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## Autocratic Legalism through Anti-Corruption Strategies and Agencies: A Case Study of Nigeria

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### ABSTRACT

One of the hallmarks of the transition to constitutional democracy in Nigeria is the consolidation of an overarching anti-corruption strategy. After several years of successive military rule, Nigeria transitioned to a democratic dispensation in 1999. On the heels of this transition was the institution of the crusade against corruption which is often blamed as the progenitor of all the ills in Nigeria. In over two decades after the transition and the commencement of the anti-corruption crusade, it would seem that the anti-corruption strategies of the different administrations are targeted at perceived opponents and influenced by the private interests of political elites. The paper examines the operation of anti-corruption agencies (ACAs) as tools to entrench autocratic legalism in Nigeria. It interrogates the narrative that successive democratic administrations manipulate ACAs to perpetuate oppression and selectively apply anti-corruption mechanisms. The paper is purely doctrinal and adopts a desktop legal research approach. The paper examines whether purported anti-corruption strategies by different administrations are exploited to mask their rent-seeking tendencies. The political manipulations of prosecutorial authorities, selective prosecution by ACAs, indiscriminate application of plea bargain and abuse of court process do not only undermine anti-corruption efforts but subtly perpetuate autocratic legalism in Nigeria.

**Keywords:** *Transition, Democratic, Corruption, Administration, Prosecution, Anti-Corruption Agencies, Economic and Financial Crimes, Nigeria*

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## 1. Introduction

The years of successive military rule in Nigeria before the transition to a democratic dispensation in 1999 left indelible imprints on the political landscape. This would subsequently impact the disposition of successive civilian governments to the rule of law and constitutionalism. The transitional government which midwifed the birth of a democratic rule in 1999 was headed by the military. The first democratic administration after the transition seemed to recycle the former military leaders by cloaking them in civilian outlook and representing them as democrats. Successive democratic administrations have recurrently recycled the same crop of leaders now masked as advocates of democracy. Autocratic legalism underscores the general abuse of the rule of law and the subtle legitimisation of the autocratic disposition of supposed democratic government. Generally, the assertion that grand corruption is one of the ills and legacies of the military dispensation in Nigeria is not unfounded. While it is indisputable that corruption in Nigeria predated the military regimes in Nigeria, studies have established a phenomenal increase in corruption during the military regimes in Nigeria. Ironically, allegations of corruption were always one of the reasons for the successive coups that enthroned military governments in Nigeria.

Over the decades, corruption has been portrayed as the 'hydra-headed monster' Nigeria has had to face and fight. Successive democratic governments since 1999 always had specially designed strategies purportedly designed to combat corruption. From the establishment of principal anti-corruption agencies (ACAs) in the early 2000s to the purported international cooperation on the recovery of proceeds of corruption, democratic governments have deployed different strategies in their anti-corruption campaign. Despite the concerted efforts against corruption, it remains pervasive.<sup>1</sup> It would seem that successive governments only wield the instrument of the law as a double-edged sword in their anti-corruption. Each democratic dispensation appears to subtly shield their corrupt activities

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1 Over the decades, Nigeria has consistently ranked low on the Corruption Perception Index with a score ranging from 24-27.

while clamping down on corrupt political opponents, within the same legal framework against corruption.

This paper focuses on the theme of autocratic legalism within the context of anti-corruption efforts of successive democratic governments since 1999. The paper is divided into five sections. The first section provides an introductory background on the Nigerian political landscape against the backdrop of the transition to a democratic regime and anti-corruption effort. The second section discusses the principal anti-corruption strategy since the transition to democratic government from the creation of specialised anti-corruption agencies to anti-corruption policies targeted at specific public institutions. The third section analyses the operations and activities of the principal ACAs over the last two decades. The section examines the ACAs in line with the provisions of their establishment Acts and the provisions of international legal instruments such as the United Nations Convention Against Corruption (UNCAC) and the African Union Convention on Preventing and Combating Corruption (AUCPCC). The fourth section interrogates the concept of autocratic legalism in anti-corruption strategies in Nigeria. This section focuses on the activities of principal ACAs ranging from investigation, prosecution, and execution of court judgments. The section evaluates the ACAs against the concepts of independence, transparency, and impartiality. The final section makes final remarks and recommendations flowing from some of the identified issues in the previous sections.

