

# A Case for the Establishment of Specialized Corruption Courts in Nigeria: A Panacea for the Prosecution of High Profile Corruption Cases

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## Abstract

Specialized anti – corruption courts have emerged and are still emerging in many countries, both in response to legal reform for faster and better criminal justice system and due to the frustration, complexity and difficulty in litigating corruption cases especially high profile corruption cases. Nigeria like many other countries is struggling with an endemic level of corruption and even though Nigeria is not bereft of adequate anti – corruption laws and institutions, the fight against corruption remains daunting. Just as the nature of corruption evolves, the mode of tackling it must also evolve and that is why this paper supports the establishment of specialized anti- corruption courts. This paper also takes into cognizance that the success of the proposed specialized anti - corruption court would definitely depend on several other factors, such as, the establishment of this court should not in any way be seen as the magical solution to a complicated problem such as corruption rather as a likely mechanism for a broader, more systemic, anti-corruption transformation.

**Keywords:** Corruption, Nigeria, Specialized Court, High Profile Corruption Case

## 1. Introduction

The fight against corruption anywhere in the world is no easy task due to the growing complexity of the law and the daunting task of litigating corruption cases. It is a known fact that corruption is Nigeria's greatest obstacle to economic development and a barrier to breaking the vicious circle of poverty. That corruption is a practice that has and is still destroying the moral fabric of the society is openly acknowledged in Nigeria. Acts of diversion of funds at the federal and state level; business and investment capital; and foreign aid, contribute to the degradation of basic services and the opportunity cost of these acts of corruption is insurmountable.

It has been estimated that close to \$400 billion was stolen from Nigeria's public accounts from 1960 to 1999 (UNODC, 2007), and that between 2005 and 2014 some \$182 billion was lost through Illicit Financial Flows from the country.<sup>1</sup> This stolen common wealth in effect represents the investment gap in building and equipping modern hospitals to reduce Nigeria's exceptionally high maternal mortality rates – estimated at two out of every ten global maternal deaths in 2015; expanding and upgrading an education system that is currently failing millions of children;<sup>2</sup> and procuring vaccinations to prevent regular outbreaks of preventable diseases.

Corruption according to the renowned political scientist, Joseph Nye (Nye, 1989) is “behavior, which deviates from the formal duties of a public role [i.e. abuse of public post] because of private (personal, close family, private clique) pecuniary or status gains”. Nye also touches upon the nature of benefit obtained from corruption both in material (pecuniary) and moral (status) terms. Nye's definition of corruption is the preferred description for me because it encompasses those other forms of corruption that are usually overlooked like, for instance, nepotism, cronyism, favoritism and clientelism.

In my opinion, I believe Nigeria is making progress in the fight against corruption no matter how little that progress may be. This progress can be seen in the charges brought against high profile individuals, even though these trials have been going on for years and convictions are near impossible to secure. However, the assets of some of these high profile individuals have already been recovered through the increased use of non-conviction based forfeiture orders thereby depriving them of their ill-gotten assets. It can also be seen in the significant amount of cash and property that has been recovered so far, domestically and internationally.

For instance, according to the Economic and Financial Crimes Commission (EFCC) between January and

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<sup>1</sup> This figure represents some 15 per cent of the total value of Nigeria's trade over the period 2005–14, at \$1.21 trillion. In 2014 alone illicit financial flows from Nigeria were estimated at \$12.5 billion, representing 9 per cent of the total trade value of \$139.6 billion in that year. See Global Financial Integrity (2017), Illicit Financial Flows to and from Developing Countries: 2005–2014, April 2017, [http://www.gfintegrity.org/wp-content/uploads/2017/05/GFI-IFF-Report-2017\\_final.pdf](http://www.gfintegrity.org/wp-content/uploads/2017/05/GFI-IFF-Report-2017_final.pdf), pp. 30–34 (accessed 4 May 2017).

<sup>2</sup> Nigeria's rapid population growth and poor investments in education have put enormous pressure on the number of schools, facilities and teachers available for basic learning: online: [https://www.unicef.org/nigeria/children\\_1937.html](https://www.unicef.org/nigeria/children_1937.html). Moreover, at an estimated 10.5 million, Nigeria has the world's largest number of out-of-school children: see <https://www.unicef.org/nigeria/education.html> (accessed 17 Apr. 2017).

December 2017, the amount of cash recovered locally through the non-conviction based forfeiture mechanism amounted to N473 billion, \$98 million, €7 million, and £294,000 among others (Nasir Ayitogo, 2018). The Federal Government also confirmed that approximately N9.12 billion has been recovered from its whistle blowing policy since it came into effect in December 2016 (Sylvester Ugwuanyi, 2018). Internationally as well, only recently, assets worth N861m from the Malabu deal had been returned to Nigeria and the Swiss government recently returned \$321m of the loot, which the late Sani Abacha stashed away in Switzerland.

Despite these successes, to effectively address the various faces of corruption, a broader, progressive and more systemic approach will be needed; as such the need for a specialized court to try corruption cases is one of those systemic approaches. The crime of corruption evolves and to keep up with its nature, the system that has been put in place to fight this ill must also evolve with it. With overburdened judges and court dockets, an environment less friendly to speedy trial is unavoidable. It is therefore my position that with the level of endemic and institutional corruption in Nigeria and in order to get speedy justice from those who has been alleged to have robbed the country dry, the establishment of a specialized anti - corruption court is vital.

