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## **COMBATING CORRUPTION IN PUBLIC PROCUREMENT: AN APPRAISAL OF NIGERIA'S DEBARMENT SYSTEM**

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### **ABSTRACT**

This article examines the provisions of the Public Procurement Act (PPA) on debarment, an administrative sanction that is used in fighting corruption in the procurement process, in Nigeria. The article concludes that courts can debar juristic persons convicted of any offence in the PPA for a minimum of five years, on the one hand. While on the other hand, the Bureau can debar both natural and juristic persons that are convicted of any offence in the PPA. Similarly, it identifies the weaknesses in the provisions of the PPA on debarment, which includes the following: First, only an individual or firm that contravenes the PPA and Procurement Regulations can be debarred. An individual or firm convicted of procurement corruption under any other federal law cannot be debarred; Second, the PPA does not state for how long an individual could be debarred; and Third, the scope of debarment does not extend to affiliate companies, such as parent or subsidiary companies, of the debarred firms. The article concludes with recommendations on how to make debarment an effective anti-corruption measure in Nigeria.

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## 1. INTRODUCTION

One of the administrative sanctions in the Public Procurement Act of 2007(PPA),<sup>1</sup> the main legal framework for federal procurements in Nigeria,<sup>2</sup> is debarment.<sup>3</sup> Although prior to the enactment of the PPA, a form of a disqualification system existed,<sup>4</sup> it was not effective.<sup>5</sup> Under the disqualification system, individuals and firms interested in bidding for contracts were required to register annually with federal, state or any of their agencies, through their respective Tender Board/Registration Board.<sup>6</sup> However, a registered individual or firm may be de-registered, that is, disqualified, if it failed to execute a contract in line with the terms of the contract, if it assigns the contract without the consent of the Tender Board, and if it failed to revalidate its registration after one year, amongst other reasons.<sup>7</sup>

The disqualification system, however, was fraught with several irregularities, such as collusion, which made it ineffective.<sup>8</sup> One reason for the ineffectiveness of the disqualification system in particular was that Nigeria did not have a specific and comprehensive procurement legal framework.<sup>9</sup> Rather, public procurement was regulated by financial regulations, which were not laws but administrative documents, issued from time to time by the Federal Ministry of Finance.<sup>10</sup> These weaknesses have been addressed with the enactment of the PPA of 2007, which also makes provision for the debarment of corrupt individuals and firms.<sup>11</sup> In 2013, the

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1 Section 6 (1) (e) of the PPA.

2 Section 15 of the PPA. See also Quinot G, Williams-Elegbe S & Udeh K (2021) "Emergency Procurement and Responses to COVID-19 in Africa: The Contrasting Cases of South Africa and Nigeria" in Arrowsmith *et al* (eds) *Public Procurement Regulation in (a) Crisis? Global Lessons from the COVID-19 Pandemic* Oxford: Hart at 703.

3 Sections 6(1)(e) & 58(6) of the PPA. The other administrative sanction is exclusion. See section 16(8) of the PPA. See also Williams -Elegbe S (2012a) "The Reform and Regulation of Public Procurement in Nigeria" 41 *Public Contract Law Journal* at 357.

4 World Bank (2000) *Nigeria Country Procurement Assessment Report* (CPAR) (Volume 11) 22.

5 World Bank (2000) 22.

6 World Bank (2000) 22.

7 World Bank (2000) 23.

8 World Bank (2000) 24.

9 Fagbadebo O & Mbada K (2021) "Public Procurement Law, Due Process, and Public Sector Corruption in Nigeria: A Review" in Dorasamy N & Fagbadebo O (eds) *Public Procurement, Corruption and the Crisis of Governance in Africa* Switzerland: Palmgrave Macmillan at 165; Williams -Elegbe (2012a) at 347; World Bank (2000) 22.

10 Fagbadebo & Mbada (2021) at 167 & 168; Williams -Elegbe (2012a) at 347; World Bank (2000) 22.

11 Sections 5 (n), 6(1) (e) & 58 (6) (a) of the PPA.

Bureau reportedly activated the debarment system and subsequently debarred thirteen contractors from participating in the federal procurement process.<sup>12</sup>

However, since then there is no record that any other entity has been debarred, even though corruption continues to plague public procurement in Nigeria.<sup>13</sup> Different forms of corruption, such as bribery, fraud, collusion, embezzlement of advanced payment, amongst others, are still prevalent in Nigeria's procurement process.<sup>14</sup> Studies,<sup>15</sup> and data from the Economic and Financial Crimes Commission (EFCC), and the Independent Corrupt Practices and Other Related Offices Commission (ICPC), the two main anti-corruption agencies in Nigeria, corroborate the existence of corruption in procurement processes.<sup>16</sup> For example, according to the ICPC, over sixty per cent of corruption cases in Nigeria are related to procurement.<sup>17</sup> In the light of this, it does not appear that the debarment provisions in the PPA is being used effectively.<sup>18</sup> Against this background, this article examines the provisions of the PPA on debarment with a view to identifying its flaws and factors undermining its effectiveness.

The remaining parts of this article is organised as follows: The first part of this article examines the meaning and purposes of debarment; The second part of this article analysis the provisions of the PPA on debarment. Specifically, it examines the grounds on which an individual or a firm may be debarred, and the bodies empowered to do so. Also, it identifies the strengths and weaknesses of the provisions of the PPA on debarment; The third part examines the scopes of debarment; and the fourth part contains the conclusion and

12 See <https://www.premiumtimesng.com/business/141038-procurement-bureau-threatens-stiff-sanctions-against-erring-contractors-suppliers.html> (visited 10 July 2023).

13 Fagbadebo & Mbada (2021) at 166.

14 Williams-Elegbe S (2018) "Systemic corruption and public procurement in developing countries: are there any solution?" 17 *Journal of Financial Crime* 132 & 134; Ozigis R (2018) "Adapting Nigeria's Whistleblower Policy to Procurement Frauds: A Cue from False Claim Act's *Qui Tam* Provision" *Public Contract Law Journal* at 339.

15 Procurement fraud at 38% the most prevalent economic crime in Nigeria in past 24 months – PwC, available at [procurement-fraud-at-38-the-most-prevalent-economic-crime-in-nigeria-in-past-24-months-pwc/](#) (accessed on 19 July 2022).

16 GIABA (2014) *Money Laundering Related to Fraud in Public Procurement in West Africa: A Case study of Nigeria* Dakar: GIABA at 42; Williams-Elegbe (2018) 132.  
See also '60% of corruption cases in Nigeria are procurement-related. Available at [60-of-corruption-cases-in-nigeria-are-procurement-related-icpc/](#) (visited on 18 July 2022).