## **2. Anti-Corruption Strategy in Nigeria Post-1999 Transition**

Since the transition to democratic government in 1999, successive administrations have made anti-corruption strategy a key point in their governance agenda. With each successive administration, the anti-corruption campaign has been intensified. However, the debate has often been centred around the effectiveness and authenticity of the efforts. Each administration since 1999 has adopted different forms of anti-corruption strategy which are often rooted in hidden political agendas.<sup>2</sup> The strategy ranges from legislative to institutional

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2 Over the years the political interference in the exercise of the powers by principal

frameworks and implementation agendas to combat corruption at different levels. In 2017, Nigeria developed a four-year national anti-corruption strategy from 2017-2021 built on five core areas of prevention, public engagement, ethical re-orientation, enforcement and sanctions, recovery and management of proceeds of corruption.<sup>3</sup> In 2022, the implementation of the 2017 strategy was extended for another period of five years from 2022-2027.<sup>4</sup> The principal anti-corruption agencies form part of the institutions with strategic roles in implementing the strategy. Hence, this paper focuses more on the ACAs because they are the key drivers of the anti-corruption agenda of the successive governments.

### 3. The Principal Anti-Corruption Agencies in Nigeria

Nigeria is state party to the United Nations Convention Against Corruption (UNCAC)<sup>5</sup> and the African Union Convention on Preventing and Combating Corruption (AUCPCC)<sup>6</sup> which make comprehensive provisions on combating corruption.<sup>7</sup> The two conventions emphasise preventive measures, criminalisation and enforcement of law and the establishment of ACAs.<sup>8</sup> The United Nations (UN) enjoins States to develop an integrated approach to anti-

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ACAs, selective prosecution of alleged corrupt officials and indiscriminate withdrawal of corruption charges against former political opponents suggest that the anti-corruption policies and strategies have been weaponized as political tools to assert political authority and silence political oppositions rather than genuinely tackling corruption as a menace to the nation.

- 3 The national Anti-Corruption Strategy is the first comprehensive national strategy against corruption following failed previous attempt in 2011.
- 4 Timothy Choji " VON (23 November 2022) <<https://von.gov.ng/federal-executive-council-approves-new-anti-corruption-strategy-document/#:~:text=The%20Federal%20Executive%20Council%20has,of%20the%20Federation%2C%20Abubakar%20Malami>> Accessed 19 September, 2024
- 5 Treaty Series, vol. 2349, October 2003.
- 6 Adopted by the 2nd Ordinary Session of the Assembly of the African Union, Maputo, Mozambique.
- 7 Nigeria is a dualist state which implies international legal provisions do not automatically become operational within its territory until it is legislatively domesticated. Hence, by the provisions of sec. 12 of the Constitution of the Federal Republic of Nigeria 1999, Nigeria can validly implement the provisions of international legal instruments through an Act of the National Assembly.
- 8 For instance, articles 6 and 36 of UNCAC provide for the establishment of anti-corruption agencies by state parties.

corruption strategy which is inclusive and comprehensive, transparent, integrated, non-partisan, evidence-based and impact-oriented.<sup>9</sup> Thus, there are internationally accepted binding norms to guide the development and implementation of anti-corruption strategies and the operations of ACAs. The standard and core functions of ACAs are specifically spelt out in UNCAC. ACAs should be independent and effective bodies charged with the primary responsibilities of coordinating anti-corruption activities including preventive and reactive measures against corruption such as public education, investigation and prosecutions, providing technical assistance etc.<sup>10</sup> The independence of ACAs is non-negotiable and must not erode its transparency and accountability. The independence implies freedom from political interference or manipulation and undue influence.<sup>11</sup>

Prior to democratic rule in 1999, there was barely any specialised anti-corruption agency.<sup>12</sup> Corruption rather became entrenched and was perpetrated with impunity.<sup>13</sup> Even though the military regimes made decrees purportedly aimed at combating corruption, the laws only became tools to prosecute civilian politicians perceived as enemies while exempting the corrupt allies of the military.<sup>14</sup> Following transition to democratic regime in 1999 and in line with global crusade against corruption in the early 2000s,<sup>15</sup> Nigeria established two

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9 UNODC, 'UN Guide for anti-corruption policies' (November, 2003) <[https://www.unodc.org/pdf/crime/corruption/UN\\_Guide.pdf](https://www.unodc.org/pdf/crime/corruption/UN_Guide.pdf) > Accessed 13 August, 2024.

10 Article 6 of UNCAC.

11 Articles 6 (2) and 36 of UNCAC.

12 Although there was one Corrupt Practices Investigation Bureau which was established in 1975 during the Muritala Muhammed military regime which criminalised bribery and receiving gratification with corrupt intent, the body had limited operations and did not outlive the regime. Abel A. Emiko. "A Reflection on the Nigerian Corrupt Practices Decree" *Journal of the Indian Law Institute*, (1977) 19 (1), 17–43.