It should however be noted that the agitation for a specialized corruption is not a new concept in Nigeria. Throughout the history of Nigeria, it has had some form of special courts like for instance the Special Armed Robbery and Firearms Tribunals to tackle the scourge of armed robbery; Electoral Petition Tribunals, for electoral matters; Rent and Tenancy Tribunals, to settle disputes between landlords, tenants and other related matters; National Industrial Court to handle industrial disputes and most recently, the Investment and Securities Tribunal vested with the responsibility of interpreting the Investment Security Act and adjudicating on disputes and controversies in capital market transactions (Vanguard Newspaper, 2017). There are conversations around the possible introduction of tax courts that would deliberate on solely tax matters (Tidnewsonline, 2017) and Lagos state recently established Small Claims Courts to ensure speedy dispensation of commercial cases in Lagos (Punch Newspaper, 2018).

In acknowledgment of strong proponents against the establishment of this court, the aim of this paper is to make a case for the establishment of a specialized anti – corruption court which would facilitate the prosecution of high profile corruption cases. The first part introduces the thesis statement. Here, the paper recognizes the existence of endemic corruption in Nigeria and also acknowledges some of the efforts of the government in fighting corruption. The second part discusses challenges in the prosecution of high profile corruption cases, highlights reasons why this category of cases are hanging in court and also proffers some solutions.

The third part identifies models of specialized anti corruption courts in various jurisdictions and highlights some of their successes and challenges. Selected factors to consider when designing specialized anti corruption courts were highlighted and juxtaposed with the Nigerian Special Crimes Court Bill to determine what the proposed Nigerian model would be. The fourth part discusses the advantages of specialized anti court courts, highlighting experiences of select jurisdictions. The fifth part is prescriptive, positing that a specialized anti – corruption court should not be looked at as the means to ending all the corruption problems in Nigeria but rather as part of a larger anti corruption reform process. It also proffers recommendations that would ensure the success of the specialized anti – corruption court.

## **2. Challenges in the Prosecution of High Profile Corruption Cases in Nigeria**

A case is categorized as a high profile where the value involves cash or assets of a significant value and one or more of the following are present: any of the suspects is a politician, a public officer or judicial officer; a person elected or nominated to a public office or position; where the subject matter of the case involves government property or funds; any allegation involving fraud against any government or corruption of its officials or involves the abuse of office; the subject matter has significant international dimensions; involves specialized knowledge of financial, commercial, fiscal or regulatory matters; involves complex financial transactions that may involve cross border or multi-jurisdictional transactions or property movement; likely to be of widespread public concern; or alleged misconduct amounting to economic sabotage (PACAC, 2016).

It is not news that the Nigerian criminal justice system is struggling with the prosecution of high profile cases and this is due to a barrage of reasons. The anti- corruption agencies have successfully prosecuted numerous low profile corruption cases but in the last 11 years, no high profile case has been successfully concluded until recently. At the time of writing this paper, a former governor of Taraba State, Mr. Jolly Nyame, was sentenced to fourteen years imprisonment without the option of fine for the misappropriation of N1.64 billion of public funds. The case was tried in 3,971 days, approximately eleven years.<sup>1</sup>

Courts across the country are besieged with such unresolved high-profile corruption cases. Take for example the following cases and their years of commencement - Fred Ajudua(2005); Joshua Dariye (2007); Orji

<sup>1</sup> The former governor was sentenced on May 30<sup>th</sup>, 2018 by the High Court of the Federal Capital Territory. Mr Nyame was found guilty of 27 out of 41 counts of alleged diversion of public funds while serving as governor of Taraba State between 1999 to 2007. The various sentences included a term for 2, 5, 7, and 14 years respectively and the terms are expected to run concurrently meaning he would spend 14 years in jail except conviction is overturned by a higher court.

Uzor Kalu (2007); Ibrahim Suleiman (2007); Saminu Turaki (2007); Danjuma Goje (2011); Otunba Alao- Akala (2011); Esai Dangabar (2012); Abdullahi Alao (2012); Adeyemi Ikuforiji (2012); Farouq Lawan (2013); Bolanle Babalakin (2013); Rasheed Ladoja (2008); Attahiru Bafarawa (2009); Babalola Borishade (2009); Abdullahi Adamu (2010); Okey Nwosu (2011) Gbenga Daniels (2011).

The above-mentioned cases are just a few of the hundreds of high profile corruption cases that are still pending before the various courts of competent jurisdictions. Due to lack of proper case management coordination amongst courts that handles corruption cases, like for instance a database, the accurate number of such cases cannot be appropriately estimated at this time. The failure of these cases cannot be eluded to just one party but rather could be shared amongst various stakeholders including prosecutors, defense lawyers, judges as well as the police.

The almost zero level of high profile conviction raises fears of possible manipulations and frustration of the cases by those arraigned when they are granted bail. Lawyers and sometimes Judges use technicalities to defeat the cause of justice and this is particularly true with respect to high profile corruption cases (Bolaji Owasanoye, 2004). According to former Economic and Financial Crimes Commission (EFCC) Chairman, "it has become an art for defense attorneys to ensure that financial crime cases do not go on and substantive cases are never tried on their merits. Defense attorneys delay and prolong cases by a tactic of applying for stay of proceedings. Where such application is not granted, they accuse Judges of bias, which provide grounds for application to transfer their cases to other Judges" (Nuhu Ribadu, 2004).

Reasons why high profile corruption cases are not progressing in court have been identified to include – too many charges filed by prosecutors, weak evidence from inception, compulsory bail application usually for medical or religious grounds, frequent change of counsel, incessant adjournments, transfer or promotion of Judges, use of dilatory tactics, political influence, compromise of the court or of the prosecution or both, underfunding of anti- corruption agencies, (Bolaji Owasanoye, 2004).

It has been observed that there is a peculiar pattern that high-profile corruption cases take to get protracted and become unresolved. It commences with the arrest and arraignment of high profile persons, which usually generate frenzy in the media, but soon after that, the defendants, through their lawyers, would raise preliminary objections, challenging the competence of the charges and the jurisdiction of the court to entertain their cases. The Judge would rule, dismissing such preliminary objections in most cases, after which the defendants would file an appeal and ask for stay of proceedings to await the outcome of the appeal. While proceedings have been suspended, the appeal would travel for many years up to the Supreme Court, which would then, in most cases, dismiss the appeal and ask the defendants to go back to the trial court for the case to be re-opened (Punch Newspaper, 2017).

