

**CORRUPTION AS AN IMPEDIMENT TO THE IMPLEMENTATION OF AFRICAN  
CONTINENTAL FREE TRADE AREA AGREEMENT AND AFRICAN TRADE: THE  
NIGERIAN PARADIGM**

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***Abstract***

*This study looks at corruption as an impediment to the implementation of African Continental Free Trade Area (AfCFTA) Agreement and African trade. The paper undertook an overview of the corruption in Nigeria. It also discussed the legal and institutional efforts to tackle the issue of corruption. It also appraised the challenges of corruption on trade in Africa, especially the AfCFTA. A doctrinal research method, relying on primary and secondary sources of data collection was used. The primary source comprised legislations (1999 Constitution of Federal Republic of Nigeria; Economic and Financial Crimes Act, 2004; Independent Corrupt Practices Commission Act 2004; Public Procurement Act, 2004 and a host of other transparency laws) and case law. The secondary source included textbooks, journal articles, newspapers, conference proceedings and the Internet sources. The study revealed that there is official corruption in Nigeria's public life, capable of interfering with national development. It is also found that the challenges of official corruption have a deleterious effect on international trade, especially the trade in Africa. The legal and institutional frameworks in Nigeria are not robust and inadequate to curb official corruption, if weak implementation of the laws is not prevented. The study concluded that corruption is a major impediment to trade in Africa which needs to be curbed through stronger implementation of the domestic laws of the State Parties.*

*Keywords: African Continental Free Trade Area (AfCFTA) Agreement; Corruption; Financial Transparency; Money Laundering; Public Procurement; Rule of Law*

**Introduction**

Nigeria is the biggest market in Africa with an estimated 229,152,217 million people at 2.39% annual increase.<sup>1</sup>. Its economy is anchored on export goods such as cocoa, butter, ginger, rubber,

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palm kernel oil, cassava, groundnuts, and yam apart from its richness in mineral deposits.<sup>2</sup> It is also a market open to imported commodities from other African states.<sup>3</sup> The AfCFTA Agreement, therefore, promises to increase trade relations between it and other African nations. This has been estimated to run into billions of dollars annually.<sup>4</sup>

The major impediment to the public service administration and trade (internal or international) in Nigeria since independence on 1st October, 1960 is official corruption.<sup>5</sup> Since 1999 when the Fourth Republic democratic leadership came on board, politicians had perfected various acts and devices of misappropriating public funds, embarking on money laundering and interfering with businesses and trades across borders.<sup>6</sup> These practices on the part of the political leaders and businessmen had threatened the Economic Community of West African countries of which Nigeria is a market leader. Nigeria's adoption of the AfCFTA<sup>7</sup> has raised a fresh concern on the impediments which corruption could create for the success of the continental free trade agreement. However, foreign companies have committed serious cases of corruption in developing nations, including Nigeria. For example, the confession of Siemens, a leading global engineering firm, that it had made corrupt payments up to the tune of 10million Euros to Nigerian government officials between 2001 and 2005 to facilitate contract awards.<sup>8</sup>

Another instance of monumental corruption by a foreign company operating in Nigeria involved the TSKJ Consortium which bided to promote services of \$12billion liquefied natural gas project that was partly cured by Nigerian government and the Royal Dutch Shell group. When the initial bid was rejected, the TSKJ group enlisted the services of Tristar Investment, a separate company which was scheduled to provide 'consultancy' services to help the company run the contract in the LNG Project. The TSKJ was eventually awarded the project for \$2billion for the Nigeria LNG

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<sup>1</sup> Macrotrends, 'Nigeria Population 1950-2025 < <https://www.macrotrends.net/global-metrics/countries/nga/nigeria/population>> accessed 12 April 2025.

<sup>2</sup> Bowa-gate Global, Ultimate List: 20 profitable products to export from Nigeria and make huge profit. <<https://bowagateglobal.com>> accessed 12 June 2024.

<sup>3</sup> Tralac, 'Nigeria: Intra-Africa trade and tariff profile 2020 infographic,' <<https://www.tralac.org>> accessed 18 July 2024.

<sup>4</sup> The World Bank, 'The African Continental Free Trade Area,' <<https://worldbank.org>> accessed 17 July 2024

<sup>5</sup> I.T. Mohammed, Fight against Corruption in Nigeria, Sharia Point of View. In Yusuf O. Ali. *Corruption in Nigeria: Issues, Challenges & Solutions* (Yusuf O. Ali, 2016)134-168.

<sup>6</sup> UNODC, Corruption in Nigeria: Patterns and trends: Second survey in corruption as experienced by the population (Vienna, UNODC, 2019) 41.

<sup>7</sup> This was on 7 July 2019.

<sup>8</sup> Ngozi Okonjo Iweala, *Reforming the Unreformable: Lessons from Nigeria* (MIT Press Books, 2012)86.