18 Williams -Elegbe (2012a) at 358.

recommendations on how to make debarment a more effective anti-corruption measure in Nigeria's procurement system.

## 2. MEANING AND PURPOSE OF DEBARMENT

According to the PPA, 'debar' is 'the placing of a firm company or natural person on a list of persons ineligible to participate in any procurement proceedings under this Act'.<sup>19</sup> Based on this, debarment can be defined as the disqualification of a firm from participating in any procurement process, usually for a fixed period of time, because of corruption or any other misconduct.<sup>20</sup> Debarment is an administrative sanction because it is usually imposed by procurement regulatory bodies and is usually not a part of the sentences that courts impose on errant firms or individuals.<sup>21</sup> The conventional punishments, such as a fine and a term of imprisonment,<sup>22</sup> that courts often impose on individuals or firms who are convicted of procurement-related crimes are sometimes ineffective as deterrent measures.<sup>23</sup> This is because individuals or firms on whom such sentences are imposed may still be eligible to participate in procurement proceedings, notwithstanding their convictions.<sup>24</sup> The award of contracts to such firms may amount to a reward for their misconduct. Hence, debarment is designed to prevent and combat corruption by ensuring that individuals and firms that have been convicted of or indicted for corruption and other related offences or irregularities, are not allowed to participate in the procurement process for a stipulated period of time.

The primary objective of debarment is deterrence, both specific and general.<sup>25</sup> Debarment achieves specific deterrence through the disqualification of any individual or firm

19 Section 60 of the PPA. The "Act" refers to the PPA.

20 Williams-Elegbe S (2012b) *Fighting Corruption in Public Procurement: A Comparative Analysis of Disqualification or Debarment Measures* (Hart Publishing: Great Britain 2012) 3; Shaw A & Totman J (2015) *Suspension & Debarment: Strengthening Integrity in International Defence Contracting*, London: Transparency International London at 11.

21 Williams-Elegbe S (2012b) at 3.

22 For example, any natural persons that is convicted of an offence in the PPA is liable to a minimum of five years and a maximum of ten years imprisonment, but maximum term of imprisonment that a court may imposed on convicted public officer is not stated. See section 58(1) & (5) of the PPA. Similarly, a juristic person that is convicted of an offence in the PPA is liable to a fine not less than 25 per cent of the total price of the contract in question. See section 58 (5) (b) of the PPA.

23 Soreide & Hjelmeng (2014) "Debarment in Public Procurement: Rationales and Realization" in Racca G & Yukins C (eds) *Integrity and Efficiency in Sustainable Public Contracts* Bressel: Brylant at 4.

24 Soreide & Hjelmeng (2014) 5.

25 Shaw and Totman (2015) at 13.

that engages in corruption and other related misconduct from participating in procurement proceedings for a stipulated period of time.<sup>26</sup> Apart from the individual or firm that is debarred, other firms would also be deterred from engaging in corrupt practices in the procurement process so as not to be debarred.<sup>27</sup> Additionally, the debarment of a corrupt firm is meant to engender public trust in the procurement process<sup>28</sup> and ensure the optimum utilisation of public funds.<sup>29</sup> It seeks to avoid a situation in which procurement proceedings are overshadowed by allegations of and proven cases of corruption.<sup>30</sup>

However, debarment could reduce the number of bidders that may participate in procurement proceedings.<sup>31</sup> This may reduce competition and lead to a sub-optimal procurement, especially where the debarred firms have a competitive edge over those that were not debarred.<sup>32</sup> Nonetheless, the need to prevent corruption and punish corrupt firms should override any seeming advantages that a corrupt firm may offer.<sup>33</sup> Consequently, it may be justifiable to debar a corrupt firm, no matter its level of expertise, especially if it has not taken or is reluctant to take any significant step to remedy any identified irregularity or misconduct.

### **3 DEBARMENT UNDER THE PPA**

Two bodies are empowered to debar erring firms under the PPA. These are the court and the Bureau of Public Procurement (the Bureau). The next part of this article examines the provisions of the PPA as they relate to the power of the court and the Bureau to debar any erring individual or firm.

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26 Shaw & Totman (2015) at 13.

27 Shaw & Totman (2015) at 13.

28 Auriol E & Soreide T "An Economic Analysis of Debarment" (2017) 50 *International Review of Law and Economics* at 36.

29 Soreide & Hjelmeng (2014) at 2; Bianchi W (2015) "Equality in Exclusion: Empowering Individuals in the Suspension & Debarment System" *Public Contract Law Journal* at 81.

30 Shaw & Totman (2015) at 13.

31 Tillipman J "A House of Cards Falls: Why 'Too Big to Debar' is all Slogan and Little Substance" (2011) *Res Gestae* 57; Stevenson D & Wagner N "FCPA Sanctions: Too Big to Debar" 2011 *Fordham Law Review* 816.

32 Soreide & Hjelmeng (2014) 5 & 6.

33 Soreide & Hjelmeng (2014) 5 & 6.

### 3.1 Debarment by a court

Debarment is part of the sentence that a court can impose on a person convicted of an offence under the PPA. However, the power of the court to debar a convicted person from participating in procurement proceedings is limited to legal juristic persons who have been convicted of a contravention of the PPA. The court cannot debar a natural person who has been convicted of a crime under the PPA.

The PPA in section 58 provides *inter alia* that:

Any legal person that contravenes any provision of this Act commits an offence and is liable on conviction to a cumulative penalty of (a) debarment from all public procurements for a period not less than 5 calendar years; and (b) a fine equivalent to 25% of the value of the procurement in issue.<sup>34</sup>

The term 'cumulative penalty' suggests that both a debarment for a period not less than five years and a fine that equals 25 per cent of the value of the procurement at issue are types of sentences that a court can impose on a juristic person that has been convicted of a crime under the PPA.<sup>35</sup> The court can impose both or either of these sentences.<sup>36</sup>

Where a court debars a firm, the minimum operative period of the debarment must not be less than five years.<sup>37</sup> This means the operative period of the debarment could be more than five years. The fact that the PPA stipulates the minimum duration of a debarment imposed by a court is commendable. It would prevent the court from debarring convicted firms for a shorter period of time. The debarment of a firm for a short period of time, particularly without any condition, may amount to a slap on the wrist and may undermine the deterrent objective of debarment.<sup>38</sup> The inability of a firm to bid for any public contract at the

34 Section 58(6)(a) & (b) of the PPA.

35 Ifejika S (2019) "Strengthening Good Governance in Nigeria's Procurement System in State" in Okolie A Saliu H & Ezirim G (eds) *Governance and Regional Integration in Africa* Nigeria: Nigerian Political Science Association at 52.

