>ix</sup>The combine effect of the aforementioned provisions is principally to eliminate the common law of crimes in Nigeria, as well as every other form of customary criminal law.<sup>x</sup> Similar provisions are made in sections 2 and 3 of the Penal Code<sup>xi</sup> and these sections are only a pointer that criminal law in Nigeria is not only statutory, but codified.<sup>xii</sup>Consequently, to put corruption in the perspective of an offence, one must endeavor to explore the legal definition of corruption and examine the necessary statutory provisions on the subject matter.

The concept of corruption is a complex phenomenon not admitting to any definition in simple and clear terms. At the deliberations and elaborations of the United Nations Convention Against Corruption (UNCAC) the option adopted as a way of effectively tackling the menace of corruption was not to define corruption *per se* but to identify and describe the specific conducts that are generally classified as corrupt criminal conduct. Such misconduct identified includes bribery, embezzlement, theft, fraud, extortion, abuse of discretion, favouritism, nepotism, cronyism, creating or exploiting conflicting interests and improper political party donations.<sup>xiii</sup> Interestingly, this is the same line towed by most Nigerian statutes that seek to criminalize of corruption.

According to *the Black's Law Dictionary*,<sup>xiv</sup> corruption is:

- "1. Depravity, perversion, or taint: an impairment of integrity, virtue, or moral principle; especially the impairment of a public official's duties by bribery.
- "2. The act of doing something with an intent to give some advantage inconsistent with official duty and the rights of others; a fiduciary's or official's use of a station or office to procure some benefit either personally or for someone else, contrary to the rights of others."

From the above, corruption appears to be the deliberate violation, for gainful ends, either directly or indirectly of certain legally, professionally or even ethically established standards of conduct by public officials. These gains may be in cash, or, kind, or it may even be psychological or political, but they are made by the violation of the integrity of an entity and involves the subversion of its quality and capacity.<sup>xv</sup> Thus, corruption or corrupt practice involves the violation of established rules for personal gain and profit.<sup>xvi</sup> It is the acquisition of wealth or power through illegal means, a misuse of public power for private benefit.<sup>xvii</sup>

In other words, corruption is the misuse by government officials of their governmental powers for illegitimate private gains. It is that behaviour which deviates from the normal duties of a public role because of private-regarding (personal, close family, private clique) pecuniary or status gains; or violates rules against the exercise of certain types of private-regarding influence.<sup>xviii</sup>This definition was referred to and adopted by Yadav.<sup>xix</sup>

This definition comes close to that of the World Bank which defines corruption as the abuse of public office for private gains. Public office is abused for private gains when an official accepts, solicits or extorts a bribe. It is also abused when private agents actively offer bribes to circumvent public policies and processes for competitive advantage and profit. Public office can also be abused for personal benefit even if no bribery occurs, through patronage and nepotism, the theft of state assets or the diversion of state revenue.<sup>xx</sup>

The above definition which emphasizes the abuse of public office for private gain<sup>xxi</sup> appears to be the most popular or conventional definition of corruption. This conventional or economic definition tallies with an often quoted definition used by the Transparency International which defines corruption as the misuse of public power for private benefit, which includes the bribing of public officials, kickbacks in public procurement and the embezzlement of public funds. There are three different elements in this definition namely:

- i. a misuse of power;
- ii. a power that is entrusted (i.e. it can be in the private sector just as much as in the public); and

- iii. a private benefit (i.e. not necessarily personal to the person misusing the power, but including as well members of his or her immediate family and friends).

This conventional or economic definition however, does not fully capture all that the concept of corruption is employed to denote. By emphasizing public sector corruption, it forgets that much of it is actually induced by private sector corruption.<sup>xxii</sup>

In Nigeria, the term “corruption” evades an all-encompassing definition. None of our anti-corruption laws gives a comprehensive definition of “corruption.” While the Corrupt Practices and Other Related Offences Act 2003<sup>xxiii</sup> defines corruption as “including bribery and other related offences;”<sup>xxiv</sup> the Economic and Financial Crimes Commission (Establishment) Act 2004<sup>xxv</sup> does not give a definition at all. Rather, it incorporated corrupt practices into what it labelled as “economic and financial crimes,” which it says means:

The non-violent criminal and illicit activity committed with the objectives of earning wealth illegally either individually or in a group or organised 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.<sup>xxvi</sup>

Neither the Criminal Code<sup>xxvii</sup> nor the Penal Code<sup>xxviii</sup> gives any definition of corruption. The Criminal Code only says that:

An offence of corruption is committed where a public officer corruptly asks for, receives, or obtains any property or benefit of any kind for himself or any other person; or corruptly agrees or attempt to receive or obtain any property or benefit of any kind for himself or any other person on account of...<sup>xxix</sup>

The Code appears to be begging the question in proffering a definition for “corruption.” It only stated when the offence of corruption is committed and mentioned acts and conducts that amount to the offence of corruption. It must however be borne in mind that conducts which constitute corruption are not static and certain. They evolve with time. As society develops and human affairs and governance become more sophisticated, so also do man continue to device means to cut corners and enrich himself at the expense of the public good.<sup>xxx</sup> Furthermore, the Code and even judicial attitude<sup>xxxi</sup> tends to treat corruption as only public-sector bound; but in truth, the trend is prevalent in the private sector as well.

In its shortcoming, the mainstay of the definition of the offence of corruption in the Criminal Code centres on the word “corruptly” without any deliberate attempt to define what “corruptly” as used in the Code means.<sup>xxxii</sup> However, corruption is said to mean abuse of office for personal gains or other illegal or immoral benefits.<sup>xxxiii</sup> It is an anti-social behaviour conferring improper benefits contrary to legal and moral norms.<sup>xxxiv</sup>

### 3. Legal Framework for the Offence of Corruption in Nigeria

In Nigeria, the responsibility of legislating on corruption rests on the National Assembly. Though corruption is not specifically mentioned in the exclusive legislative list,<sup>xxxv</sup> but the Supreme Court has held in the case of *A-G Ondo State v A-G Federation & Ors*.<sup>xxxvi</sup> that by the joint effect of sections 4(2) and (3),<sup>xxxvii</sup> 15 (5)<sup>xxxviii</sup> and items 60 (a),<sup>xxxix</sup> 67,<sup>xl</sup> and 68<sup>xli</sup> of Part I to the Second Schedule to the 1999 Constitution of Nigeria, the National Assembly is empowered to legislate on issues of corruption and corrupt practices and such legislations would be enforced across the entire federation, including the states. This is because the Supreme Court considered corruption as a national problem that requires uniform approach.

#### 3.1. General Statutory Provisions

There are several pieces of legislation that touch generally on corruption and corrupt practices in Nigeria, but for the purposes of this work, the 1999 Constitution of the Federal Republic of Nigeria<sup>xlii</sup>/the Code of Conduct Bureau and Tribunal Act 1991,<sup>xliii</sup> the Criminal Code,<sup>xliv</sup> the Penal Code,<sup>xlv</sup> and the Corrupt Practices and Other Related Offences Act 2003<sup>xlvi</sup> would be the touchstone. This is because these mentioned statutes are the ones that created specific offences that fall under our definition of corruption. Others, which include Advance Fee Fraud and Other Fraud Related Offences Act 2006,<sup>xlvii</sup> Dishonoured Cheques (Offences) Act 1977,<sup>xlviii</sup> Pension Reforms Act 2014,<sup>xlix</sup> Banks and Other Financial Institutions Act (BOFIA) 1991,<sup>l</sup> Failed Bank (Recovery of Debt) and Financial Malpractices in Banks (Amendment) Act 1994,<sup>li</sup> Money Laundering (Prohibition) (Amendment) Act 2012,<sup>lii</sup> etc., touch generally on other economic and financial crimes, which necessarily do not qualify as the offence of corruption strictly speaking.

Economic and Financial Crimes Commission (Establishment) Act 2004<sup>liii</sup> on its part makes no specific provision on any specific offence of corruption, but it rather created the Economic and Financial Crimes Commission, EFCC<sup>liv</sup> and saddled it with the powers to investigate and prosecute corrupt practices and other economic and financial crimes. It also created few offences touching on the running and hampering the functions of the EFCC and other ancillary economic and financial crimes.

#### 3.2. 1999 Constitution of Nigeria<sup>lv</sup>/the Code of Conduct Bureau and Tribunal Act 1991<sup>lvi</sup>

Under the Code of Conduct for Public Officers, a public officer shall not put himself in a position where his personal interest conflicts with his duties and responsibilities as a public officer.<sup>lvii</sup> Going further, the Code of Conduct prohibits public

officers from maintaining a foreign bank account.<sup>lviii</sup> This is aimed at checkmating looting, embezzlement and money laundering, as public funds stolen in many instances are often charted away in foreign bank accounts.