Project. It was later revealed that TSKJ group surreptitiously agreed to pay about \$180million to various foreign accounts of Nigerian public officers to help secure the profitable contract, “through inflated contracts and undermining of the country’s institutions.”<sup>9</sup> The two examples reported by the former Finance Minister, and the Director General of World Trade Organisation (WTO) depicted clearly what corruption in trade relations could cost a nation, not to talk of a continental trade organisation, like AfCFTA.

Many studies have focused on the impediment which corruption had created for good governance in Nigeria,<sup>10</sup> but less studies have however been conducted on the challenges corruption could pose to the implementation of AfCFTA and the Africa trade. Researching into this area would bring up some suggestions that could insulate the implementation of the AfCFTA and the Africa trade from corruption and lead to some legal and institutional reforms in that regard.

The paper investigated corruption as an impediment to the implementation of AfCFTA and African Trade. The objectives were to undertake an overview of state of corruption; identify challenges corruption could pose to AfCFTA and appraise the legal and institutional frameworks for tackling corruption in Nigeria and trade in Africa.

The paper relied on primary and secondary sources of information. The primary source included 1999 Constitution of the Federal Republic of Nigeria (CFRN);<sup>11</sup> Economic and Financial Crimes Commission Act,<sup>12</sup> 2004; Advance Fee Fraud and other Related Offences Act,<sup>13</sup> Code of Conduct Act Bureau and Tribunal Act;<sup>14</sup> Corrupt Practices and other Related Offence Act;<sup>15</sup> Public Procurement Act;<sup>16</sup> and sundry transparency laws) and case law. The secondary source included textbooks, journal articles, conference proceedings, newspapers and the Internet.

The paper is structured into five sections. The first section is the introductory part which gives its scope. The second section undertakes an overview of corruption in Nigeria. The third section

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<sup>9</sup> Ibid, 86.

<sup>10</sup> Ngozi Okonjo Iweala, *Reforming the Unreformable: Lessons from Nigeria*, (The MIT Press Cambridge, Massachusetts,2012); Opeyemi A. Oladimeji, *Moral Decadence among Nigerian Youths: A Menace to National Development* (Wonderful Family Publishers,2018); Farida Mzamber Waziri, *Advance Fee Fraud, National Security & the Law* (Bookbuilders,2005) etc.

<sup>11</sup> Cap C23, Law of the Federation of Nigeria (LFN) 2004.

<sup>12</sup> Cap E1, LFN 2004.

<sup>13</sup> Cap A6, LFN 2004.

<sup>14</sup> Cap C15 LFN 2004.

<sup>15</sup> Cap C31, LFN 2004.

<sup>16</sup> 2007 Act No 14.

examines the AfCFTA in African trade in Africa, while section four appraises the challenges corruption could pose to its implementation among the State Parties, especially Nigeria. Section five is the conclusion.

## **2.0 OVERVIEW OF SECTOR CORRUPTION IN NIGERIA**

### **2.1 NATURE OF CORRUPTION IN NIGERIA**

Definitions of corruption have been attempted by many scholars, but the most accessible definition is to view it as “the misapplication of public resources to private ends.”<sup>17</sup> It may also be viewed as “an arrangement that involves exchange between two parties (the demander and the supplier) which (i) has an influence on the allocation of resources either immediately or in the future, and (ii) involves the use or the abuse of public or collective responsibility for private ends”<sup>18</sup>

Causes of corruption have been identified to include policy induced sources such as trade restrictions, government subsidies and multiple exchange rate practices and foreign exchange allocation and low wages for the public and private sector workers.<sup>19</sup> Others are cultural and or political sources, poverty, political instability and other societal forces such as pressures from families, colleagues and political associates), poor wage considerations (inadequate pay, fringe benefits and other financial incentives), inefficient internal control (inadequate supervision and control systems, lack of explicit standards for employees and organisations, poor recruitment and selection procedures, too few or too many (non-transparent) rules and procedures (red tape).<sup>20</sup>

Corruption in Nigeria, as in the global community, operates in varying forms. In Nigeria’s public sector, it has been identified to include “bribery, extortion, cronyism, nepotism, patronage, influence peddling, graft and embezzlement, money laundering etc.”<sup>21</sup> It also includes misuse of government power for other purposes not intended, such as to repress political opponent or to

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<sup>17</sup> Emmanuela Ceva and Maria Paola Ferreti, ‘Political Corruption,’ 2017 (12)12 *Philosophy Compass*, 1-10 , <<https://doi.org/10.1111/ph3.12461>> accessed 13 June 2024,

<sup>18</sup> J. Macrae, ‘Underdevelopment and the economics of corruption’, A game theory; 1982 (10)8, *World Development*, 677-687.

<sup>19</sup> Yusuf O. Ali, ‘The Fight against Corruption in Nigeria’ in Yusuf O. Ali (ed.) *Anatomy of Corruption in Nigeria: Issues, Challenges & Solutions* (Yusuf O. Ali,2016)1-31.

<sup>20</sup> Van Rijkejem and B. Weder (1997) ‘Corruption and the rate of temptation: Do low wages in Public Civil Service Cause Corruptions?’ Working Paper 97/73 (Washington).