36 OECD (2022) *Director Disqualification and Bidder Exclusions in Competition Enforcement: OECD Competition Policy Roundtable Background Note* Paris OECD at 18.

37 Section 58(6)(a) & (b) of the PPA.

38 A study has shown that the effectiveness of debarment is inversely proportional to its length. The study further showed that debarment for a short period of time increases the risks of collusion among firms that are debarred. See OECD (2022) at 32; Cerrone, Hermstruwer & Robalo (2021) "Debarment and Collusion in Procurement Auctions" *129 Games and Economic Theory* at 115.

federal level for five years or longer would undoubtedly serve as a deterrent to it and other firms not to engage in any corrupt practices.

Another point that needs to be underscored with regard to the provision of the PPA on debarment is that a convicted firm could be debarred indefinitely.<sup>39</sup> This is because the PPA did not stipulate the maximum period of time for which a convicted firm may be debarred. However, it may be undesirable to debar a firm indefinitely for a number of reasons. First, an indefinite debarment will amount to an indirect dissolution of the debarred firm,<sup>40</sup> leading to loss of employment for its employees.<sup>41</sup> Second, it does not give any room for such a firm to reform its operations in compliance with legal and ethical standards.<sup>42</sup>

### 3.2 Debarment by the Bureau

Apart from the court, the PPA also empowers the Bureau to debar any supplier, contractor or service provider that violates any provision of the PPA or procurement regulations.<sup>43</sup> The power of the Bureau to debar an errant individual or a firm is two-fold. The Bureau has power to debar any individual or firm that contravened the provisions of the PPA. Additionally, the Bureau has the power to debar any individual or firm that contravened provisions of the Procurement Regulations. It is noteworthy that unlike the court's power of debarment, which is limited to a legal person, the power of the Bureau to debar extends to both natural and juristic persons. This means that any supplier, contractor, or service provider can be

39 See para 8 (b) (ii) of the Procurement Regulations which *inter alia* states that the Bureau can debar an individual or a firm indefinitely.

40 Dixon O (2021) "The Efficacy of Australia Adopting a Debarment Regime in Public Procurement" 49 *Federal Law Review* at 141; Yukins C & Kania M (2019) *Suspension and Debarment in the U.S. Government: Comparative Lessons for the EU's Next Steps in Procurement* George Washington Law School Public Law and Legal Theory Paper No. 2091-39 at 56; Olmos (2019) "Too Small to Debar? Too Small to Disgorge Illegal Profits? What About the Senior Executives, Including the CEO" 13 *Law and Financial Market Review* at 255.

41 Szerman (2023) "The Employee Costs of Corporate Debarment in Public Procurement" 15 *American Economic Journal: Applied Economics* at 435; Dixon (2021) at 143.

42 Tillipman J (2011) "A House of Cards Falls: Why "Too Big to Debar" is all Slogan and Little Substance" *Res Gestae* at 55. If an entity is debarred for a specified period of time, for example, three years, such an entity is expected to address the issue that led to its debarment during the operative period of the debarment. In furtherance of this, the entity may remove its officials that were indicted for the misconduct that led to its debarment. It could also train its officials on ethic and anti-corruption compliance with a view to ensuring that they act above board in their official duties. However, debarment for an indefinite period of time will shut the door against these.

43 See section 6(1) (e) of the PPA; Ifejika (2020) at 73. Williams-Elegbe (2012b) at 349 & 357.

debarred.<sup>44</sup> The PPA defines a supplier as 'a real or legal person who provides a supply of goods, contracting of works or consultants'.<sup>45</sup>

The PPA also, defines a contractor or supplier as 'any potential party to a procurement contract with the procuring entity and includes any corporation, partnership, individual, sole proprietor, joint-stock company, joint venture or any other legal entity through which business is conducted'.<sup>46</sup> Although the PPA does not state the meaning of a service provider, it states the meaning of 'services'.<sup>47</sup> It means *inter alia* 'the rendering by a contractor or supplier of his time and effort'.<sup>48</sup> From this definition, a service provider could be either a natural or juristic person.

The next part of the article examines the power of the Bureau to debar an individual or a firm for the contravention of the PPA. Thereafter, it examines the power of the Bureau to debar an individual or a firm for the contravention of the PPA.

### **3.2.1 Debarment for contravention of the PPA**

Since the Bureau can only debar an individual or firm if it establishes that such an individual or firm has contravened any provision of the PPA, one may ask, on what basis can the Bureau make such a conclusion. Can it reach such a conclusion only after the court has convicted such an individual or firm of a contravention of the PPA? In this case, the Bureau would only be able to debar an entity after a court convicted the firm of violating the PPA. Alternatively, it may be questioned whether or not the Bureau on its own, without a court's conviction, can conclude that an entity has contravened the provisions of the PPA, following its own investigation. The contravention of any provision of the PPA is an offence.<sup>49</sup> This was affirmed by the Court of Appeal in *Adamu v Federal Republic of Nigeria*.<sup>50</sup> In the light of this, this article

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44 Section 16(5) of the PPA.

45 Section 60 of the PPA.

46 Section 60 of the PPA.

47 Section 60 of the PPA.

48 Section 60 of the PPA.

49 Section 58(1)(5) & (6) of the PPA.

50 (2021) LPELR-54598(CA) at 40-42.



submits that the Bureau cannot conclude that a person has contravened any provision of the PPA if a court has not convicted the person.<sup>51</sup>

The abovementioned conclusion is supported by the decision of the Supreme Court of Nigeria in *Garba & Ors v. University of Maiduguri*,<sup>52</sup> in which the Court held *inter alia* that an administrative panel does not have power to give a verdict or make a conclusion that a person has committed a crime. Similarly, in *Odon v. Barigha-Amange (No 2)*,<sup>53</sup> the Court of Appeal held *inter alia* that 'only a court of law has the power and jurisdiction to indict a person for a criminal allegation after a trial and finding of guilt or conviction'. Based on these authorities, it is submitted that the power of the Bureau to debar any person from participating in procurement proceedings is dependent on the conviction of such a person by a court.<sup>54</sup>

Thus, if a person, natural juristic, has been convicted of an offence under the PPA, the Bureau may proceed to debar such a person from participating in procurement proceedings, provided in the case of a juristic person, the court has not done so. However, some may argue that the subsequent debarment of such individuals or firms violates the right against double jeopardy. In other words, it may be argued that their subsequent debarment after the punishment imposed on them by the court amounts to being punished twice for the same offence.<sup>55</sup>

The Nigerian Constitution provides in section 36(9) that

No person who shows that he has been tried by any court of competent jurisdiction or tribunal for a criminal offence and either convicted or acquitted shall again be tried for that offence or for a criminal offence having the same ingredients as that offence save upon the order of a superior court.<sup>56</sup>

From the above constitutional provision, one can deduce that for any person or firm to successfully raise the defence of the right against double jeopardy, four things must be established.<sup>57</sup> First, the individual or firm must have been previously prosecuted. Second, the

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51 See Arrowsmith *et al* (2010) at 59.