The Code of Conduct also prohibits public officers from asking for and accepting gifts, bribes and properties for the discharge of their duties.<sup>lix</sup> It also prohibits any other person from bribing a public officer to perform his lawful duties,<sup>lx</sup> and any other abuse of office on the part of the public officer.<sup>lxi</sup> The Code of Conduct also makes it mandatory for public officers to declare their assets within the period prescribed by the laws.<sup>lxii</sup>

Even though the “offences” under the Code of Conduct for public officers are not necessarily criminal offences; and the sanctions are merely administrative and disciplinary and not necessarily punitive, the Supreme Court has held that the jurisdiction of the Code of Conduct Tribunal in trying and punishing infraction of the Code of Conduct is quasi-criminal.<sup>lxiii</sup>

### 3.3. Criminal Code<sup>lxiv</sup>

The Criminal Code prohibits and criminalizes corrupt practices and abuse of office generally.<sup>lxv</sup> As indicated earlier, the Code specifically provides for the offence of “official corruption.”<sup>lxvi</sup> Under the code, it is official corruption for a public official to invite bribes, etc., on account of own actions.<sup>lxvii</sup> It is also official corruption for any person to give bribes, etc., on account of actions of a public official.<sup>lxviii</sup> Official corruption also extends to persons inviting bribes, etc., on account of actions of public official.<sup>lxix</sup>

The code defines judicial officer and condition for arrest and prosecution of a judicial officer in cases of official corruption.<sup>lxx</sup> It also gave the meaning of a “public official” as used sections 98 to 98B.<sup>lxxi</sup>

Under the Criminal Code, it is an offence for a public officer to engage in extortion on account of public duties.<sup>lxxii</sup> The Criminal Code also criminalises and prohibits public officers from expressing interest in contracts made on account of public service.<sup>lxxiii</sup> Under the Criminal Code, it shall be an offence for an officers charged with administration of property of a special character or with special duties to act in a manner that manifests conflict of interest.<sup>lxxiv</sup> The Criminal Code also prohibits and criminalises false claims by officials,<sup>lxxv</sup> and abuse of office,<sup>lxxvi</sup> bargaining for offices in public service<sup>lxxvii</sup> and public servants demanding property, etc. corruptly and under the colour of his/her employment.<sup>lxxviii</sup> It is also an offence under the Criminal Code for someone acting as an agent to accept secret commission and corrupt acceptance of gift in other to work against the interest of his/principal,<sup>lxxix</sup> while it is also an act of corruption to give someone acting as an agent secret commission or gifts corruptly to induce him to work against the interest of his principal.<sup>lxxx</sup>

Punishment for corruption under the Criminal Code ranges from one year to seven years imprisonment.

### 3.4. Penal Code<sup>lxxxi</sup>

The Penal Code, which is applicable only in Northern Nigeria,<sup>lxxxii</sup> contains several provisions relating to corruption. Such provisions include: the prohibition and criminalization of giving, receiving and benefitting from gratification, and abuse of office generally.<sup>lxxxiii</sup> The offences of giving, receiving and benefitting from gratification, and abuse of office are punishable with a term of imprisonment of seven (7) years and/or fine and eleven (11) years and/or fine is the offender acted in a judicial capacity or as a Police officer. The Code also prohibits and criminalizes extortion<sup>lxxxiv</sup> and criminal breach of trust.<sup>lxxxv</sup> Criminal breach of trust is ordinary punishable with a term of seven (7) to ten (10) years and/or fine,<sup>lxxxvi</sup> but if the matter concerns a public servant, banker, factor, broker, legal practitioner or an agent, such a person would be punished with a term of fourteen (14) years and/or fine.<sup>lxxxvii</sup> The Code made elaborate provisions prohibiting and criminalizing the offences of cheating generally<sup>lxxxviii</sup> and the falsification of account.<sup>lxxxix</sup>

A major drawback of the provisions of the Criminal Code and the Penal Code is that emphasis and prohibition of corruption is in public service. The both Codes are silent in cases of corruption in the private sector. This gap has however been filled by the Anti-Corruption Act.

### 3.5. Corrupt Practices and Other Related Offences Act 2003<sup>xc</sup>

Under the Anti-Corruption Act, offences created and penalized under the Act include the offence of accepting gratification;<sup>xc</sup> making corrupt offers to public officers;<sup>xcii</sup> corrupt demand by officials;<sup>xciii</sup> fraudulent acquisition of property;<sup>xciv</sup> fraudulent receipt of property;<sup>xcv</sup> commission of corruption offences through the postal system;<sup>xcvi</sup> deliberate frustration of investigation by the Commissioner;<sup>xcvii</sup> making false statement or return;<sup>xcviii</sup> accepting, obtaining, receiving, giving gratification by and through agents or agreeing to do same;<sup>xcix</sup> bribery of public officers;<sup>c</sup> using public office or position for gratification;<sup>ci</sup> bribery in relation to auctions;<sup>cii</sup> bribery of public officers for contract;<sup>ciii</sup> failure to report bribery transactions;<sup>civ</sup> dealing with, using, receiving or concealing gratification;<sup>cv</sup> making false or misleading statement to the Commission.<sup>cvi</sup> Attempts, conspiracy, abetments of corruption related offences are as well made punishable under the Act.<sup>cvi</sup>