13 Terry Andrews Odisu. "Corruption and insecurity in Nigeria: A comparative analysis of civilian and military regimes." *Basic Journal of Social and Political Science*, (2015) 3 (1), 8-15. Ejovi Austine, Mgbonyebi Voke Charles, and Akpokighe Okiemute Raymond. "Corruption in Nigeria: A historical perspective." *Research on Humanities and Social Sciences*, (2013) 3 (16), 19-26.

14 Ugochukwu Ezech. "'Our enemies are swindlers'!: Conceptualising anti-corruption legalism as a securitising device." *Verfassung und Recht in Übersee/Law and Politics in Africa, Asia and Latin America*, (2021) 54 (2), 219-242.

15 The United Nations Convention Against Corruption 2003 (UNCAC) and regional

principal anti-corruption agencies in an attempt to combat corruption. These agencies were established under the Independent Corrupt Practices and Other Related Offences Commission (ICPC) and the Economic and Financial Crimes Commission (EFCC) Acts.<sup>16</sup> The two agencies are specialised ACAs saddled with the responsibility of investigating and prosecuting various form of corruption and allied crimes.<sup>17</sup>

The ICPC was established in the year 2000 with the responsibility of investigating and prosecuting corruption crimes as provided by its establishment Act.<sup>18</sup> The broader roles of the ICPC include prevention, enforcement and public education on government's anti-corruption measures. For the purpose of fulfilling its mandate the ICPC has several units and departments which are staffed accordingly. The Commission co-ordinates the Anti-corruption and Transparency Units within each of the federal government parastatals and agencies.<sup>19</sup> The ICPC is funded by the federal government from the national budget allocation. Unlike the EFCC, there is no statutory provisions for external funding, hence it is limited to the allocation it gets from the budgetary funds. The ICPC works with educational clubs in educational institutions both at secondary and tertiary institutions<sup>20</sup> and collaborates with civil societies.

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treaties such as the African Union made similar provisions via the African Union Convention on Preventing and Combating and Corruption were adopted during this period.

- 16 The establishment of the principal ACAs does not prejudice provisions of other laws which empower traditional law enforcement agencies and prosecutorial authorities to investigate and prosecute corruption crimes within certain spheres.
- 17 Contrary to the interpretation by some authors, ICPC's mandate is not limited to public corruption or acts of corruption involving public officers.
- 18 Secs. 6, 27 and 61 of the ICPC Act.
- 19 The Anti-corruption and Transparency Unit (ACTU) was created in 2001 in all government ministries as an extension of the ICPC in line with the provision of sec. 6 of the ICPC Act, to help in monitoring, reporting and preventing corruptions in the respective agencies.
- 20 ICPC reports that 300 anti-corruption clubs were inaugurated in schools across the federation at the outset of the Commission's work in 2003. UNODC: Nigeria, 'Thematic Compilation of Relevant Information Submitted by Nigeria in Relation to Article 6 of UNCAC' 8 April, 2013. 3. <[https://www.unodc.org/documents/corruption/WG-Prevention/Art\\_6\\_Preventive\\_anti-corruption\\_bodies/Nigeria.pdf](https://www.unodc.org/documents/corruption/WG-Prevention/Art_6_Preventive_anti-corruption_bodies/Nigeria.pdf)> Accessed 12 June, 2024.

The EFCC was established by the Economic and Financial Crimes Commission Establishment Act 2004 (EFCC Act).<sup>21</sup> In the same manner as the ICPC, the mandate of the EFCC includes enforcement, prevention and education/enlightenment in its functions. The EFCC has the broad mandate of prosecuting and investigating economic and financial crimes.<sup>22</sup> In fulfilling the mandate, it is charged with the responsibility of enforcing the provisions of the Act and other specified laws in respect of financial and economic crimes in Nigeria.<sup>23</sup> It also has the responsibility of co-ordinating all the economic and financial crimes investigating units in Nigeria.<sup>24</sup> Its mandates are essentially different from those of the ICPC and the two bodies operate independently of each other or collaborate where necessary.<sup>25</sup>

First, the EFCC was established when it became necessary for Nigeria to have a separate and independent financial intelligence unit following the establishment of ICPC and the blacklisting of the country on the non-cooperative territories and countries by the Financial Action Task Force in 2001.<sup>26</sup> The EFCC served the purpose of a financial intelligence unit until 2018 when Nigeria established one.<sup>27</sup> The focus of the ICPC is purely to tackle corruption and related crimes within public agencies and among individuals. Whereas, the EFCC has a wider mandate that incorporates financial crimes and allied offences, with a specific focus on individuals and corporate bodies. The ICPC may not concern itself with economic crimes such as money laundering and terrorism financing especially when they do not connect with public

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21 The earlier 2002 Act was repealed by the 2004 Act.