52 (1986) 1 NSCC 245.

53 (2010) 12 NWLR Part 1207 at 7.

54 Williams-Elegbe (2012b) at 82.

55 Williams-Elegbe (2012b) at 82.

56 Section 36(9) of the Nigerian Constitution.

57 Hambali (2013) *Practice and Procedure of Criminal Litigation in Nigeria* Lagos: Feat Print and Publish Limited at 421.

prosecution took place before a competent court. Third, the prosecution led to the acquittal or conviction of the individual or firm.<sup>58</sup> Fourth, the criminal charge for which it is being prosecuted is the same, in character and nature, as the one for which it had been prosecuted.<sup>59</sup> The debarment of a convicted person is not another criminal trial, but an administrative proceeding.<sup>60</sup> It does not impose a new or additional criminal sanction on a convicted company. Debarment is an administrative sanction. Based on these facts, it is submitted that the debarment of an individual or a firm following the conviction by a court does not violate the right against double jeopardy.<sup>61</sup>

### **3.3.2 Debarment for the contravention of the Procurement Regulations**

Apart from the contravention of the PPA, the Bureau has power to debar any individual or firm that contravenes any provisions of the Procurement Regulations. While the Procurement Regulations essentially restated the provisions of the PPA, their provisions on debarment appear to be inelegantly drafted.<sup>62</sup> The Procurement Regulations empower the Bureau to debar any individual or firm that that engaged in collusive, corrupt, fraudulent or coercive practices.<sup>63</sup>

They define collusive practice as

a scheme or an arrangement between two or more Bidders with or without the knowledge of the Procuring Entity, including non-disclosure of subsidiary relationships, designed to establish bid prices at artificial, non-competitive levels thereby depriving the Procuring Entity of the benefits of free and open competition.<sup>64</sup>

From this definition, one can deduce that what the Procurement Regulations refer to as a 'collusive practice' is what the PPA refers to as collusion.<sup>65</sup> The Procurement Regulations define corrupt practice as 'the offering, giving, receiving, or soliciting of anything of value to

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58 *Kalu v Nigerian Army* (2010) 4 NWLR, Part 1185 CA at 439.

59 *Nigerian Army v Aminun-Kano* (2010) 5 NWLR, Part 1188 SC at 434.

60 See *R v Jinadu* 12 WACA 368, where it was held that proceedings in the police orderly room for the discipline of an erring policeman does not constitute a criminal trial.

61 See Tillipman (2011) at 51. He submitted that debarment is an administrative remedy and that it is wholly independent of the criminal justice system.

62 Regulation 8 of the Procurement Regulations.

63 Regulation 8 of the Procurement Regulations.

64 Para 4 of the Procurement Regulations.

65 Section 58 (4) (a) of the PPA.

influence the action of a public official in the procurement process or in contract execution'<sup>66</sup> What the Procurement Regulations refer to as corrupt practice is bribery. Similarly, the Procurement Regulations define fraudulent practice as 'anyone or combined misrepresentation or omission of facts that affects the procurement process or contract execution to the detriment of the Procuring Entity'.<sup>67</sup> In addition, the Procurement Regulations define coercive practice as 'harming or threatening to harm, directly or indirectly, persons or their property with intent to influence the manner of their participation in and/or their appropriate conduct of a procurement process and/ or the execution of a contract''.<sup>68</sup>

It is noteworthy that unlike the power of the Bureau to debar individuals and firms that contravene the PPA,<sup>69</sup> the power of the Bureau to debar individuals and firms that contravene the Procurement Regulations does not depend on the conviction of such entities by courts. This is because the Regulations do not criminalise corrupt, fraudulent, collusive and coercive practices. However, one main flaw in the Procurement Regulations on debarment, is that they do not prohibit corrupt, fraudulent, collusive and coercive practices.<sup>70</sup> It is submitted that if these practices are not prohibited, the issue of contravention cannot arise.<sup>71</sup> Because of this omission, there is doubt whether the Bureau can debar any individual or firm for contravention of the Procurement Regulations.

Another flaw in this provision is that it does not state the procedure, particularly the due process requirements,<sup>72</sup> that the Bureau must observe in debarment proceedings. This leaves room for abuse.<sup>73</sup> This article submits that, instead of stating additional grounds of

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66 Para 5 of the Procurement Regulations.

67 Para 4 of the Procurement Regulations.

68 Para 4 of the Procurement Regulations.

69 Section 58 (1) & (6) of the PPA.

70 Annex IV, para 2.2 of the Regulations. For also section 66 (1) of the Kenyan Public Procurement and Disposal Act of 2015 as amended, which expressly prohibit corrupt, coercive, fraudulent and obstructive practices. It states that a person to whom the Act "applies shall not be involved in any corrupt, coercive, obstructive, collusive or fraudulent practice; or conflicts of interest in any procurement."

71 See section 6(1) (e) of the PPA.

72 Williams-Elegbe S (2020) "An Uncertain Future for Debarment in South Africa: An Analysis of the Debarment Provisions in the 2019 Draft Public Procurement Bill" 7 *African Public Procurement Law Journal* at 41.

73 UNCITRAL (2014) *Guide to Enactment of the Model Law on Public Procurement* Vienna: UNODC at 19.

debarment, the Procurement Regulations should state the rules and procedures that the Bureau must follow in debarring entities.<sup>74</sup>

### **3.4 Debarment of convicted persons: Is it mandatory or discretionary?**

The question of whether the court or the Bureau has a mandatory power to debar a person from participating in public procurement is vital to the effectiveness of the debarment system. It is submitted that a mandatory debarment may be more effective than discretionary debarment, because it is predictable and not susceptible to abuse.<sup>75</sup> With respect to the court, the PPA provides that the convicted legal person is liable to be debarred for a minimum of five years.<sup>76</sup> The use of the word 'liable' shows that the court has a discretion on whether or not to debar a convicted firm.<sup>77</sup> With respect to the power of the Bureau to debar any supplier, contractor or service provider, this appears to be discretionary as well.<sup>78</sup> The Bureau is empowered to debar a person, natural or juristic, who contravenes the provisions of the PPA or procurement regulations.<sup>79</sup> Therefore, the Bureau may choose to either exercise or refrain from exercising this power. Based on this, the power of the Bureau to debar an individual or firm is also discretionary.