To address all these dilatory tactics and to make criminal justice delivery more progressive, the Administration of Criminal Justice Act (ACJA) was passed in 2015 to significantly alter the criminal justice process with a view to raising the bar in the efficiency and effectiveness in the quality of justice delivery in Nigeria. Despite the ACJA, the administration of criminal justice is still a major concern as other tricks that could be used during trial which were not envisaged by the ACJA, to delay criminal cases and particularly high profile corruption cases have arisen. Among such new tricks are long cross-examination of witnesses by defense lawyers; intimidation of Judges through petitions and complaints of alleged bias; filing of no-case submission and constant resort to appeal (Punch Newspaper, 2017).

Only recently the Corruption and Financial Crime Cases Trial Monitoring Committee (COTRIMCO)<sup>1</sup> in its interim report presented by the Chairman of the Committee, Hon. Justice Suleiman Galadima, (Rtd) at the 86th Meeting of the National Judicial Council, identified poor prosecution, absence of counsel for parties in Court, reliance on irrelevant documentary evidence, multiplicity of charges, non-adherence to Court rules and procedures, retirement and transfer of Judges, re-assignment of cases to start de-novo, amendment of charges after commencement of trial, and cumbersome record transmission process to the Court of Appeal amongst others as some of the factors militating against speedy disposal of corruption cases (Premium Times, 2018).

The Committee distilled the issues from its findings from discussions with heads of courts and observations made from the surprise visits of the members to courts handling corruption and financial crime cases in some parts of country. On the part of the Prosecution, the Committee observed the following: that offenders are charged to court before proper investigations of the charges are done, and afterwards, expecting the court to detain such alleged offenders till conclusion of their investigation; inadequate prosecuting personnel at the prosecution agencies; that some prosecutors lack the requisite experience to prosecute corruption cases, which invariably leads to poor handling of such cases; lack of commitment on the part of some prosecutors and

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<sup>1</sup> The Chief Justice of Nigeria constituted a 15-member committee to monitor judges and courts handling corruption and financial crimes cases across the country. The function of the Committee includes - Regular monitoring and evaluation of proceedings at designated courts for financial and economic crimes nationwide; Advising the Chief Justice of Nigeria (CJN) on how to eliminate delay in the trial of alleged corruption cases; Giving feedback to the Council on progress of cases in the designated courts, conduct background checks on judges selected for the designated courts; and Evaluating the performance of the designated courts.

collusion between them and defense counsel to pervert justice either by stalling the trials of cases or achieving pre-determined results; that there is no threshold to the number of witnesses the prosecution calls; inadequate funding of prosecution agencies to carry out thorough investigation of the corruption cases with attendant low quality prosecution cases; and frequent requests for adjournment by the Prosecutors.

The Committee submitted that the prosecution in most cases duplicate charges which could be up to one hundred and seventy counts against a defendant, but at the end, are unable to substantiate them, leading to the discharge of such defendant. The Committee also observed the issue of multiplicity of cases involving the same defendants, and on similar subject matters going on in different courts at the same time. This particular factor makes it impossible for some trials to proceed. The absence of parties in Court is also a major factor delaying criminal justice administration as cases are mostly adjourned when parties are absent in Court. The Committee added that both the defense and prosecution are often culpable by relying on irrelevant evidence they would not necessarily use thereby causing unnecessary delay.

On the part of the Court, the Committee identified the following as contributing to the delay in quick dispensation of corruption cases to include: retirement\transfer of Judges handling corruption cases and when this happens, such cases which may have gone far are re-assigned to another Judge to start de-novo; granting of remand order by a Court without following up to ensure suspects are brought to Court; inadequate provision for proper record keeping and shelving of Court files and other relevant documents in some Courts; cumbersome process of transmission of records from trial Courts which impedes the early disposal of appeals; and difficulties associated with ascertaining addresses for service of process by Bailiffs.

Prison on its part contributes to the delay by failing to remind court of subsisting order to reproduce suspects in court and most times lack means to convey awaiting trials to Court. To ensure speedy trial of corruption cases, the Committee recommends the following: proper training of prosecution in the area of investigation, especially in the area of Administration of Criminal Justice Act (ACJA) 2015; need for prosecuting agencies to have competent prosecution departments manned by qualified personnel; synergy between the various prosecution Agencies to enhance proper prosecution of criminal cases; use of professionals, such as accountants, auditors, etc, to investigate high profile and complicated cases; need for training and re-training of staff of Court handling criminal cases; proper funding for the judiciary and prosecuting agencies; deployment of more judges to handle designated corruption cases; complete overhaul of both physical and technical infrastructures in designated courts as some of them are small and not well ventilated.

Between 2016 – 2017, the Presidential Advisory Committee Against Corruption conducted several capacity building for judicial officers on effective utilization of the various extant laws and practice directions in litigating high profile corruption cases (PACAC, 2015-2017). Part of the feedback received from participants addressed the challenges they encounter in the prosecution of high profile corruption cases and suggestions on improving litigating corruption cases.<sup>1</sup> On challenges, the following were observed: lack of necessary infrastructures in the courts; lack of proper investigation by prosecutors and the police before filing charges; lack of adequate technology for instance recording materials for the courts; insufficient number of judges; overburdened dockets which makes it difficult to comply with the statutory one hundred and eighty days within which a case should be completed and compliance with day to day trial as provided for in the ACJA; execution of court orders takes a long time to enforce; frequent petition against judges.