22 Sec. 6 of the EFCC Act, 2004.

23 Secs. 6 (a) and 7 (2) of the EFCC Act.

24 Sec. 6 (n) of the EFCC Act.

25 Given the wide mandate and powers of the EFCC, there are few areas of overlap of powers of the two principal agencies which grants the EFCC same powers as the ICPC and *vice versa*.

26 ACE Working Paper 038 The EFCC and ICPC in Nigeria: Overlapping Mandates and Duplication of efforts in the fight Against Corruption November, 2021. Centre for Democracy and Development Twenty Years of Anti-Corruption Efforts in Nigeria: A critical Look August 2021, 4.

27 Sec. 1 (2) (c) of the EFCC Act. The Nigerian Financial Intelligence Unit (Establishment) Act 2018, established an autonomous agency known as the Nigerian Financial Intelligence Unit independent of the of EFCC.

corruption.<sup>28</sup> The EFCC is funded based on allocation from the national budget annually. The Commission maintains a fund from which all its expenses are defrayed.<sup>29</sup> The EFCC may also get external funding through gifts in so far as they do not contradict its objectives and functions.

Both ACAs have the power to investigate and prosecute crimes as provided by their establishment Act. Their investigative function may be triggered via petitions or complaints received from the public, whistleblowers, or on their own initiative through proactive intelligence gathering. Upon vetting a complaint, the agency may launch a full investigation where it is satisfied that there is some credibility in the allegation. In exercising their powers to investigate and prosecute, the ACAs are not totally independent, as they are subject to the powers of the Attorney-General of the Federation (AGF) who may decide to take over or discontinue a case.<sup>30</sup> Additionally, the AGF has regulatory functions over the ACAs and is conferred with powers that may interfere with the functions of the ACAs. For instance, the AGF may make regulations for the EFCC under its Establishment Act.<sup>31</sup> The AGF coordinates all non-conviction-based asset recovery operations hence, ACAs must transfer all non-conviction-based forfeiture matters, which arise in the course of their investigation, to the office of the AGF.<sup>32</sup> Over the years, there have been many instances especially, in the prosecution of high-profile corruption cases, where the AGF has interfered with the functions of the ACAs by halting corruption trials or simply prevented investigation under the guise of exercising constitutional powers.<sup>33</sup>

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28 The difference in the mandates of the two agencies, in this respect, is more defined where there is a fine distinction between economic and financial crimes on one hand and corruption crimes on the other hand. While the EFCC is concerned with the former, the ICPC has mandate over the latter. Sec. 45 of the EFCC Act provides a strict interpretation of 'economic and financial crimes' which further helps to clarify the Commission's mandate differently from that of the ICPC.

29 Sec. 35-37 of the EFCC Act.

30 Sec. 174 and 211 of the Constitution of the Federal Republic of Nigeria 1999

31 Sec. 43 of the EFCC Act.

32 Sec. 5 of the Assets Tracing Recovery and Management Regulations, 2019.

33 Abdul-rahman Abubakar 'AGF writes EFCC, ICPC again over high profile case' *Daily*



Over the last two decades, both ACAs have reportedly recovered about ~~₦~~900 billion worth of<sup>34</sup> looted assets.<sup>35</sup> Despite its alleged relative ineffectiveness, the ICPC has reportedly received about 20,000 petitions and successfully investigated over 5000 of those petitions and prosecuted 1000 cases with 20% convictions.<sup>36</sup> Additionally, the ICPC reportedly recovered over ~~₦~~454 billion of looted funds in the last five years and recorded a recovery of assets worth over 125 billion Naira.<sup>37</sup> In pursuance of its duties in Sec. 6 of the ICPC Act, the Commission conducts systematic study and review of government ministries, departments, and agencies which has helped stall many corrupt tendencies and helped in fulfilling its preventive mandate. The EFCC reportedly got over three thousand convictions and recovered ~~₦~~156 billion between May 2023 and May 2024.<sup>38</sup> In 2022, the EFCC reported 3,735 convictions recording 98.93% success in all the cases prosecuted in 2022.<sup>39</sup> The EFCC has recorded thousands of convictions in the last decade and recovered ~~₦~~8.5 billion in 2020

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*Trust* (10 August, 2017) <<https://dailytrust.com/agf-writes-efcc-icpc-again-over-high-profile-cases/>> Accessed 22 September, 2024.