Perhaps, the discretionary nature of the Bureau's power to debar erring bidders has made it reluctant to debar erring individuals and firms.<sup>80</sup> More so, the PPA does not state the guidelines that the Bureau must follow in determining whether or not to debar such a firm.<sup>81</sup> Although the Bureau claimed to have operationalised the provisions of the PPA on debarment

74 UNCITRAL (2014) at 19.

75 Soreide & Hjselmeng (2014) at 6.

76 Section 58 (6) (a) of the PPA.

77 *Agip (Nig.) Ltd v Agip Petroli Int'l* (2010) 5 NWLR, Part 1187 SC at 362.

78 Section 6 (1) (g) of the PPA; Dixon (2021) at 124.

79 Section 6 (1) (g) of the PPA; Dixon (2021) at 124.

80 Town A (2021) "Ours is to Reason Why: Exploring Motivating Principles for Debarment Systems" 50 *Public Contracts Law Journal* at 535; Ifejika (2019) at 52.

81 Volmink P (2022) "Deviations and Variations in South African Public Procurement (A Note on SCM Instruction 3 of 2021/22)" *African Public Procurement Law Journal* at 61; Dixon (2021) at 145; Williams-Elegbe (2012b) at 208.

in 2013<sup>82</sup> there is nothing to show this has been done.<sup>83</sup> Since 2007 when the PPA came into force, there is no record that any individual or firm has been debarred for violation of the PPA. The annual report of the Bureau on procurement, which contain information on procurement activities for each year, does not include any information on debarment.<sup>84</sup> Different departments within the Bureau have different responsibilities.<sup>85</sup> For example, the Department of Compliance, Certification and Monitoring is charged with the conduct of administrative review proceeding.<sup>86</sup> However, it is concerning that no department is charged with the duty of enforcing the two administrative sanctions provided for in the PPA.

This contradicts the statement of the Bureau that that the administrative framework required to operationalise these sanctions, particularly debarment, has not been put in place.<sup>87</sup> This article submits that that the failure or perhaps the reluctance of the Bureau to debar erring individuals and firms is inadvertently promoting impunity and undermining compliance with the PPA.<sup>88</sup> Bearing in mind that corruption is a systemic problem in Nigeria and that regulatory institutions, including the Bureau,<sup>89</sup> are also being ravaged by it, this article recommends that it should be mandatory for the Bureau to debar any person who has

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- 82 See Premium Times (2013) "Procurement Bureau threatens Stiff Sanctions against Erring Contractor", [supplierpremiumtimesng.com/business/141038-procurement-bureau-threatens-stiff-sanctions-against-erring-contractors-suppliers.html?tztc=1](http://supplierpremiumtimesng.com/business/141038-procurement-bureau-threatens-stiff-sanctions-against-erring-contractors-suppliers.html?tztc=1) (visited on 22 July 2020). The Bureau only concurrently enforced the debarment of thirteen firms that were earlier debarred by the World Bank and the Inter-American Development Bank Group. As stated earlier, there is no legal basis for this in the PPA or any other law in Nigeria.
- 83 Ifejika (2019) at 52; Williams-Elegbe (2012b) at 358.
- 84 For example, see Bureau of Public Procurement (2016) *Annual Report*, Bureau of Public Procurement (2017) *Annual Report 2017*, Bureau of Public Procurement (2020) at 22 & 23.
- 85 The Bureau has eight departments. See Bureau of Public Procurement (2017) *Annual Report* at 17.
- 86 Bureau of Public Procurement (2017) at 80.
- 87 Premium Times (2013) "Procurement Bureau threatens Stiff Sanctions against Erring Contractor", [supplierpremiumtimesng.com/business/141038-procurement-bureau-threatens-stiff-sanctions-against-erring-contractors-suppliers.html?tztc=1](http://supplierpremiumtimesng.com/business/141038-procurement-bureau-threatens-stiff-sanctions-against-erring-contractors-suppliers.html?tztc=1) (visited on 22 July 2020).
- 88 Cerrone, Hermstruwer & Robalo (2021) at 115; Jones A (2021) "Combating Corruption and Collusion in Public Procurement: Proposals for Post-Brexit Reform" 84 *The Modern Law Review* at 689; Ifejika (2019) at 52; Garlick C (2019) "Putting Federal Suspension & Debarment Officials in the Driver' Seat" 48 *Public Contract Law Journal* at 316.
- UK
- 89 For example, in June 2023, a civil society organisation sued the Bureau for its complicity in the irregularities and fraud in the award of contracts. See Premium Times (24 July 2023) *Group Sue BPP over 'foul' Contracts Awarded to MDAs* available at <https://www.premiumtimesng.com/news/top-news/611551-group-sues-bpp-for-alleged-failure-to-monitor-buhari-administrations-contracts.html> (visited July 25 2023). See also Guardian Newspaper (2017) "Senate to probe Alleged Corrupt Practices in BPP" available at <https://guardian.ng/news/senate-to-probe-alleged-corrupt-practices-in-bpp/> (visited on 9 August 2023); Fagbadebo and Mbada (2021) at 180; Jacob (2010) at 147-150.

been convicted of procurement-related corruption under any federal criminal law.<sup>90</sup> This will promote certainty in the process of debarment and prevent the abuse of the discretion that the Bureau and its officials has in this regard.<sup>91</sup>

Further, this article recommends that the Bureau should put in place an administrative framework to operationalise the provisions of the PPA on debarment. The duty of conducting debarment proceedings should not be given to an *ad hoc* committee as this may promote inconsistent decisions, which could lead to uncertainty. Like the World Bank, the Bureau should state the department or committee that would be charged with the conduct of debarment proceedings, as well the rules and procedures that are to be followed in the proceeding.<sup>92</sup> In addition, information on debarment proceedings and the names of individuals and firms that are debarred, the reasons for and duration of their debarments should be included in the annual report of the Bureau and on its website.<sup>93</sup> This will promote transparency in the enforcement of debarment and deter other bidders from engaging in corruption in the procurement process.<sup>94</sup>

### 3.5 The scope of debarment

The scope of debarment is sometimes extended to subsidiaries,<sup>95</sup> parent companies<sup>96</sup> and other affiliates as well as the successors of the debarred firm.<sup>97</sup> The essence of this is to prevent the debarred firm from evading the consequences of its debarment by participating in procurement proceedings through its affiliates, assignees or successors.<sup>98</sup> Generally, debarment is extended to affiliate companies if it can be established that the affiliate controls

90 Arrowsmith S (2020) *Constructing Rules on Exclusions (Debarment) under a Post-Brexit Regime on Public Procurement: A Preliminary Analysis* Working Paper at 1; Shaw and Totman (2015) at 30.