On litigating corruption cases the following suggestions were proffered - need to amend relevant procedural laws relating to corruption; the need for the establishment of specialized anti – corruption courts; training and re-training of judicial officers and prosecutors; better funding of the judiciary; amendment of the law to reflect a shift in the onus of proof to rest on the accused; the witness protection bill should be passed into law.

### **3. Models of Specialized Anti – Corruption Courts in Various Jurisdictions**

Special or specialized Courts generally refers to a Judge with special knowledge of and expertise in a particular area of the law, Court, division of a Court, Tribunal or Taskforce that specializes substantially, though not exclusively in corruption cases. As stated in a March 2012 report issued by the Working Party of the Consultative Council of European Judges (CCJE), “The main reason for [court] specialization is the increasing specialization of the law and the growing complexity of topics” (CCJE, 2012).

One of the dilemmas faced by practitioners in the field of corruption is the issue of specialized anti - corruption courts versus the ordinary courts with special Judges dedicated to try solely corruption cases. Some countries, as an alternative to having specialized anti – corruption courts, stick to the ordinary Courts and equip them with designated Judges who have expertise in handling corruption and other economic and financial crime cases. This choice is obvious in order to avoid having a multitude of different specialized courts.

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<sup>1</sup> Post Workshop Evaluation Forms on file with the Presidential Advisory Committee Against Corruption.



This directive is intended to speed up the trial of corruption cases especially high profile corruption cases and some courts have already implemented this directive like for instance, the Federal High Court has already identified its designated Judges,<sup>1</sup> the Federal Capital Territory High Court,<sup>2</sup> the Lagos State Judiciary (Punch Newspaper, 2018), and the Plateau State Judiciary.<sup>3</sup> This directive is a short-term measure pending the passage of the Special Crimes Court bill that is currently before the Nigeria National Assembly. A short-term measure was necessary because the average gestation period for a Bill to be passed into law in Nigeria, is five years.

Special courts come in a variety of forms; some are established as special branches or divisions of existing courts,<sup>4</sup> others are established as separate, stand-alone units within the judicial hierarchy.<sup>5</sup> In addition, some countries have adopted a hybrid system in which the special court can serve as a court of first instance in some cases (usually in more significant cases) and as an appellate court in other cases. The two notable examples in this category are the Philippines and Uganda. In the Philippines, the Sandiganbayan has exclusive original jurisdiction over corruption offences committed by sufficiently high-ranking public officials; when those offences are committed by lower-ranking officials, the regional trial courts have original jurisdiction and the Sandiganbayan has appellate jurisdiction (Stephenson, M, 2016). The Ugandan system is similar, in that the Anti-Corruption Division (ACD) of the High Court typically only serves as a court of first instance in high-value cases; in other cases the ACD hears appeals from Magistrate Judges.<sup>6</sup>

According to a 2015 survey conducted by the Anti Corruption Resource Centre, 20 jurisdictions that had specialized anti-corruption courts at that time were identified: Afghanistan (established in 2010), Bangladesh (established in 2004), Botswana (established in 2013), Bulgaria (established in 2012), Burundi (established in 2006), Cameroon (established in 2011), Croatia (established in 2008), Indonesia (established in 2002 and revised in 2009), Kenya (established in 2003), Malaysia (established in 2011), Nepal (established in 2002), Pakistan (established in 1999), Palestine (established in 2010), the Philippines (established in 1979 pursuant to the provisions of the 1973 constitution), Senegal (established in 2012, pursuant to a 1981 statute), Slovakia (established in 2009), Uganda (established in 2008), Mexico (established in 2015), Tanzania (established in 2016), and Thailand (established in 2016).<sup>7</sup>

The latest addition to the jurisdictions with specialized courts is Zimbabwe. In March 2018, the Chief Justice of the Constitutional and Supreme Court in Zimbabwe launched five specialized anti – corruption courts with the appointment of twelve magistrates (Pindula 2018). The motivation for the establishment of these courts is for corruption cases to be dealt with expeditiously and to reduce the possibility of accused persons bribing judicial officers (Zimbabwe situation).

Although, many countries have special courts of some kind, there is a great deal of variation in the design of these institutions. There is no single “correct” model or “best practice” for the design of a specialized anti-corruption court; the appropriate design depends on many contextual factors and on the main objectives for the institution. For a country to decide on what home grown model would be best for a specialized court, would definitely depends on several factors like; the relationship of the specialized anti – corruption court to regular judicial system, the place of the anti – corruption court in the judicial hierarchy, size of the court, mode of selection and removal of judges, scope of the court, relationship to prosecutorial authorities, and procedural laws to apply when litigating corruption cases.

In the Philippines, the government has a special court called Sandiganbayan (Philippine Constitution) to prosecute corruption cases, it is of the same level as the Court of Appeal and has exclusive jurisdiction over violations of the Anti-Graft and Corrupt Practices Act (Republic Act, 3019), the Unexplained Wealth Act (Republic Act, 1379), and other crimes or felonies committed by public officials and employees in relation to their office, including those employees in government-owned or controlled corporations. The court is composed of a presiding Justice and fourteen other Justices who sit in five divisions of three Justices each in the trial and determination of cases. The court has original and appellate jurisdiction (Republic Act 3019, Anti Graft Act), and gives its final verdict on a case within three month from the date of registration of the case (Froilan L. Cabarios).

In the Indonesian judicial system, the Court for corruption crimes<sup>8</sup> was established by law in 2002 as part of

<sup>1</sup> So far, 9 judges have been designated.

<sup>2</sup> So far, 4 judges have been designated.

<sup>3</sup> The Plateau State Judiciary has designated two High Court judges to hear and speedily dispose of all corruption cases in the state, online: <http://www.aitonline.tv/post>

<sup>4</sup> This arrangement can be found in Bangladesh and Kenya, appeals from the first instance anticorruption judges go through one or more of the usual intermediate layers of appeals before any appeal to the country’s supreme court.