34 About \$ 5.3 billion US Dollars.

35 Kunle Sanni, 'Nigeria's Anti-Graft agencies Recover N900 Billion Looted Assets in 20 Years' *Premium Times* (6 December 2021) <<https://www.premiumtimesng.com/news/top-news/499315-nigerias-anti-graft-agencies-recover-n900-billion-looted-assets-in-20-years-cdd.html>> Accessed 12 June, 2024.

36 Femi Gold, 'Steadily Winning the War Against Corruption' *ICPC* (21 September, 2021) <<https://icpc.gov.ng/20y121/09/06/icpc-steadily-winning-the-war-against-corruption-written-by-femi-gold/>> Accessed 31 May, 2024.

37 ICPC 'ICPC recovers restrains over N454 bn in four years' (22 June, 2023) <[https://icpc.gov.ng/2023/06/22/18184/#:~:text=Apart%20from%20the%20recovery%2C%20other,Projects%20Tracking%20Initiative%20\(CEPTI\)](https://icpc.gov.ng/2023/06/22/18184/#:~:text=Apart%20from%20the%20recovery%2C%20other,Projects%20Tracking%20Initiative%20(CEPTI))> Accessed 30 August, 2024.

38 Approx. \$101 million US Dollars. EFCC, 'EFCC secures 3,175 convictions, recovers N156 billion in one year' (29 May, 2024) < <https://www.efcc.gov.ng/efcc/news-and-information/news-release/10136-efcc-secures-3-175-convictions-recovers-n156-billion-in-one-year>> Accessed 10 August, 2024.

39 EFCC, 'EFCC Conviction Records 2022' (8 January, 2023) <<https://www.efcc.gov.ng/efcc/news-and-information/news-release/8781-efcc-secures-3785-convictions-in-2022>> Accessed 10 August, 2024.

alone.<sup>40</sup> Notwithstanding the seemingly impressive records of the principal ACAs, allegations of public corruption have been on the increase and Nigeria's performance on the corruption perception index has remained within the same range with insignificant differences.<sup>41</sup>

Over the last decade, there has been an emergence of state-based ACAs in three states of the federation including, Kano, Lagos, and Oyo states. These states established their own ACAs with powers and jurisdiction similar to those of the principal ACAs within their states.<sup>42</sup> While the states are constitutionally empowered to combat corruption within their jurisdictions,<sup>43</sup> the proliferation of ACAs raises many questions. First, given the fact that states have previously challenged and continue to challenge the validity of the principal ACAs, what

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40 NAN, 'EFCC Records 48 Convictions, N 8.5 billion Recoveries' *The Guardian* (14 February, 2020). <<https://guardian.ng/news/efcc-records-48-convictions-n8-5bn-recoveries/>> Accessed 30 May, 2024.

41 CJID, 'Top 10 Corruption Scandals Nigeria's National Assembly hasn't resolved.' <<https://thecjid.org/top-10-corruption-scandals-nigerias-national-assembly-hasnt-resolved/>> Accessed 10 August, 2024. The Corruption Perception Index in Nigeria averaged 21.48 Points from 1996 until 2023, reaching an all-time high of 28.00 Points in 2016 and a record low of 26.90 Points in 1996.

42 Kano state established the Kano State Public Complaints and Anti-Corruption Commission (KPCACC) in 2008 and Lagos and Oyo states established the Oyo State Anti-Corruption Agency (OYACA) and Lagos State established the Public Complaints and Anti-Corruption Commission (LPCACC) in 2019 and 2021 respectively. Deborah D. Adeyemo, 'Fragmenting Anti-Corruption Agencies: An assessment of the emergence of state-based anti-corruption agencies in Nigeria' *African Journal of Criminal Law and Jurisprudence* (2022) 7 (2), 62-72.

43 By the earlier decision of the Supreme Court in *Attorney-General of Ondo State v Attorney-General of the Federation and 35 Ors.* (2002) NWLR (Pt. 772) 222 @385, suffice to state that constitutional provisions did not specifically list corruption on either the exclusive or concurrent legislative lists. Hence, it would suggest that both the states and federal government have the constitutional powers to implement strategies to combat corruption in so far as these actions are not contradictory. It is difficult to construe the provisions of Sec. 15 (5) and items 60, 67-68 of the Second Schedule Part I of the constitution, under the exclusive list as bringing corruption matters within the exclusive legislative competence of the federal government when it is clear that both the state and federal government have legislative powers over crimes generally. Thus, while the federal government may validly enact laws on corruption matters, states are not constitutionally excluded from doing the same, provided the constitutional principle of covering the field as expounded in sec. 4 (5) of the constitution is not violated.

would be the rationale for state-based ACAs where the principal ACAs have nationwide coverage and jurisdiction?<sup>44</sup> Second, given the international standards on ACAs, the proliferation of ACAs in Nigeria, and their operations, is it likely that ACAs are more than just legal tools to combat corruption? Are ACAs being wielded as tools of autocratic legalism?