<sup>21</sup> Oladapo A. Afolabi, ‘Eradicating Corruption in the Civil Service’. In E.M. Essien and G.B. Ayoola, *Corruption Eradication and the Nigerian Ethical Revolution*, Proceedings of the 8<sup>th</sup> Forum of Laureates of the Nigerian National Order of Merit (1<sup>st</sup>-2<sup>nd</sup> December 2015)13-35.

embark on police brutality.<sup>22</sup> All these forms exist in Nigeria and it has got to a stage that a former President, Muhammadu Buhari, has to declare that “if we (Nigerian) do not kill corruption, corruption will kill Nigeria”<sup>23</sup>

Price Water House<sup>24</sup> reviewed 32 studies on the menace of corruption in Nigeria; 20% was sponsored by international organisations; 22% published by Nigerian scholars affiliated with Nigerian universities; 16% was published by other academics as well as 3% in-house studies. It was revealed that seventy percent (70%) of the 32 studies conducted quantitative studies on the Nigerian economy, while also examining qualitative relationships between corruption and economic outcomes. After an extensive review, Price Water House further analysed the effect of corruption on economic growth.<sup>25</sup> The study indicated that corruption impacted negatively on income into the economy, natural resources, level of trade openness over the period and change in terms of trade over the period and investment ratio to GDP average over the period.

UNODC<sup>26</sup> also conducted a survey of 33,000 households across the 36 States and federal capital territory in Nigeria to gather data on corruption. It was designed to analyse the actual experiences of Nigerians when they encountered 20 types of public officials. It evaluated the probability of citizens being called upon to pay bribes, as well as the recurrence of the requests and payments. It also sought to gather citizens’ attitudes towards corruption, their readiness to refuse to give bribes and report erring officials to the authorities. Results indicated that bribery was less prevalent than three years earlier (2016) when the first survey was conducted. Although few Nigerians had contact with public officials paid bribes, or were asked to pay bribes, those who paid continued to do so quite frequently, as each of them reported that they paid an average of six bribes less ½ months prior to the survey. In all, with at least one public official, 30% of them paid at least one bribe.

Iweala,<sup>27</sup> an experienced technocrat and the Director General of World Trade Organisation (WTO) relived her encounter with the war against corruption in Nigeria. She commented:

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<sup>22</sup> Ibid

<sup>23</sup> Jimitot Omoyume, “If we don’t kill corruption, it will kill us’ says Buhari.” *Vanguard* (March 12, 2015). <<https://www.vanguardngr.com>> accessed 30 April 2024.

<sup>24</sup> ‘Impact of Corruption on Nigeria’s Economy’ PW (2016).< <https://www.pwc.com>> accessed 30 April 2024.

<sup>25</sup> Ibid.

<sup>26</sup> ‘Corruption in Nigeria: Second Survey on Corruption as Experienced by Population’ (December 2019). <<https://www.unodc.org>> 10 May 2024.

<sup>27</sup> Ngozi Okonjo-Iweala, *Fighting Corruption is Dangerous: The Story behind the Headlines* (The MIT Press, 2018)

So telling my story is risky. But not telling it is also dangerous. Silence would allow these same vested interests in my country, the same corrupt people, to distort events, twist factual accounts, and hide behind lies, half-truths, and obfuscations to protect themselves and harm others. With the co-operation of unscrupulous media, they turn truth to lies and promote lies as truth.<sup>28</sup>

The above experiences, which led to the kidnapping of her mother, and serious threat to her life and that of her loved ones, show how dangerous it is to fight institutional corruption which has eaten deep to the fabrics of the Nigerian nation.

Corruption is endemic in Nigeria's national life, and it has become the cankerworm threatening its corporate existence. Since 1999 when the Third Republic came on board, corruption has been institutionalised, considering various cases of financial corruption being perpetrated by public officials. Reports of the request by the legislature for bribes from public officials to pass the budgets of their Ministries, Departments and Agencies (MDAs), budget padding, compromise of oversight functions of the legislatures, contract splitting and so on are published in the media.<sup>29</sup> Corruption in Nigeria's oil sector has cost a huge some of financial resources. The dimension of fuel subsidy manipulation, crude oil theft by public officials, is humongous.<sup>30</sup> This cut across the legislative, the executive and the judicial arms of government.

Corruption has been with Nigeria since Independence in 1960. The fall of the First and Second Republics (1 October 1960 to 15 January 1966 and 1 October 1979 and 31 December, 1983 respectively) was attributable to corruption. In the first Republic, Government's ministries, departments, and agencies stole public funds and there was no policy direction to stamp out corruption, election rigging, nepotism and prebendalism of the day.<sup>31</sup> All these formed the bases for the military coup and the counter coup in 1966 and 1967.

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<sup>28</sup> Ibid, 121.

<sup>29</sup> Anthony Standon, 'Parliamentary oversight and corruption in Nigeria'. A Report Funded by British Academic and Department of International Development (DFD), as part of its Anti-Corruption Evidence (ACE) Partnership (2017). <<https://www.ace.globalintegrity.org>> accessed 30 April 2024.