<sup>5</sup> This arrangement can be found in Burundi, Cameroon, Croatia, Nepal, Pakistan, Senegal and Slovakia.

<sup>6</sup> There are two important differences, however. First, in the Philippines, the Sandiganbayan’s original jurisdiction is limited by law; while in Uganda, the ACD has original jurisdiction in all corruption cases, but as a matter of discretion it chooses only to serve as a court of first instance in more significant cases. Second, in the Philippines, Sandiganbayan decisions can be appealed directly to the Supreme Court; in Uganda, ACD decisions are appealed first to the Court of Appeal (which in the Ugandan judicial hierarchy is between the High Court and the Supreme Court), and only then to the Supreme Court

<sup>7</sup> Id.

<sup>8</sup> Pengadilan Tindak Pidana Korupsi, commonly known as Pengadilan Tipikor, or Tipikor court)

the general court system, and began operating in 2004. The main reason for the establishment of the Tipikor Court was a lack of trust in the existing judiciary to handle corruption cases impartially and effectively (Schütte & Bergen, 2016). Until 2010, the Tipikor Court of first instance was located at the Central Jakarta District Court, with appeals going to special Tipikor panels at the Jakarta High Court and ultimately the Supreme Court. Now, all thirty-four Indonesian provinces have Tipikor Courts, which take on cases from both the Corruption Eradication Commission (KPK) and the public prosecution service.

There were five Judges at each of these levels: two career Judges and three ad hoc Judges. Ad hoc Judges were (and still are) selected in a multi-tiered process by the Supreme Court from outside the current judiciary, with tenure of five years. The law established strict timelines for the Tipikor Court: ninety days for trials, sixty days for first appeals, and ninety days for cassation appeals to the Supreme Court. These deadlines are meant to avoid a backlog of undecided cases (S. Fenwick, 2008).

Another example of a special court is the special anti-corruption Court of Kenya, which was established under the Anti-Corruption and Economic Crimes Act of 2003 (ACECA) and presided over by a special Magistrate, (ACECA, 2003) the innovative special anti-corruption Court was established to deal with the corruption cases as a matter of priority. Section 4 of the ACECA emphasizes that, “notwithstanding anything contained in the Criminal Procedure Code or in any other law for the time being in force, the offences in this Act shall be tried by special Magistrates only”.

To elucidate on those above-mentioned selected factors to consider when designing a specialized anti – corruption court and to determine the model for the proposed Nigerian specialized anti – corruption court, I will juxtapose the selected factors with the Special Crimes Court Bill that is currently before the National Assembly.<sup>1</sup>

### 3.1. *Relationship of the Specialized Anti – Corruption Court to Regular Judicial System*

The Court shall have and exercise jurisdiction throughout the Federation, and for that purpose, the Chief Judge may divide the whole area of the Federation into not less than six Judicial Divisions and designate a Judicial Division. The Court may sit in any one or more Judicial Divisions as the Chief Judge may direct, and he may also direct one or more Judges to sit in any one or more of the Judicial Divisions.<sup>2</sup> Designated judges would hear not just corruption cases but also other serious organized crimes. Subject to the provisions of section 44 of the Act,<sup>3</sup> in so far as jurisdiction is conferred on the Court in respect of the scheduled offences, a High Court or any other Court of a State or of the Federal Capital Territory, Abuja shall, to the extent that jurisdiction is so conferred on the Court, cease to have jurisdiction to try or inquire into the scheduled offences.<sup>4</sup>

### 3.2. *Scope of the Court*

The Court is to allow for speedy trials of certain offences; economic and financial crimes offences, terrorism offences, money laundering and corruption offences, trafficking and kidnapping offences, narcotic offences, cyber crime offences and other related offences. The Court shall have and exercise exclusive jurisdiction and power in respect of the offences specified in Schedule 1 to the Act.<sup>5</sup>

<sup>1</sup> The bill was drafted by the Presidential Advisory Committee Against Committee for the Executive arm of government and submitted to the Nigerian National Assembly in 2017. Explanatory Memorandum- This Bill seeks to establish the Special Crimes Court charged with exclusive jurisdiction throughout the Federation for the trial of offences referred to in the Bill as “scheduled offences”, which include in the main, offences relating to terrorism, money laundering, economic and financial crimes, corruption, narcotics, human trafficking, kidnapping and cyber crimes. The Court is to operate as a superior court of record on the same footing as the Federal High Court. With the establishment of the Court, scheduled offences are to be attended to expeditiously in the interest of justice and fair play. Judges of the Court are to have in-depth knowledge and experience in the law and practice of the subject matters of the scheduled offences. The Court in its operation is expected to take full advantage of new developments in criminal justice administration and provide for the much needed specialization in the prosecution and trial of complex criminal cases which impact on the economic wellbeing and the overall national security of the nation.  
<sup>2</sup> Section 11.

<sup>3</sup> A High Court or any other court shall continue to hear and determine trials and other criminal proceedings in respect of scheduled offences which are part-heard before the commencement of this Act, and any trial or other criminal proceeding, not determined or concluded at the expiration of one year after the commencement of this Act, shall abate and the trial or other proceeding may be brought before the Court for fresh hearing. Notwithstanding anything to the contrary in any enactment, including any rule of law, but subject to subsection (1) of this section, where the trial of a scheduled offence has not commenced in a High Court before the coming into force of this Act, the trial shall be transferred to the Court.

<sup>4</sup> Section 8.