From these offences, it will be observed that the scope of the meaning of corruption as envisaged under the Act is so wide to cover vast range of offences and corrupt practices committed contrary to one’s public or private duty, and the rights of others.<sup>cvi</sup>

The anti-corruption law imposes penalties of fine or imprisonment or both and in addition provides for the forfeiture of gratification and properties to government which are assets of the convict(s), which is the subject matter of the prosecution.<sup>cix</sup>



#### 4. The Amorphous Nature and Limited Scope of the Offence of Corruption in Nigeria

If it is agreed that corruption is the abuse and misuse of public office for private gains and illegal benefits and enrichment, then it is unfortunate that there are some aspects of official corruption that is not clearly and expressly provided for as acts of corruption in our laws and these included misappropriation, embezzlement, diversion and conversion of public funds.

Bringing this in tune with cases of misappropriation, embezzlement, diversion and conversion of public funds, one needs no authority to state that monies and funds are things capable of being stolen and are subject to state/public ownership. This makes it convenient to assert without equivocation that misappropriation, embezzlement, diversion and conversion of public funds, which are acts of official corruption, also amounts to stealing and could be prosecuted and punished as such, because they involve the abuse and misuse of public office for unlawful private gains and illicit enrichment.

It was during the administration of former Nigerian President, Dr. Goodluck Jonathan that the issue of 'stealing is not corruption' trended. The then President during his Presidential media chat on 4<sup>th</sup> May, 2015 was quoted as saying that, stealing is not corruption. According to him, most acts credited to corruption have no relationship with corruption, but stealing. This comment of the then President sparked off controversies. He however clarified that he meant that some act of public officials are merely stealing and cannot necessarily be called corruption.<sup>cx</sup>

Further to this, a former Chairman of the Independent Corrupt Practices and Other Related Offences Commission, Mr EkpoNta was also quoted as saying that:

"Stealing is erroneously reported as corruption. We must go back to what we were taught at school to show that there are educated people in Nigeria. We must address issues as we were taught in school to do."

But in an interview with with OlayinkaOyegbile Deputy Editor and GboyegaAlaka of the Nation Newspaper, Mr EkpoNta shed more light on the difference between stealing and corruption, but however insisted that stealing is corruption if it involves the embezzlement of public funds.<sup>cx</sup>

The foregoing exposes the lacuna in our anti-corruption legislation on the scope of the offence of corruption. There is no specific provision of our anti-corruption legislation that specifically criminalizes misappropriation, embezzlement, diversion and conversion of public funds and illicit enrichment by public official as acts of corruption or corrupt practices. What we have is a situation where prosecutions for any of these acts are brought under other provisions of our substantive criminal laws which could accommodate them by their very nature.

A case at hand is that of *F.R.N. v EssaiDangaba & 5 Ors.*,<sup>cxii</sup> where John YakubuYusufu, a former Assistant Director in the Police Pension Office as 5<sup>th</sup> accused person; EssaiDangaba (Director of Police Pension Fund), AtikuAbubakarKigo (Permanent Secretary), and 3 others were charged on a 20 count amended charge, with the offences bordering on the embezzlement of Police pension fund. Through a plea negotiation, John YakubuYusufu pleaded guilty to counts 18, 19 and 20 which accused him of conniving with the other accused persons to convert to their own use, a total sum of N27.2 billion, belonging to the Police Pension Office. An offence defined by section 308 and punishable under section 309 of the Penal Code Act (PCA).<sup>cxiii</sup> Section 308 of the PCA provides for the offence thus: "whoever dishonestly misappropriates or converts to his own use any movable property, commits criminal misappropriation." While section 309 of the PCA prescribes the punishment thus: "whoever commits criminal misappropriation shall be punished with imprisonment for a term which may extend to two years imprisonment or with fine or with both."