<sup>30</sup> Kennedy Mbele, 'Oil Gas Sector the most corrupt in Nigeria.' *Vanguard* (July 2, 2023). <<https://www.com>> accessed 10 May 2024.

<sup>31</sup> U.E. Uwak and Anietti Nseowo Udofia. 'Corruption in Nigeria's Public Sector Organisation and Its Implications for National Development.' (2016) 7(3). *Mediterranean Journal of Social Sciences*, 27 - 35

In General Yakubu Gowon's administration, corruption was deeply entrenched in the fabrics of Nigeria while the oil boom led to the pursuit of white elephant projects which created opportunities for the public officials to steal national funds.<sup>32</sup> The Murtala administration which overthrew the Gowon 9-year rule had to embark on mass sack of public officials who had been accused of corruption.<sup>33</sup> Successive military and civilian governments institutionalised corruption. The administration of General Sani Abacha would go down in the history of Nigeria as an era when mass looting of national resources literally became a public policy.<sup>34</sup> This trend was inherited by the Third Republic leadership.

## **2.2 Corruption and International Trade: Challenges for AfCFTA and African Trade**

Studies have revealed that corruption in trade practices is not limited to any region as it occurs in any situation where a party seeks an improper business advantage. A study compared measures of trade-related corruption in international trade with corruption in general.<sup>35</sup> It was found that corruption in the exporting economy was different from that of the importing economy, with the more robust effect in importing countries with inefficient customs which increased delays at the border and largely reduced trade. Although the focus of the study is on global trade, its findings relate to African countries which are also members of the global village.

Another study on regional integration in Africa and their effects on AfCFTA revealed that language barriers, multiple currencies, porosity of borders, foreign interference, political stability and insecurity, poor human development overlapping membership of regional bodies are key challenges that must be overcome for the achievement of its objectives.<sup>36</sup> The overall effect of these constraints could lead to, and promote, corruption as the factors identified inhibit trade facilitation.

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<sup>32</sup> Joshua O. Nweke. 'Bureaucratic corruption in the administration of military pension in Nigeria' (2010) 5(1) *International Journal of Development and Management Review* 50 - 60.

<sup>33</sup> Aisha Muhammed Oyeboode, 'Murtala Muhammed: 42 Years Later and a Call for National Rebirth' *KIR* (February 13, 2018). <<https://www.newnigeria.org>> accessed 10 May 2024.

<sup>34</sup> BBC, Sani Abacha, The Hunt for the Billion Stolen by Nigeria's Ex-leader' (January 28, 2021). <[www.bbc.com](http://www.bbc.com)> accessed 10 May 2024.

<sup>35</sup> Eelke de Jong & Christian Bogmans, 'Does Corruption Discourage International Trade?' (2011) (27) (2) *European Journal of International Trade*, 385-398 <<https://doi.org/10.1016/j.ejpoleco.2010.11.005>> accessed 12 November 2024.

<sup>36</sup> Dimas Garba & Wancelous Avong Alexander, 'The Challenges of Regional Integration and Effective Implementation of African Continental Free Trade Area (AfCFTA) Policy in Africa,' (2021) (16)(2) *AJPAS* <<https://www.ajpasebsu.org.ng>> accessed 9 November 2024.

Participants in continental trade could find ways to surmount these challenges through bribery and unethical trade practices which could undermine the implementation of the AfCFTA.

It has been contended that the objectives of the AfCFTA may not be realised if Africa refuses to combat corruption within the continent and member nations.<sup>37</sup> Provisions of the AU Convention on Prevention and Combatting Corruption (AUCPCC) were recommended for incorporation into the AfCFTA to reflect the continent's readiness to combat corruption. Furthermore, Nigeria is a signatory to major international and regional instruments such as the United Nations Convention against corruption (UNCAC), the UACPCC, the ECOWAS Protocol on the Fight against Corruption, among others. These instruments recommend that the State Parties may adopt prevention, criminalisation, asset recovery, international cooperation and public awareness .to fight corruption<sup>38</sup> A diligent implementation of these instruments among state parties could reduce corruption substantially. However, the report of a Nigerian study on this appears conflicting. <sup>39</sup> It finds that investigating and prosecuting corruption was not effective in Nigeria due to delays which had been attributed to the absence of political will on the part of the political leadership and the nonchalant attitude of the citizens. This unique finding in Nigeria needs to be taken seriously for seamless implementation AfCFTA as Nigeria is a major player.

A study on corruption and trade facilitation costs in a Chinese company made use of the systematic variations in entertainment and travel costs (ETCs), across various markets and trading partners.<sup>40</sup> The results indicated a significant increase in ETCs was recorded when the sales were to domestic markets which dropped when firms exported to international markets.<sup>41</sup> Also, when firms sold to government-run and state-owned companies rather than other trade partners companies, the ETCs were significantly higher.<sup>42</sup> The conclusion of the authors was that the differentials were because of regional trade segmentation and local protection in China, since ETCs contained

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<sup>37</sup> Gbemi Odusote & Yakusak Aduak, 'Implementing the African Continental Free Trade Area (AfCFTA) Agreement and the Challenges of Corruption in Africa,' (2022) (12) Open Journal of Political Science 321.