<sup>5</sup> Section 7(1). The listed offences are: (a) terrorism offences under the Terrorism (Prevention) Act (No.10 of 2011), as amended; (b) economic and financial crimes under Economic and Financial Crimes Commission (Establishment, etc.) Act (E1 LFN 2004); (c) money laundering offences under the Money Laundering (Prohibition) Act (No.11 of 2011), as amended; (d) narcotic drugs and psychotropic substances offences under the National Drug Law Enforcement Agency Act (N30 LFN 2004); (e) trafficking and kidnapping offences under the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2015 (No. 32 of 2015); (f) corruption offences under the Corrupt Practices and Other Related Offences Act (C31 LFN 2004); (g) kidnapping offences under the Criminal Code (C38 LFN 2004) and the Penal Code (P3 LFN 2004); (h) cyber crimes under the Cyber Crimes Act, 2015; and (i) such other offences declared under any other Act to be a scheduled offence for the purposes of this Act.

### 3.3. *Judicial Hierarchy*

The Court shall be a superior Court of record; and except as may be otherwise provided by any enactment, have all the powers of a High Court.<sup>1</sup> Subject to the provisions of the Constitution, the Court of Appeal Act and the Rules of Court of the Court of Appeal, appeals shall lie from the decisions of the Court to the Court of Appeal.<sup>2</sup>

### 3.4. *Size of the Court*

The Court is to consist of a Chief Judge, not less than twelve Judges of the Court meaning more judges can progressively be appointed and shall have all the powers of a High Court.<sup>3</sup> The main advantage of appointing many judges is to have a favorable judge to case ratio.

### 3.5. *Mode of Selection and Removal of Judges*

The Chief Judge shall be appointed by the President, on the recommendation of the National Judicial Council,<sup>4</sup> subject to confirmation by the Senate.<sup>5</sup> The appointment of a person to the office of a Judge of the Court shall be made by the President on the recommendation of the National Judicial Council.<sup>6</sup> A person shall not be eligible to hold office of the Chief Judge or of a Judge of the Court unless the person is qualified to practice as a legal practitioner in Nigeria and has been so qualified for a period of not less than ten years and has sufficient knowledge and experience in the law and practice of at least one of the subject matters of the scheduled offences in respect of which the Court has jurisdiction under this Act.<sup>7</sup>

Regarding the mode of selection and removal of judges under the bill, I would suggest that credible Civil Society Organizations (CSOs) should also be part of the recommendation process to serve as a check and to ensure that people of integrity are appointed to the Court.

In addition, the bill provides that, if the office of the Chief Judge is vacant, or if the person holding the office is for any reason unable to perform the functions of the office, then until a person holding the office has resumed those functions, the President shall appoint the most senior Judge of the Court having the qualification to be appointed as Chief Judge as provided under subsection (3) of this section to perform those functions.<sup>8</sup> Except on the recommendation of the National Judicial Council, an appointment made pursuant to the provisions of subsection (4) of this section shall cease to have effect after the expiration of three months from the date of such appointment and the President shall not re-appoint a person whose appointment has lapsed.<sup>9</sup>

The provisions in the Constitution of the Federal Republic of Nigeria, 1999, as altered, relating to the disqualification of certain legal practitioners as judicial officers, declaration of assets and liabilities of judicial officers, tenure, removal, gratuity and pension of any person holding or appointed to act in the office of the Chief Judge or a Judge of the Federal High Court, shall, respectively, apply to any person holding or appointed to act in the office of the Chief Judge or as a Judge of the Court.<sup>10</sup>

### 3.6. *Relationship to Prosecutorial Authorities*

Subject to the provisions of the Constitution relating to the powers of prosecution by the Attorney-General of the Federation, prosecution of all scheduled offences under this Act shall be undertaken by- the Attorney-General of the Federation or a Law Officer in his Ministry or Department; a legal practitioner authorized by the Attorney-General of the Federation; or a legal officer authorized to prosecute any of the scheduled offences under any of the enactments listed in Schedule 2 to this Act,<sup>11</sup> with the fiat of the Attorney- General of the Federation.<sup>12</sup>

### 3.7. *Applicable Procedural Laws*

Proceedings before the Court shall be conducted in accordance with the provisions of the Administration of

<sup>1</sup> Section 1(3).

<sup>2</sup> Section 10.

<sup>3</sup> Section 1.

<sup>4</sup> National Judicial Council is an executive body established by the Federal Government of Nigeria in accordance with the provisions of sections 153 of the 1999 constitution as amended to protect the Judiciary of Nigeria from the whims and caprices of the Executive. The NJC perform several judicial functions such as advising the the President of Nigeria and governors on issues related to the judiciary. They also perform disciplinary functions as well as appointment and nomination of executive members of the judiciary

<sup>5</sup> Section 2(1).

<sup>6</sup> Section 2(2).

<sup>7</sup> Section 2(3).

<sup>8</sup> Section 2(4).

<sup>9</sup> Section 2(5).

<sup>10</sup> Section 3.

<sup>11</sup> The Terrorism (Prohibition) Act, 2011 (No. 10 of 2011), as amended; the Economic and Financial Crimes (Establishment, etc.) Act (E1 LFN 2004); the Money Laundering (Prohibition) Act (No. 11 of 2011), as amended; the National Drug Law Enforcement Agency Act (N30 LFN 2004); the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2015 (No. 32 of 2015); the Corrupt Practices and Other Related Offences Act (C31 LFN 2004; the Criminal Code (C38 LFN 2004) and Penal Code (P3 LFN 2004); Cyber Crimes Act, 2015; and any other Act under which power is conferred on legal officers to prosecute scheduled offences.

<sup>12</sup> Section 28.

Criminal Justice Act, 2015, and the provisions of that Act shall, with such modifications as may be necessary to bring them into conformity with the provisions of Special Crimes Court Act in respect of all matters falling within the jurisdiction of the Court.<sup>1</sup>

An analysis of the Special crimes Court bill shows that the proposed specialized anti – corruption Court would be designed as a separate, stand only Court. The proposed Court would not try only corruption cases but would include other serious organized crimes relating to terrorism, money laundering, economic and financial crimes, corruption, narcotics, human trafficking, kidnapping and cyber crimes. The Court would be on the same hierarchy as the High Court and appeals from this Court would lie in the Court of Appeal.