#### 4 Anti-Corruption Agencies and Autocratic Legalism

Autocratic legalism is a governance strategy in which seemingly legal tools, such as anti-corruption laws, constitutional amendments, and judicial reforms, are selectively applied to consolidate political power, marginalize opposition, and erode democratic institutions.<sup>45</sup> Autocratic legalists manipulate legal and constitutional provisions to create a facade of legality while undermining democratic governance. Autocratic legalism is unlike traditional authoritarianism where autocratic legalists make use of force, violence and have absolute disregard for the rule of law. Autocratic legalism exploits constitutional and legal provisions to consolidate their regime and drive their illiberal agenda while making it appear that they are operating within the democratically established legal framework.<sup>46</sup> Autocratic legalists

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44 In 2023, Kogi States joined with some other states of the federation instituted a suit challenging the constitutionality of the establishment Act of the EFCC among other issues. Deborah Musa 'S'Court hears 16 states suit challenging EFCC legality' *The Punch* (9 October, 2024) <<https://punchng.com/s-court-hears-16-states-suit-challenging-efcc-legality-oct-22/>>. Accessed 17 October 2024. Earlier the Court had dismissed a case against the EFCC by the Delta State government challenging the validity of its powers to probe into state spending. This Day, 'As court strengthens EFCC, ICPC's powers' *ThisDay* (12 May, 2024). <<https://www.thisdaylive.com/index.php/2024/05/12/as-court-strengthens-efcc-icpcs-powers/>> 10 September, 2024. In *Attorney-General of Ondo State v Attorney-General of the Federation and 35 Ors.* (2002) NWLR (Pt. 772) 222 @385. The Supreme Court established the constitutional powers of the National Assembly to legislate on corruption matters based on the provisions of sec. 15(5) and 4(2) of the CFRN 1999. Hence, the constitutionality of the establishment of the principal ACAs seemed to have been laid to rest especially the subsequent following the decision of the Supreme in *Olafisoye v. FRN* (2004) 4 NWLR (Pt. 864) 580.

45 The phrase was first coined by Javier Corrales when he described Hugo Chavez's rule in Venezuela. Javier Corrales, 'The authoritarian resurgence: autocratic legalism in Venezuela' *Journal of Democracy* (2015) 26 (2), 37-51, 37-38.

46 Kim Lane Scheppele, 'Autocratic legalism' *The University of Chicago Law Review*

could manipulate judicial institutions, engage constitutional and legal reforms, or even exploits international networks and support to drive their agenda.<sup>47</sup> Hence, it is not immediately obvious that the democratic norms and legal frameworks are being eroded. One of the strategies of autocratic legalism is the exploitation of existing laws and legal frameworks to drive their autocratic agenda.

Anti-corruption agencies are publicly created independent bodies responsible for co-ordinating anti-corruption strategy of any polity.<sup>48</sup> The mandates of anti-corruption agencies are usually broad and multifaceted, but specific. Their functions may range from investigating and prosecuting corruption crimes to executing preventive anti-corruption strategies.<sup>49</sup> The standard and core purpose of the anti-corruption bodies are set out in international legal provisions. They must be independent, specialised, staffed and sufficiently funded to perform their functions and duties.<sup>50</sup>

The provisions of the ICPC and the EFCC Acts suggest *prima facie* guarantee of independence of the Commission, although things have played out differently in reality. The ACAs are not subject to any form of control or direction from any person or authority in the discharge of their functions.<sup>51</sup> With respect to the composition of the Commissions, the

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(2018) 85 (2), 545-584.

47 Heba M. Khalil, "“This Country has Laws”": Legalism as a Tool of Entrenching Autocracy in Egypt' *American Behavioral Scientist* (2024) 68 (12), 1597-1695.

48 Warizi sees anti-corruption agencies as separate independent and permanent body which provide leadership in core areas. anti-corruption activity. Fatima Waziri, *Strengthening of Anticorruption Commissions and Laws in Nigeria* (Doctoral dissertation, University of Pittsburgh 2011), 112. The definition provided by De Sousa is also instructive. Luis de Sousa, 'Anticorruption Agencies: Between Empowerment and Irrelevance' *Journal of Crime Law and Social Change* (2010) (53) 5-22, 5.