91 Adeniran (2020) *Emerging Patterns, Experiences and Manifestations of Corruption in Nigeria* 1 *Nigerian Journal of Anti-Corruption Studies* at 37; Shaw and Totman (2015) at 16.

92 Dixon (2021) at 146; Jones (2021) at 704.

93 Dixon (2021) at 146; Jones (2021) at 704.

94 Dixon (2021) at 146.

95 "A company is said to be a subsidiary of another company if the company is a member of the company and controls the composition of its board of directors, holds more than 50% in nominal value of its equity share capital, or the first-mentioned company is a subsidiary of any company which is that other's subsidiary." See section 381(1) (a) & (b) of the Companies and Allied Matters Act, 2020.

96 Also known as holding company. "A company is deemed to be the holding company of another, if the other is its subsidiary." See section 381 (5) (a) of the Companies and Allied Matters Act, 2020.

97 OECD (2022) at 31; Yukins & Kania (2019) at 57; Williams-Elegbe (2012b) at 186.

98 Williams-Elegbe (2012b) at 186.

the debarred firm or is under common control with the debarred firm.<sup>99</sup> Unfortunately, the PPA does not state the implications that the debarment of a firm could have on the eligibility of its parent or subsidiary companies, or successors to bid for public contracts.<sup>100</sup> As a result of this *lacuna*, a debarred firm may evade the consequences of its debarment by bidding for contracts using a different entity.<sup>101</sup> Hence, there is a need to extend the scope of the debarment to its affiliates, assignees and successors.

Furthermore, it appears the Bureau cannot debar a director of a firm that has been convicted by the court for his role in the offence committed by a convicted firm.<sup>102</sup> This is because the power of the Bureau to debar is limited to a supplier, contractor and service provider.<sup>103</sup> A director who controls such a convicted firm cannot be described as a supplier, contractor or service provider. However, it may be contended that to effectively curb corruption, such a director should also be debarred by the Bureau because the firm, being a juristic person, cannot on its own engage in corruption or violate the provisions of the PPA. The decision of the firm reflects the actions and decisions of its directing minds and those who control it.<sup>104</sup> The debarment of the firm without extending the debarment to such a culpable director will make a mockery of debarment as such a person could participate in procurement proceedings through other entities.<sup>105</sup> In the light of this, this article recommends that the PPA should be amended to extend the debarment of a firm to its owners and directors.

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99 Williams-Elegbe (2012b) at 186.

100 Williams-Elegbe (2012b) at 3.

101 Szman C (2023) "The Employee Costs of Corporate Debarment in Public Procurement" 15 *American Economic Journal: Applied Economics* at 435; Williams-Elegbe (2012b) at 169.

102 Section 58 (7) & (11) of the PPA. A director of a convicted firm may be convicted by the court if he is complicit in the offence for which the firm was convicted. Specifically, the PPA requires the court to consider the ability of the director to "control the procurement proceedings or to control a solicitation or the conditions of the contract in question, whether total or partial". See section 58 (7) & (11) of the PPA.

103 Section 6 (1) (e) of the PPA; Transparency International (2006) *Handbook for Curbing Corruption in Public Procurement* Berlin: Transparency International at 56.

104 Williams-Elegbe (2012b) 179.

105 Mujuzi J (2021) "Companies Convicted of Economic Crimes and Their Participation in Government Tender Process in South Africa: A Comment on *Namasthethu Electrical (PTY) Ltd V. City of Cape Town and Another* (201/9) (2020) ZASCA 74) (29 June 2020)" *Journal of Comparative Law in Africa* at 110; Olmos (2019) at 255; Williams-Elegbe (2012b) at 180.

At this juncture, it is also important to discuss the scope of debarment in relation to public contracts awarded by the three levels of government in Nigeria: federal, state and local. The PPA regulates only contracts at the federal level of government in Nigeria,<sup>106</sup> and those in which the federal government provides at least 35 per cent of the contract funds.<sup>107</sup> For this reason, an entity that is debarred under the PPA will only be ineligible to bid for federal contracts and those in which the federal government provides at least 35 per cent of the contract funds.<sup>108</sup> The debarred entity will still be eligible to participate in procurement at the state and local government levels. This is one of the flaws in Nigeria's debarment system, which, makes it less effective in deterring erring individuals and firms.<sup>109</sup>

To make debarment an effective deterrence measure, this article recommends that any individual or firm that is debarred by the Bureau should also be disqualified from participating in the procurement process organised by state and local governments during the operative period of such debarment. To make this a reality, the Bureau should liaise with procurement regulatory bodies in all the states in Nigeria with a view to making an agreement for mutual enforcement of one another's debarment decisions.<sup>110</sup> This article acknowledges that there may be opposition to a nationwide enforcement of debarment decisions imposed by the Bureau and states' procurement regulatory bodies on the basis that federal and state governments have exclusive power on procurement matters.<sup>111</sup>

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106 Section 15 of the PPA; Jacob O (2010) "Procurement Law in Nigeria: Challenge for Attainment of its Objectives" 11 *Botswana Law Journal* at 142.

107 Section 15 of the PPA; Jacob (2010) at 142.

108 Section 15 of the PPA.

109 OECD (2022) at 32 & 36.

110 Moreso that the Public Procurement Laws of most of the states in Nigeria, including the provisions on debarment, are to a large extent, similar with that of the PPA. See, for examples section 75(4)(a) of the Kwara State Public Procurement Law No 7 of 2018, section 86(4)(a) of the Lagos State Public Procurement Law of 2021, and section 68(5) of the Kaduna State Public Procurement Law of 2016. See also Yukins C & Nicholas C (2022) *The UNCITRAL Model Law on Public Procurement: Potential Next Steps* George Washington Law Faculty Publications at 15 & 16; Yukins & Kania (2019) at 65; Agora (2023) *Imperative of Strengthening Nigeria's Transparency and Accountability Measures*, Abuja: Agora Policy Report at 588.