<sup>38</sup> UNCAC, Art. 2(2); African Union, Art.4 & 5.

<sup>39</sup> Gbemi Odusote & Yakusak Aduak, 'Implementing the African Continental Free Trade Area (AfCFTA) Agreement and the Challenges of Corruption in Africa, 321.

<sup>40</sup> Douglas Cumming and Ying Ge, 'Trade Facilitation Costs and Corruption: Evidence from China.' (2022) (78) Journal of International Financial Markets, Institutions and Money <<https://doi.org/10.1016/j.intfin.2022.101564>> accessed 19 November 2024'

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

significant “grease money” to prevent the operation of domestic trade barriers.<sup>43</sup> This study exposes corrupt behaviours in trade facilitation costs in China, with wide implications for African trade with China, and among the State Parties under AfCFTA.

On the impact of corruption in international trade, a negative influence of corruption was reported when a study concluded that corruption might be a barrier to international trade by increasing its costs when corrupt state agents break the rules.<sup>44</sup> This result indicates that corruption could inhibit international trade when corrupt public officials break regulations easily in line with “grease the wheels” hypothesis.<sup>45</sup>

Considering corruption and ease of doing business in ECOWAS countries, Nager and Gunu conducted an empirical study on the effect of corruption on the ease of doing business.<sup>46</sup> Results indicated that corruption rank, inflation and import have negative and significant effect on ease of doing business, while corruption score, control of corruption, lending rate spread, and education (skill level) have positive and significant effect on the ease of doing business. Export and gross domestic products have an insignificant positive effect on ease of doing business. The study recommended that countries should improve on their corruption scores, control of corruption and ranks to promote ease of doing business through monetary and infrastructural facilities. This is instructive for the successful implementation of AfCFTA.

### **3.0 OVERVIEW OF AfCFTA**

#### **3.1 BRIEF HISTORY**

The AfCFTA was signed on 21 March, 2018<sup>47</sup> by the continental body to improve African trade. The central aim of the trade agreement was the acceleration of economic developments in Africa. The AfCFTA entered into force on 30th May 2019 as part of the agenda 2063 of the AU for a single

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<sup>43</sup> Ibid.

<sup>44</sup> Salvador Gil -Pareja, Rafael Llorca Viveroy and Jose Antonio Martinez- Serrano, ‘Corruption and International Trade :a Comprehensive Analysis with Gravity,’ (2019)(27)(2) Applied Economic Analysis, <<https://www.emeraldinsight.com/2632-7627.htm>> accessed 19 November, 2024.

<sup>45</sup> Ibid.

<sup>46</sup> KI Nageri and U Gunu, ‘Corruption and Ease of Doing Business: Evidence from ECOWAS.’ (2020) (8) Acta Uni Sarpentiae, Economics and Business, 19.

<sup>47</sup> African Union; The African Continental Free Trade Area. Retrieved from <<https://www.au.int/en/african-continental-free-trade-area>> on 25 January 2024.

Custom Union and a single common market,<sup>48</sup> while the official trading commenced on 1 January 2021.

This Agreement has eight important protocols which it intends to achieve in objectives. These are: trade in goods; trade in services; digital trade; rules and procedure on the settlement of disputes; investment; intellectual property rights and competition policy<sup>49</sup> and women and youth in trade.<sup>50</sup> These protocols are sub-agreements which guide the implementation of the Agreement. The Protocols are detailed and comprehensive. They highlight the procedures through which the objectives would be achieved.

### **3.2 OBJECTIVES OF AfCFTA**

The aim and the expansive objectives of the Agreement (both general and specific) point to the African Union's desire to establish an integrated continent, with political and socio-economic affiliation to achieve its potential as a continent most blessed with natural resources.<sup>51</sup> The AU Agenda 2063 appears to be a strategy for achieving a unified custom union, a political and socio-economic union and an Africa full of opportunities and economic boom.<sup>52</sup>

Objectives of the agreement adopted at the session includes: the creation of single market for goods and services; free market for good and service; preparing ground for African Customs Union, promotion and attainment of inclusive socio-economic development, gender equality and structural transformation as stipulated in Agenda 2063.<sup>53</sup> It also plans to enhance competitive economies of the state parties; promote industrial development through diversification of the supply chain and resolve the challenges of multiple and overlapping membership and fast track regional and continental integration processes.<sup>54</sup> It is also saddled with the creation of single and

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<sup>48</sup> Richard Frimpong Oppong, 'Private International Law and the African Economic Community: A Plea for corrector Attention' *The International Comparative Law Quarterly*, 2006(55)4, 911-928.

<sup>49</sup> *Ibid*, Article 3.