49 Doig et al identify three core functions of anti-corruption agencies. Doig Alan, David Watt and Robert Williams, 'Why Do Developing Country Anticorruption Commissions Fail to Deal with Corruption? Understanding The Three Dilemmas of Organizational Development, Performance Expectation, and Donor and Government Cycles' *Public Administration and Development* (2007) 27 (3), 251 – 259.

50 Articles 6, 7 and 36 of UNCAC. Authors like De Sousa also highlight the basic features of these bodies. L de Sousa, 'Anticorruption Agencies: Between Empowerment and Irrelevance' (2010) (n. 47).

51 Sec. 3 (14) of the ICPC Act.

chairmen and members of the Commissions are not subject to any authority in the discharge of their duties except as otherwise provided by the Act.<sup>52</sup> However, the chairmen of both ACAs are appointed by the President upon confirmation by the Senate for a specified time.<sup>53</sup> While removal of these officers can only be made by the President with support of two-thirds majority of the Senate in the case of the ICPC. The EFCC officers may be removed by the President solely, on the grounds of 'inability to discharge the functions of office' or for misconduct or in the interest of the public without recourse to the legislature.<sup>54</sup> Additionally, the powers of the ACAs are subject to the constitutional powers of the Attorney-General of the Federation.

The ICPC and EFCC report to the executive and the National Assembly but do not owe any allegiance to them that may contradict their mandate. In addition, the powers of the ACAs are subject to the constitutional powers of the Attorney-General of the Federation (AGF). In reality however, the independence of the principal ACAs has been constantly jeopardised in many ways. Irrespective of the clear provision of the law, Nigeria has witnessed many of the rifts between the office of the AGF and the principal ACAs.<sup>55</sup> The constitutional provisions

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52 Section 3 (10) and (14) of the ICPC Act.

53 Sec. 2 (3) of the EFCC Act. Sec. 3 (8) of ICPC Act. In the case of the ICPC, for a period of five years while members are appointed for a period of four years.

54 Sec. 3 (8) *Ibid*. At the wake of its inauguration the recent administration in Nigeria, the executive just suspended the chairman of one EFCC in June 2023.

55 Contrary to statutory provisions, there has been strong discordance between the office of the AGF and the principal ACAs. Former AGFs such as Anodoaaka, Adoke and Malami have reportedly exploited legal provisions and abused their powers to stall or discontinue high profile corruption cases much to the chagrin of the public. For instance, former AGF, Andoaaka had contested the prosecutorial powers of the EFCC and sought to take over cases with respect to some former governors who were facing allegations of corruption crimes by the EFCC. Often, the AGFs refer to their powers by the provision of sec. 43 of the EFCC Act. Subsequently in 2011, Adoke also had made controversial regulatory provisions for the EFCC pursuant to sec. 43 of the EFCC Act. Dayo Benson, 'EFCC: What is Attorney General Up to?' *Vanguard Newspaper* (21 July, 2011) <<https://www.vanguardngr.com/2011/07/efcc-what-is-attorney-general-up-to/>> Accessed 15 May, 2023. More recently is the unceremonious take-over of cases from the ACAs. Ikechukwu Nochiri, 'Malami Orders EFCC to hand over Casefiles of Ex-Aviation Minister, Oduah' *Vanguard Newspaper* (22 November, 2021)

regarding the powers of the AGF have been used on several occasions to stifle the activities of the ACAs to investigate and prosecute. With the emergence of state-based ACAs and in the absence of clear legal provisions, it remains unknown how the activities of the principal ACAs and the State ACAs will be coordinated to prevent rift between them.

Additionally, the principal ACAs have been wielded by politicians especially in the executive arm of government to stifle opposition through selective prosecution. For instance, right from the third republic following transition in 1999, the ACAs have been subject to control by the president. Political opponents involved in corruption cases were picked-up, investigated and prosecuted. Whereas, political allies charged with similar corruption allegations, were selectively exculpated without any justification.<sup>56</sup> Where a political opponent facing strong corruption allegations deflects to the ruling party, the charges are suddenly dropped, or the cases are no longer pursued.<sup>57</sup> Thus, it would seem that the ACAs are used as political tools to pursue high profile prosecution with political motives of promoting impunity while seemingly appearing to fight corruption. It can be argued that

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<<https://www.vanguardngr.com/2021/11/malami-orders-efcc-to-handover-casefile-of-ex-aviation-minister-oduah/>> Accessed 15 May, 2023.