One feature this Bill proposes to achieve is to further eliminate any factor that would hinder speedy dispensation of justice like for instance, section 13 provides that where a presiding judge for any reason is unable to attend Court sitting on the day appointed, and no other Judge is able to attend in his stead, the Court shall stand adjourned for a period not exceeding twenty-one days. If on the adjourned date, the Judge is still unable to preside over the Court, the Chief Judge shall re-assign the trial to any other Judge. Section 16 also provides that a trial shall, be heard and disposed of by a single Judge, and all proceedings subsequent to the trial, down to and including the final judgment or order, shall be taken by the Judge before whom the trial took place.

What these sections have succeeded in achieving is to guarantee the efficiency of judges and to ensure speedy dispensation of justice. One of the reasons why cases linger in Court is incessant adjournment and frequent transfer of cases forcing these cases to commence de novo. It is hoped that this Court would not end up being overburden like the regular Court considering the scourge of corruption in Nigeria.

#### **4. Advantages of Special Courts: Experience of Select Jurisdictions**

The creation of special Courts is now a common phenomenon all over the world and evaluation of some jurisdictions with special Courts has shown that its advantages include; better efficiency, often through streamlined procedures, as well as higher quality and more consistent decisions in complex areas of law (Gramckow & Walsh, 2013). Consistent with this, Gramckow and Walsh find, in their review of international experiences with Court specialization, that specialization can help the processing of complex cases that “require special expertise beyond the law, such as in bankruptcy, environmental, or mental health issues, or cases that must be handled differently to better reflect the needs of a particular Court user group, such as business cases or family matters”.<sup>2</sup> While the advantages for the creation of specialized anti-corruption Courts may vary, the three that stand out as particularly salient are efficiency, integrity, and expertise.

##### *4.1. Efficiency*

Special Courts are supposed to increase the efficiency with which the judicial system resolves corruption cases. Having a more favorable ratio of judges to cases will enable cases to be processed quickly<sup>3</sup> by streamlining the procedures for handling corruption cases. For instance, some anti-corruption Courts are Courts of first instance, with appeals going directly to the country’s supreme Court, thus bypassing the usual intermediate appellate Courts;<sup>4</sup> and in order to speed up the processing of corruption cases, many jurisdictions impose special deadlines on their anti-corruption Courts. Examples include Cameroon, Nepal, Palestine, the Philippines, Malaysia and Indonesia.<sup>5</sup>

Indeed, in most of the jurisdictions that have adopted a specialized anti-corruption Court, the desire to speed up the processing of cases has been one of the main public justifications. This was true, for example, in Botswana, (UNODC, 2014) Cameroon (Iliasu, 2014) Croatia (Balkan Insight, 2008) and the Philippines (Stephenson, M, 2016). Specialized procedures, staff and judges who are well versed in these cases lead to streamlined operations and more efficient processing. By diverting a class of cases to specialized Courts, the burden of growing caseloads in the regular Courts will be reduced, also positively impacting on their operations.

Like Nigeria, many countries, particularly, though not exclusively, developing countries, face substantial backlogs and delays throughout the judicial system and while judicial inefficiency is undesirable in all cases, it may be especially harmful with respect to corruption cases, for two reasons. First, the urgency of making progress in the fight against corruption means that extensive judicial delays in dealing with corruption cases are particularly problematic, especially since such delays threaten to undermine public confidence in the

<sup>1</sup> Section 19.

<sup>2</sup> Id.

<sup>3</sup> While these factors sometimes help specialized anti-corruption courts process cases more quickly than the ordinary courts, this is not always the case: many anti-corruption courts seem just as swamped as the regular court system, perhaps more so.

<sup>4</sup> This kind of structure is used in like in Cameroon, Croatia, Nepal, Pakistan and Slovakia.

<sup>5</sup> The deadlines vary a great deal across countries, in part because of other differences in the structure, function, and organization of the courts. In Palestine, the court is supposed to hear any case brought to it within 10 days and to issue a decision within 10 days after the hearing, with an allowable postponement of no more than 7 days. Another example is Malaysia. At the time Malaysia established its specialized anti-corruption courts, the average time required for a corruption case to make its way to final resolution was about 8 <sup>1</sup>/<sub>2</sub> years. Malaysia therefore imposed a legal requirement that the anti-corruption courts process cases within one year.



government's commitment and capacity to combat corruption effectively. Second, substantial delays in processing cases increase the risk that defendants or their allies may exert undue influence on witnesses, tamper with evidence, or take other action to interfere with the ordinary and impartial operation of the justice system; while such concerns are not unique to corruption cases, they are especially acute with respect to such cases (Stephenson & Schutte, 2016, 10).

#### 4.2. Integrity

A second motivation for creating specialized anti-corruption Courts is to ensure, to the extent feasible, that corruption cases are heard by an impartial and independent tribunal, free of both corruption and undue influence by politicians or other powerful actors. While the integrity rationale has not featured as prominently as the efficiency rationale in public discussions regarding the creation of specialized anti-corruption Courts, in a few instances the interest in ensuring judicial integrity was a central motivation for the creation of such Court. Perhaps the best illustration of this is Indonesia, where post-Suharto reformers established the Tipikor Courts primarily because of concerns about widespread corruption in the regular judiciary, which made it very difficult to secure corruption convictions of well-connected public officials and their cronies (Schutte & Butt., 2003).