<sup>50</sup> John Stuart. 'The AfCFTA Protocol on Women and Youth in Trade and Trade-Driven Development in Africa,' *Tralac* (24 February, 2024) < <https://www.tralac.org/blog/article/16234-the-afcfta-protocol-on-women--and-youth-in-trade-and-trade-driven-development-in-Africa.html/>> accessed 9 November, 2024.

<sup>51</sup> Nigerian Economic Summit Group (NESG), *Economic Implications of the African Continental Free Trade (AfCFTA) on the Nigerian Industrial Sectors*. Accessed from <<https://www.nesgroup.org/>> on 15 March 2024

<sup>52</sup> Richard Frimpong Oppong, 'Private International Law and the African Economic Community: A Plea for corrector Attention;' Orji Uka 'Cross Border Dispute Resolution under AfCFTA: A Call for the Establishment of a Pan-African Harmonised Private Internal and Legal Regime to Actualised Agenda 2063,' *Law Digest Journal Spring 2020*, Retrieved from <<https://www.au.companys.com/>> on 25 January 2021.

<sup>53</sup> Agreement Establishing the African Continental Free Trade Area.

<sup>54</sup> *Ibid*.

free market for goods and services and the preparation for the takeoff of African Customs Union and promotion as stipulated in Agenda 2063.<sup>55</sup>

Apart from its general objectives, additional seven specific objectives include the phased elimination of trade barriers in goods, free trade in services, investment cooperation, intellectual property rights, competition policy and trade liberalisation and facilitation among state parties.<sup>56</sup> Others are co-operation on customs matters and the implementation of trade facilitation measures, establishment of mechanism for dispute resolution concerning parties' rights and obligations and establishment and maintenance of an institutional framework for the AfCFTA's implementation and administration.<sup>57</sup>

The aim and expansive objectives of the Agreement (both general and specific) point to the African Union's desire to establish a continent where state parties will trade with one another with ease and political and socio-economic affiliations will thrive for development.<sup>58</sup> The AU Agenda 2063 upon which the Agreement rests, is a strategy for achieving a unified custom union, a political and socio-economic union and an Africa full of opportunities and economic boom.<sup>59</sup> Based on these objectives, Africa stands to gain a lot from an effective implementation of the Agreement for a sustainable growth in African trade.<sup>60</sup>

### **3.3 ORGANS OF AfCFTA**

These are the Assembly, the Council of Ministers, the Committee of Senior Trade Officials and the Secretariat.<sup>61</sup> The Assembly of the Heads of States is the highest decision-making organ of the AU. It has an oversight function and strategic guidance on the AfCFTA which includes boosting the

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<sup>55</sup> Agreement Establishing the African Continental Free Trade Area.

<sup>56</sup> Ibid, Article 4.

<sup>57</sup> Ibid, Article 4.

<sup>58</sup> Nigerian Economic Summit Group (NESG), Economic Implications of the African Continental Free Trade (AfCFTA) on the Nigerian Industrial Sectors.'

<[https://www.nesgroup.org/download\\_resource?AFCFTA%20on%20Industrial%20Sector\\_1576844589.pdf](https://www.nesgroup.org/download_resource?AFCFTA%20on%20Industrial%20Sector_1576844589.pdf)> accessed 15 March 2024.

<sup>59</sup> Richard Frimpong Oppong, 'Private International Law and the African Economic Community: A Plea for corrector Attention;' Orji Uka; Cross Border Dispute Resolution under AfCFTA: A Call for the Establishment of a Pan-African Harmonised Private Internal and Legal Regime to Actualised Agenda 2063'.

<sup>60</sup> NESG, Economic Implications of the African Continental Free Trade (AfCFTA) on the Nigerian Industrial Sectors.'

<sup>61</sup> AfCFTA, Article 9.

Action Plan for Intra-African Trade (BIAT) and exercising sole authority for interpreting AfCFTA upon the advice of the Council of Ministers. The Assembly must take the decision by consensus.<sup>62</sup> The second institution is the Council of Ministers comprising of Ministers of Trades, or any other Ministers, authorities, or officials which State Parties designate.<sup>63</sup> Its functions are as contained in Article 11(3)(a) – (p). The Council reports to the Assembly through the Executive Council.<sup>64</sup> Its terms of reference include: taking decisions in line with the Agreement and ensuring it is implemented and enforced effectively, promoting the objectives of the Agreement and other AfCFTA instruments and collaborating with the appropriate organs and institutions of the AU.<sup>65</sup> It also harmonises policies, strategies and measures for implementation; delegates tasks to committees; prepares its decisions and those of other bodies of the AfCFTA and supervises works with groups and experts.<sup>66</sup> It issues rules and regulations, directives and proposes recommendations for the implementation of the Agreement.<sup>67</sup> Decisions of the Council are binding on State Parties, upon their adoption by the Assembly.<sup>68</sup>

Article 12 presents the functions of Senior Trade Officials which consist of the Permanent or Principal Secretaries or other officials of the State Parties<sup>69</sup> to include the implementation of the Council of Ministers' decisions, development of programmes and action plans for AfCFTA's implementation, monitoring and keeping the Agreement under constant and proper review as stipulated.<sup>70</sup> Others are the establishment of committees and working groups, overseeing the implementation of the provisions of the Agreement, directing the Secretariat to undertake specific assignments and perform any other function the Council of Ministers.<sup>71</sup> The Committee reports to the Council of Ministers upon whose directive, it meets twice in a year.<sup>72</sup>

The last institution of the AfCFTA is the Secretariat. It is established by the Assembly which decides its location and approves its structure and budget. It is established as an autonomous body

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<sup>62</sup> Ibid.