111 Section 15 of the PPA. See also Quinot, Williams-Elegbe & Udeh (2021) at 703; Adewole (2014) "Governance Reform and the Challenges of Implementing Public Procurement Law Regime Across Nigeria State Local Government" 2 *International Journal of Public Administration and Management Research* at 29.



Nevertheless, it is submitted that federal and state procurement regulatory bodies have the power to make an agreement for the mutual enforcement of each other's debarment decisions on the basis of section 15(5) of the Nigerian Constitution, which provides *inter alia* 'that State shall abolish all corrupt practices.'<sup>112</sup> In *Attorney-General of Ondo State v Attorney of Federation & ors*,<sup>113</sup> the Supreme Court of Nigeria stated *inter alia* that 'State' in this context means federal, state and local governments. Consequently, in the furtherance of this constitutional mandate, federal and state governments could make an agreement for the cross-debarment of any individual or firm that has been debarred by the Bureau or a state procurement regulatory body.<sup>114</sup>

#### **4 OTHER FLAWS IN THE PROVISIONS OF THE PPA ON DEBARMENT**

There are other weaknesses in the provisions of the PPA on debarment. They are discussed next.

First, only persons who contravened the provisions of the PPA and Procurement Regulations can be debarred; persons convicted of procurement-related corruption under any other law cannot be debarred.<sup>115</sup> Although the PPA is the federal procurement law, other laws, such as the Corrupt Practice and other Related Offence Act No 5, 2000 (the ICPC Act),<sup>116</sup> the Criminal Code Act,<sup>117</sup> and the Penal Code Act,<sup>118</sup> also contain provisions that criminalise corruption and fraud generally, and in the procurement process.<sup>119</sup> For example, the ICPC Act makes it a crime for any person to offer any inducement to a public officer so that the officer can influence or as a reward for influencing the procurement or execution of any contract with a public body.<sup>120</sup> In *the Federal Republic of Nigeria v. Gekpe & 5ors*,<sup>121</sup> the defendants

112 Olayinka O (2019) "Policies to Prevent Corruption in Nigeria: Enforcement of the Right to Education" 3 *Journal of Anti-Corruption* at 40.

113 (2002) LPELR-623 (SC) at 39.

114 Ifejika (2020) at 85; Adewole (2014) at 31.

115 Sections 6(1)(e) & 58(6) of the PPA.

116 See sections 12, 21, 24 & 25 of the ICPC Act.

117 See 98A of the Criminal Code Act.

118 See sections 118, 120 & 121 of the Penal Code Act.

119 Udeh K & Ahmadu M (2013) "The Regulatory framework for public procurement in Nigeria" in Quinot G & Arrowsmith S (Eds) *Public Procurement Regulation in Africa* Cambridge: Cambridge University Press at 150.

120 Section 22(1) of the ICPC Act.

121 FCT/HC/CR/39/2009 at 2-33.

were charged with procurement-related corruption but under the Penal Code Act. In the light of the provisions of the PPA on debarment,<sup>122</sup> the convicts cannot be debarred.

In Ghana, and Kenya, an individual or a firm may be debarred from participating in procurement proceedings if it had been convicted of procurement-related corruption or any corrupt practices under any law.<sup>123</sup> It is thus submitted here that the power of the Bureau to debar convicted individuals and companies should be extended to all convictions under any federal law in which the charges relate to procurement corruption.

Second, there are two grounds on which an individual or a firm could be debarred, which are contraventions of the PPA and the Procurement Regulations. This is unlike the position in other jurisdictions, such as Ghana, Kenya, and Uganda, Tanzania.<sup>124</sup> To address this weakness, this article recommends that the grounds on which an individual or a firm could be debarred from participating in the procurement processes should be increased. Specifically, it should include grounds that are not dependent on a conviction.<sup>125</sup> Contractors that fail to substantially execute contracts awarded to them should also be liable to be debarred. Also, like in Rwanda,<sup>126</sup> it should be mandatory for the Bureau to debar any contractor who collects advance payment but fails to execute the contract to a level that is commensurate with the amount of the advanced payment.<sup>127</sup> This will curb the prevalence of the embezzlement of advance payment by contractors in Nigeria.<sup>128</sup>

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122 Sections 6(1)(e) & 58(6) of the PPA.

123 See section 22A(1)(b) of the Ghana Public Procurement Act No 633, and section 41(1)(h) of Kenyan Public Procurement Assets Disposal Assets.

124 Sections 6(1)(e) & 58(6) of the PPA.

125 Arrowsmith (2020) at 1.

126 Article 176 (7°) of Law Governing Public Procurement, N°62/2018 of 25/08/2018.

127 This will codify and give the force of law to Regulation 3104 of the Financial Regulation which states *inter alia* that any contractor that is paid mobilisation fee but who fail to execute a contract should be blacklisted.

128 Adetola F (2018) "Fraud and Corruption in Construction Contracts". A Paper Delivered at the 2nd Departmental Lecture of Bells University, Ota, Ogun State, Nigeria.at 4; Williams-Elegbe S (2015) "A Comparative Analysis of the Nigerian Public Procurement Act against International Best Practice" 59(1) *Journal of African Law* at 97; Othman S (1984) "Classes, Crisis and Coup: The Demise of Shagari's Regime"(83)333 *African Affairs* at 45. See also the report on special periodic checks on the activities and programmes of Niger Delta Development Commission (NDDC) for the period of 2008 to 2012 (2015) at 5.

Third, the provision on debarment in the PPA does not state how long the Bureau could debar a natural person.<sup>129</sup> Without an expressed provision on the minimum debarment period for natural persons, the power of the Bureau to debar such persons may be abused. For example, the Bureau may debar an erring person for three months. Debarment for a short period without any justifiable reasons may undermine the deterrence objective of this sanction. If the intention of the drafters of the PPA is that the minimum period of such a debarment should also be five years, like the debarment imposed by the court on juristic persons,<sup>130</sup> it should be expressly stated. Otherwise, the minimum period for which the Bureau could debar a natural person should be stated.<sup>131</sup>

Fourth, the PPA does not recognise the debarment that is imposed on erring individuals and firms by Multilateral Financial Institutions (MFIs), such as the World Bank and the African Development Bank. However, it appears that such firms or individuals may also be ineligible to participate in federal procurement during the period of such debarment.<sup>132</sup> In fact, cross-debarment (the enforcement of debarment imposed in other jurisdictions different from the ones that imposed it) predates the PPA in Nigeria.<sup>133</sup> On 19 January 2007, five months before the PPA came into force,<sup>134</sup> the federal government through the secretary to the government of the federation debarred Messers Lahmeyer International, following the debarment of the firm by the World Bank.<sup>135</sup> Similarly, all the thirteen contractors that were debarred by the Bureau in 2013 had earlier been debarred by the World Bank and the Inter-

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129 The Procurement Regulations appear to suggest that the Bureau has discretion in this regard. The Procurement Regulations state that the Bureau may debar an erring entity for a stated or an indefinite period of time. See Para 8(b) (ii) of the Procurement Regulations.