On Monday, January 28, 2013, a High Court of Nigeria's Federal Capital Territory, Abuja presided over by Hon. Justice AbubakarTalba convicted John Yakubu Yusuf of the offence of criminal misappropriation and sentenced him to a prison term of 2 years with an option of fine of N250, 000 for each of the 3 counts in a 20-Count Amended Charge, to which he had specifically pleaded guilty. Since the Judge ordered that the sentences should run concurrently, John YakubuYusufu was, in effect, sentenced to a cumulative prison term of 2 years with an option of N750, 000 fine. However, in addition to the custodial punishment or fine, John YakubuYusufu was ordered to forfeit, to the State, 32 real properties, situate in Abuja and Gombe, and the sum of N325 million, proceeds of his crime, stashed away in banks were frozen.<sup>cxiv</sup>

If there were to be any provision in any of our anti-corruption legislation criminalizing misappropriation, embezzlement, diversion and conversion of public funds and illicit enrichment, there would not have been any need to charge the accused persons under section 308 and 309 of the Penal Code Act, which attracted ridiculous sanction. They would have rather been charged under the specific provision for misappropriation, embezzlement, diversion and conversion of public funds and illicit enrichment in an anti-corruption legislation, if there were any.

It is also worthy of note that the Nigerian legal framework on anti-corruption in this regards, falls short of the standard and prescription of the United Nation Convention Against Corruption (UNCAC) 2003.<sup>cxv</sup> Article 17 of the UNCAC 2003 encourages state parties to legislate and criminalize embezzlement, misappropriation or other diversion of property by a public official; while article 20 of the UNCAC 2003 encourages state parties to legislate and criminalize illicit enrichment. None of these has Nigeria specifically done through any of our anti-corruption legislation.

#### 5. Conclusion

Corruption in Nigeria has become so endemic that there is need for a comprehensive and an all-encompassing legal framework to combat it. This paper has painstakingly undertaken an overview and critical analysis of the offence of corruption in Nigeria. The paper takes the position that by the existing legal framework, the acts of misappropriating, embezzling,

converting and diverting public funds and illicit enrichment all qualify as corrupt practices; but unfortunately, they are not specifically and expressly provided for and categorized as offence of corruption in any of our anti-corruption statute.

This limitation in our anti-corruption statutes in failing to recognize as corruption and specifically provide and criminalize the act of stealing public fund that manifest in the form of misappropriation, embezzlement, diversion, conversion of public funds and illicit enrichment, has brought about the hoopla as to which conducts and public malfeasances amount to corruption and which does not. It has left the scope and extent of the offence of corruption in Nigeria to be uncertain, imprecise and indecisive. This also runs afoul of international standard as per legal framework for the fight against corruption, hence the need for a turnaround.

## 6. Recommendations

In view of the foregoing discussion and to the take deliberate steps towards ensuring that our anti-corruption legal framework complies with the UNCAC 2003 standards and adequately cater for the offence of corruption, the following recommendations are preferred, in addition to others earlier rendered in the body of this paper.

- a. There should be in place a comprehensive and all-encompassing anti-corruption legislation in Nigeria. The said legislation will effectively define the offence of corruption to reflect its true meaning and scope;
- b. The anti-corruption legislation should endeavor to specifically cover and include, in the scope of the offence of official corruption, acts of misappropriation, embezzlement, diversion, conversion of public funds and illicit enrichment, in keeping with the standards of the UNCAC 2003;<sup>cxvi</sup>
- c. Such anti-corruption legislation should also extend the frontiers of the offence of corruption to the private sector. This is in keeping with the prescriptions of Article 22 of the UNCAC 2003, which provides that:  
Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position.;
- d. For offences of (official) corruption, embezzlement and diversion of public funds, and other corrupt practices; in addition to forfeiture of assets, convicts should also be sentenced to terms of imprisonment without option of fines after due trial.<sup>cxvii</sup> Offence-creating statutes should be reviewed to exclude the option of fine as a punishment in offences bordering on official corruption and other related corrupt practices. The need for this is because, where such option of fine is not expressly excluded as a punishment imposable for such offences, a judge can invoke his sentencing discretion and impose fine.<sup>cxviii</sup> Where the statute creating any offence expressly excludes the option of fine, the court cannot impose a sentence of fine.<sup>cxix</sup>

With these recommendations put into actualisation, the aims and objectives of our anti-corruption legal framework would be better placed to combat corruption and actualize the goals of the criminal law in the anti-corruption war.

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- xxxvii. Dealing with the powers of the National Assembly to make law for the peace, order and good government of the Federation with respect to any matter contained in the exclusive legislative list set out in Part I of the Second Schedule to the Constitution.
- xxxviii. State's fundamental objective and directive principle to abolish all corrupt practices and abuse of office
- xxxix. Providing for the establishment and regulation of authorities for the Federation or any part thereof, to promote and enforce the observance of the Fundamental Objectives and Directive Principles contained in the Constitution.
- xl. Dealing with any other matter with respect to which the National Assembly has power to make law in accordance with the provisions of the Constitution.
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