56 Kenneth T. Azaigba and Henry T. Ahom. "Between combating corruption and political vendetta: An appraisal of the Economic and Financial Crimes Commission (EFCC) in Nigeria since 2002". *International Journal of Research in Education and Sustainable Development* (2021) 1 (11), 1-9. Ajagun, S. O. "ICPC and EFCC: Instruments of selective justice in Nigeria." *LWATI: A Journal of Contemporary Research* (2010) 7 (1), 277-284.

57 In the fourth republic, there have been interesting turn out of events with the EFCC's exercise of its powers to investigate and prosecute alleged corrupt public officials. For instance, in 2019, after the EFCC handed over the case of former governor Danjuma Goje to the office of the AGF, the federal government withdrew the charges against him. This was after the case had been stalled for almost eight years. In 2023-2024, despite several allegations of corruption against former governor of Kano State, Abdullahi Ganduje and the current chairman of the national ruling party, the EFCC has repeatedly refused to investigate or prosecute the chairman alongside other alleged persons. Although the Kano State Public Complaints and Anti-Corruption Commission had invited the governor in 2023 for questioning, the governor had derisively ignored the invitation. In 2024, the Kano State government initially filed corruption charges including misappropriation of public funds against him, his wife and son, alongside other defendants, the case was eventually dropped. Conversely, the former governor of Kogi State, Yahaya Bello was dramatically arrested and arraigned for corruption charges after an initial conflicting court orders on the arrest of the former governor.

states may have been politically motivated to establish ACAs not necessarily with the sole aim of complementing the anti-corruption initiatives of the federal government but also with autocratic intentions. Given the antecedents of states' challenge of the constitutionality of the principal ACAs and the plethora of corruption charges against former state governors and public officials, such postulations may not be unfounded.

## **5. Concluding Observations**

In examining Nigeria's anti-corruption journey since the return to democracy in 1999, a troubling paradox emerges. The institutions established to combat corruption, particularly the ICPC and EFCC, have often functioned less as impartial bodies of justice and more as instruments for political ends. Successive administrations have repeatedly invoked these agencies to project an image of accountability, yet their actions frequently reveal the selective and politically motivated targeting of individuals, especially those in opposition. This selective use of anti-corruption laws reflects an underlying autocratic legalism that uses the (rule of) law as a tool for consolidating power rather than upholding democratic values.

Moving forward, it is evident that genuine reform is essential if anti-corruption efforts are to align with democratic principles rather than serve as a false display of legality. First, the independence of ACAs must be more than nominal. Legislative reforms are needed to protect the ICPC and EFCC from undue influence, especially from the executive and the Attorney General, whose powers to intervene have repeatedly been a source of politicised interference.

Alongside legislative reform, the establishment of an independent oversight body could ensure greater transparency in anti-corruption operations. Such an entity would ideally comprise judicial or non-partisan representatives, which would assist to provide a check on the activities of ACAs and fostering public confidence in their impartiality. If the criteria for case selection used by these ACAs were more transparent, it would mitigate the perception of selective prosecution that currently undermines their credibility.



Additionally, the constitutional role of the Attorney General (AG) requires re-examination. While the Attorney General holds a key position in overseeing prosecutions, the powers to discontinue cases must be regulated to prevent misuse, particularly in high-profile corruption cases involving political figures. The powers of the AG should be exercised judiciously in the interest of justice and not to promote impunity for corruption. While the constitutional powers of the AG need not be abrogated, the constitutional provisions should be reviewed to qualify the exercise of such power and subject it to judicial review in the interest of justice. It might be Nigeria's anti-corruption initiative would also benefit from stronger partnerships with civil society. Engaging civil society organisations as allies in monitoring anti-corruption initiatives would provide the agencies with a more consistent, community-driven form of accountability. This approach could also help address corrupt practices at lower levels of government.

Lastly, it is essential that these ACAs are equipped not only with mandates but with adequate resources, training, and tools to perform their duties effectively. Building institutional capacity is a long-term investment that would enhance the ability of ACAs to carry out thorough investigations and uphold integrity in prosecutions.

Thus, by implementing these reforms, Nigeria can reorient its anti-corruption efforts towards genuine accountability, with the rule of law as a standard guiding principle rather than a political tool. True independence and transparency within anti-corruption agencies, in the discharge of their functions or execution of their mandates, will not only strengthen public trust but also reinforce Nigeria's democratic foundations and strengthen the nation as a democracy now and into the future.