130 Section 58(6)(a) of the PPA.

131 Williams-Elegbe (2012a) at 358.

132 Although the procurement manual prepared by the Bureau provides *inter alia* that the Bureau may exclude a bidder from participating in procurement proceedings if the bidder has been debarred or blacklisted in public procurement activity. See para 5.1.7 of the Procurement Procedure Manual for Public Procurement in Nigeria. The legality of the provision is in doubt as it imposes an additional ground on which a bidder may be excluded from participating in procurement proceedings. The problem with this provision is that the Bureau does not have the power to introduce any other grounds of exclusion in addition to those stipulated in the PPA.

133 <https://www.nairaland.com/1361668/corrupt-firms-barred-business-nigeria> (visited on 4 June 2022).

134 the PPA came into force on the 19 of June 2007.

135 <https://www.nairaland.com/1361668/corrupt-firms-barred-business-nigeria> (visited on 4 June 2022).

American Development Bank Group.<sup>136</sup> However, since then there is no record that any other firm has been debarred on the basis that it had earlier been debarred an MFI.

While the cross-debarment of these firms by the Bureau is commendable, there is no legal basis for it, and if it were challenged in court, it would have been nullified. It is trite that one cannot place something on nothing.<sup>137</sup> There is no law that empowers the Bureau to enforce the debarment imposed on an individual or a firm by an MFI, unlike what is obtainable in countries, such as Ghana,<sup>138</sup> Tanzania<sup>139</sup> and Uganda<sup>140</sup>. To address this lacuna, this article recommends that any individual or firm that has been debarred by an MFI that Nigeria belongs to should also be automatically debarred in Nigeria during the operative period of the debarment.<sup>141</sup> This article does not support the debarment of any individual or firm that is debarred by any MFI that Nigeria is a member of,<sup>142</sup> although this appears to be the approach favoured by the Bureau. Three of the firms that were cross-debarred by the Bureau in 2013 had earlier being debarred by the Inter-American Development Bank Group,<sup>143</sup> notwithstanding the fact that Nigeria is not a member of this Bank.

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136 Ten of the contractors were debarred by the World Bank while the other three were debarred by Inter-American Development Bank Group. See <https://www.nairaland.com/1361668/corrupt-firms-barred-business-nigeria> (visited on 4 June 2022).

137 See *Aderigbe V Abioye* (2009) 4 MJSC (PT 11) 83, where the Supreme Court of the Nigeria held *inter alia* "the law is that one cannot build something on nothing and expect it to stand, as the edifice will certainly collapse."

138 In Ghana, an entity that has been debarred by an international agency that Ghana belong to must be currently debarred for the operative period of the debarment imposed on it by the international agency. See section 22 A (2) (b) of the Ghanaian Public Procurement Act of 2003.

139 In Tanzania, an entity that has been debarred by an international agency, irrespective of whether Tanzania belong to such organisation or not, must be currently debarred in Tanzania. See section 62 of the Tanzanian Public Procurement Act of 2011.

140 In Uganda, an entity that has been debarred by an international agency that Ghana belong to must be currently debarred for the operative period of the debarment imposed on it by the international agency. See section 94 (b) of Public Procurement and Disposal of Public Assets Act of 2003

141 This is the approach that also adopted in Ghana and Uganda. See section 22 A (2) (b) of the Ghanaian Public Procurement Act of 2003 and section 94 (b) of Public Procurement and Disposal of Public Assets Act of 2003.

142 This is the approach that is adopted in Tanzania. See section 62 of the Tanzanian Public Procurement Act of 2011. This is because, in my view, there is no legal justification for such a decision.

143 Ten of the contractors were debarred by the World Bank while the other three were debarred by Inter-American Development Bank Group. See <https://www.nairaland.com/1361668/corrupt-firms-barred-business-nigeria> (visited on 4 June 2022).

## 5. Conclusion

The article has shown that the PPA has fairly detailed provisions on debarment. However, there are certain flaws in these provisions which undermine their effectiveness. First, the power of the court and the Bureau to debar convicted individuals and firms is discretionary, which makes it vulnerable to abuse. Second, only individuals and firms that contravened the PPA and Procurement Regulations can be debarred. An individual or firm convicted of corruption in federal contracts under any other law cannot be debarred. Third, the PPA does not state the minimum period for which a convicted individual may be debarred. In addition, when a firm is debarred, the scope of the debarment does not extend to its owners and directors, as well as its affiliates, assignees and successors.

In order to address these weaknesses and make debarment an effective anti-corruption measure in Nigeria, this article makes the following recommendations. First, the provision of the PPA should be amended to make it mandatory for the Bureau to debar any individual or firm that has been convicted for any offence in the PPA. Second, the ground for debarment should not be restricted to conviction for an offence in the PPA. Any individual or firm that is convicted of procurement-related corruption in federal contracts under other laws, such as the Independent Corrupt Practices and Other Related Offence Act, and Criminal Code or Penal Code, should also be debarred. Third, the minimum period for which the Bureau could debar a natural person should be stated. Fourth, as is the case in Ghana and Kenya, the grounds for the debarment of firms should be increased. Any firm that is indicted by the report of the Auditor-General for poor execution of contracts or for engaging in corruption should also be debarred. Fifth, any person that has been debarred by MFIs, particularly the ones that Nigeria belongs to, should be automatically debarred in Nigeria as well.<sup>144</sup>

Also, this article recommends that any entity that has been debarred by the court or the Bureau for the violation of the PPA should be ineligible to participate in any public contract in Nigeria during the operative period of the debarment. Furthermore, in order to

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144 Yukins C (2013) "Cross-Debarment: A Stakeholder Analysis" *George Washington International Law Review* at 230.

prevent debarred firms from evading the consequences of their debarment, the PPA should be amended to extend the scope of the debarment to subsidiary and parent companies. However, this should be subject to a confirmation that such associate companies control the debarred firms. With respect to a debarred individual, the scope of the debarment should extend to any firm owned by or controlled by the individual. Lastly, the PPA should make it mandatory for the Bureau to publish the name of a debarred individuals or firms on its websites. It should also state why it was debarred and the duration of the debarment, as well as other relevant information.