<sup>63</sup> Ibid Article 11(1).

<sup>64</sup> This is the Executive Council of the General Assembly.

<sup>65</sup> Ibid, Art 11(3)(a)-(c).

<sup>66</sup> Ibid, Art 11(3)(d)-(h).

<sup>67</sup> Ibid, Art 11(3)(i)-(j).

<sup>68</sup> Ibid, Art 11(5).

<sup>69</sup> Ibid, Article 12(1).

<sup>70</sup> Ibid, Article 12 (2)(a) – (c).

<sup>71</sup> Ibid, Article 12(2)(c)-(g).

<sup>72</sup> Ibid, Article 12(3).

of AU with a legal personality.<sup>73</sup> The implication of this is that the Secretariat is to be independent of the AU Commission while its funds is derivable from its overall budget.<sup>74</sup> However, the determination of the roles and responsibilities of the Secretariat shall be done by the Council of Ministers of Trade.<sup>75</sup>

The structure of the AfCFTA is like the World Trade Organisation which is headed by the Ministerial Trade Conference. Other organs of the WTO are the General Council, the Dispute Settlement Body and the Trade Policy Review Body.<sup>76</sup> Its highest decision-making body is the Assembly, while the Council of Ministers, the Committee of Senior Trade Officials and the Secretariat provide the structure for its implementation.

The solid institutional framework and effective decision-making process which are patterned after WTO are the pillars on which the success of the AfCFTA could rest to reduce the incidents of corruption among state parties.

AfCFTA has 12 principles, some of which are set to aid transparency and trade facilitation among State Parties. These are “...(d)flexibility and special differential treatment; (e)transparency and disclosure of information; (f) preservation of the acquis; (g)

Most-Favoured-Nation (MFN) Treatment; (h) National Treatment; (i) reciprocity; (j) substantial liberalisation; (k) consensus in decision-making; and (l) best practices in the RECs,<sup>77</sup> in the State Parties and International Conventions binding the African Union”.<sup>78</sup> These principles are formulated to deal with emerging issues in African trade, including corruption.

With the pervasiveness of corruption in Sub Saharan Africa, it is hoped that the structure will be able to withstand its threats.

### **3.4 LESSONS FROM OTHER WTO AND OTHER REGIONAL TRADE BODIES**

Regional economic and political integration bodies pre-existed AfCFTA in Africa. These include Economic Community of West African States (ECOWAS), Common market for Eastern and Southern Africa (COMESA), Arab Maghreb Union (AMU) International Authority for

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<sup>73</sup> Ibid, Article 13(3).

<sup>74</sup> Ibid, Article 13(4) & (5).

<sup>75</sup> Ibid, Article 13(6).

<sup>76</sup> WTO, ‘WTO Organization Chart,’ < [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org2\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/org2_e.htm) > accessed 20 November 2024.

<sup>77</sup> Regional Economic Communities.

<sup>78</sup> AfCFTA, Art 5.

Development (IGAD), Economic Community of Central African States (ECCAS) and a host of others, in various parts of Africa, such as the ECOWAS, Trade Policy.<sup>79</sup> AfCFTA, however, is the first AU's trade agreement which covers the whole of the continent.

ECOWAS Treaty provides for trade liberalisation, labour mobility and free trade in services, in addition to its political mandate. Its performance as a regional trade regulator had suffered some setbacks because of regional insecurity, corruption and fear of political and economic domination from members that believe that Nigeria has a lot to gain from the achievement of ECOWAS objectives.<sup>80</sup>

Furthermore, ECOWAS appears to be more than a regional trade regulator, as it has, on many occasions, regulated political affairs of member States.<sup>81</sup> Its aims depict that:

... the community are to promote cooperation and integration, leading to the establishment of an economic union in West Africa in order to raise the living standards of its peoples, to maintain and enhance economic stability, foster realities among members and contribute to the progress of the African Continent.<sup>82</sup>

The full dedication of the AfCFTA to trade regulation among the State Parties mark it out as a body whose sole objective is the promotion of intra-African trade in goods and services,<sup>83</sup> as the WTO is to the whole world.