The designers of the Tipikor Court system therefore enacted a number of specific measures to promote judicial integrity, including provisions requiring the participation of "ad hoc" judges who are not part of the regular judiciary (Schütte & Bergen, 2016). And while Indonesia is the best-known example of a case where the promotion of judicial integrity was a principal rationale for the creation of specialized anti-corruption Courts, this factor seems to have been significant in some other cases as well.

In Slovakia, one of the arguments for giving the Special Criminal Court (SCC) jurisdiction over serious corruption cases was the concern that local networks of elites could interfere with or otherwise distort judicial decision-making in the regional Courts; the SCC, as a national Court located in the capital, was thought to be less susceptible to this problem (Stephenson, 2016).

In Nigeria, it is expected that designated corruption Court judges would be persons of integrity and high moral standard with pristine and impeccable track record. Of course, the creation of specialized anti-corruption Courts is no guarantee that these Courts will not themselves be corrupted. Even in Indonesia, where the role of the anti-corruption Courts as a safeguard against corruption has been most explicit, several judges on these Courts have themselves been indicted for corruption (Butt & Schutte, 2014).

#### 4.3. Expertise

A third justification for creating a specialized anti-corruption Court, closely related to but distinct from the interest in increasing efficiency, is the desire to create a Court with greater expertise. After all, many corruption cases, especially those involving complex financial transactions or elaborate schemes, may be more complicated than the run-of-the-mill cases that make up many generalist judges' criminal dockets. Indeed, the desire for a more expert adjudicative body, to promote not just efficiency but also accuracy is a common justification for the creation of specialized Courts in other contexts (Gramckow & Walsh, 2013). A judiciary of specialists leads to higher-quality decisions, especially in complex areas of the law. Their greater expertise and experience will lead to better decisions, better outcomes for the litigants, and greater user satisfaction.

For example, in Croatia, the creation of a specialized Court, to handle not only corruption cases but also other serious crimes, was in part an effort to build judicial capacity to handle the most complex and socially significant criminal cases, principally through the recruitment of more experienced judges to serve on these Courts (Marijan, R., 2008).

As already stated, Nigeria is already taking steps in ensuring the establishment of a specialized anti-corruption Court with the operationalization of the CJN's directive and the bill before the National Assembly. It is trite that an effective judiciary is a powerful weapon against corruption and a lot has to be done to strengthen it for the anti-graft war. What this means is that the special Court system must go in hand with broader judicial reform and that is why a Committee on the Implementation of Directives on Designated Corruption Courts under the directive of the CJN has been constituted to put together the necessary framework for these special designated corruption Courts to work effectively.<sup>1</sup>

Several issues that would help with the efficiency of these designated Courts are being deliberated upon by the committee like the issue of accountability and management of funds, case and Court management, introduction of recording devices and stenographers to those Courts without. The Federal High Court divisions in Abuja, Lagos, Kano and Port Harcourt as well as Lagos State Judiciary and Federal Capital Territory High Court have been selected for the pilot scheme based on the high volume of corruption cases in these jurisdictions. The pilot scheme will be used to evaluate the efficiency of the directive with a view to replicating same in other

<sup>1</sup> The mandate of the committee is to inspect and assess available facilities in the designated courts to determine areas of possible interventions; to work out incentives for the designated courts to reduce the burden on the judiciary; Use the designated courts as a pilot to evaluate the efficiency of the project with a view to replicating same in other courts.

designated Courts around the country.

## 5. Conclusion

That corruption is dynamic, sleek and complicated has already been established, that Nigeria is making significant inroads into the fight against corruption is evident. That innovative ways to fight corruption is necessary has also been established and this paper posits that one of the innovative ways to be employed is to use specialized anti – corruption Court. However, the chances of success in the fight against corruption and of this special Court would depend on several other factors like resources devoted to the Courts, judicial capacity, availability of the required infrastructural support, strict application of the relevant laws and statutes especially the ACJA, improving the salaries of designated corruption judges and prosecutors, to mention a few.

It is also recommended that recklessness and negligence as mental elements in money laundering offences, as is the case in Australia should be explored. Changing the mental element of money laundering will make it easier to prosecute middle men involved in money laundering, for instance lawyers, bankers, accountants, who handle the proceeds of crime and thereafter fringe ignorance of not knowing that the money was the proceeds of crime. For too long professionals who have advised and assisted criminals to launder money have evaded prosecution usually with the defense of not knowing the money was the proceeds of a crime.

The constitutional presumption of innocence makes it extremely difficult to prove allegations of corruption in an adversarial system like Nigeria and would continue to be difficult except if the onus of proof is reserved like in the case of Singapore, Nepal, Indonesia (Wahyu Wiradinata) and Hong Kong. Where a person is found with some money or property that cannot be correlated with their verifiable earnings let them prove it. Where they cannot prove legitimate ownership, the money and property would be forfeited.

Non-conviction based forfeiture mechanisms should be utilized more often by Judges. Contrary to public opinion, non-conviction based forfeiture mechanisms, have always been provided for in Nigerian laws like the Corrupt Practices and Other Related Offences Act (2000),<sup>1</sup> Advanced Fee Fraud and Other Fraud Related Offences Act (2006),<sup>2</sup> Failed Banks (Recovery of Debts) and Financial Malpractices in Banks,<sup>3</sup> Code of Conduct Bureau and Tribunal Act,<sup>4</sup> Economic and Financial Crimes Commission (Establishment) Act, (2004),<sup>5</sup> Administration of Criminal Justice Act (2015),<sup>6</sup> National Drug Law Enforcement Agency Act.<sup>7</sup> Finally, it is important that all key stakeholders including judges, lawyers and prosecutors work towards the overall success of the specialized anti – corruption Court else what we would be left with is another non-functioning court.

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<sup>1</sup> Sections 37(1), 46, 47(1), 48(1).

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<sup>3</sup> Section 3(1).

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