Although a lot needs to be learnt from the challenges of other regional trade bodies if the new initiative would succeed and its implementation would move intra-African trade from \$50billion in 2024 to \$570 billion in 2040 as projected.<sup>84</sup>

### **3.5 TRADE FACILITATION AND CORRUPTION IN TRADE**

Trade facilitation simplifies, modernises and harmonises trade export and import process and make it seamless is absent in an environment of corruption. Although trade facilitation initiatives have

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<sup>79</sup> ECOWASS Trade Information System, 'Trade Policy' < [https://ecotis.ecowas.int/?page\\_id=21948](https://ecotis.ecowas.int/?page_id=21948) > accessed 12 April 2025.

<sup>80</sup>Chieke Ihejinka, ECOWAS: The Dilema of Integration in a Fragmented Sub-Region. Accessed from <<https://www.kckccc.edu>> accessed 15 March 2024.

<sup>81</sup>Aljazeera, ECOWAS holdsemergency session over Senegal Crisis and member exits. Aljazeera, Feb 24, 2024. Accessed from <https://www.aljazeera.com/new/2024>> accessed 16 March 2024.

<sup>82</sup> ECOWAS Treaty (Revised), 1993, Art. 3(1).

<sup>83</sup> AfCFTA Treaty, Art. 3.

<sup>84</sup> Ibid.

been adopted in Africa, many of them have failed due to inefficiencies, corruption and bureaucratic delays.<sup>85</sup> Annex 3 of the Protocol on Trade in Goods of the AfCFTA Agreement contains two annexes dedicated to Customs, Cooperation and Mutual Administrative Assistance, while Annex 4 deals with Trade Facilitation. Both Annexes 3 and 4 set up a Sub – Committee on the Trade Facilitation, Customs Cooperation and Transit, and provides that State Parties should establish National Facilitation Committees to ensure the coordination and implementation of the provisions of the Annex.<sup>86</sup>

To realise the benefits of trade facilitation, State Parties should implement trade facilitation awareness strategies for the private sector and customs authorities to coordinate their functions and abide by principles set up for the AfCFTA.

#### **4.0 CHALLENGES CORRUPTION COULD POSE TO AFCFTA**

##### **4.1 PROTECTION OF PUBLIC SECTOR OFFICERS**

Although there are many transparency statutes in Nigeria, their implementations are marred by weak enforcement, and the hostile environment to the achievement of their objectives.<sup>87</sup> The special protection granted high-level public sector workers in Nigeria is a threat to AfCFTA. In the executive arm of government, the President, Vice President, Governors, and Deputy Governors have immunity from any form of litigations arising from their actions when they are in power.<sup>88</sup> Judicial attitude to the interpretation of the immunity clause has been strict. In *Tinubu v IMB Securities*,<sup>89</sup> the Supreme Court held that once a party to a case, either at trial or appeal stage, is one of those mentioned in Section 308 (3) of the CFRN 1999, the court is deprived of jurisdiction. In that case, the appellant was elected and sworn in as a Lagos State Governor when the matter was still in court.<sup>90</sup> It was the decision of the court that the office holder covered by the section could not be sued and that any pending litigation against him as at the time he was sworn in as a beneficiary of section 308(3) must cease.

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<sup>85</sup> WTO, Agreement on Facilitation Ministerial Decision, 7 December 2013.

<sup>86</sup> Talkmore Chidede, Trade Facilitation and the African Continental Free Trade Area,' (Tralac Annual Conference, 2019) <<https://www.tralac.org/documents/events/tralac/2740-tralac-brief-trade-facilitation-and-the-african-continental-free-trade-area-march-2019/file.html?> > accessed 17 November 2024.

<sup>87</sup> AfCFTA, Art. 14(5).

<sup>88</sup> CFRN 1999, Section 308.

<sup>89</sup> (2001) 16 NWLR (Pt. 740).

<sup>90</sup> Ifediora v Ume (1988), 2 NWLR (Pt. 74); Media Techniques (Nig) Ltd v Adesina (2005) 1 NWLR (Pt. 908).

Executive immunity from civil or criminal litigations, while it shields the office holders from frivolous litigations that could hinder the performance of their duties.<sup>91</sup> It has, however, provided cover for some of them to loot public treasury with impunity.<sup>92</sup> Some of the officers protected would later evade arrest for their actions upon the completion of their tenure. An example is Mr. Yahaya Bello, the former Governor of Kogi State who had evaded arrest by EFCC through various subterfuges, including the use of the motion ex parte.<sup>93</sup> Yahaya Bello was alleged to have corruptly enriched himself to the tune of 80 billion naira.<sup>94</sup> He was later arrested and arraigned before the court.<sup>95</sup>

Apart from those protected by the executive immunity, other public officers have been involved in corruption allegations. In *AbdulRasheed Maina v EFCC & Ors*,<sup>96</sup> the appellant who was the Chairman of Pension Reform Task Force was found guilty of corruptly enriching himself to the sum of #2 billion pension funds. In recent times, the Minister and her entire Management Team in the Ministry of Humanitarian Affairs who were undergoing investigation at EFCC had been alleged of misappropriating a sum of 32.7 billion naira and \$445,000.<sup>97</sup>

Cases of massive public sector corruption involving political class, top level politicians and other public officers have dire implications for AfCFTA whose representatives from Nigeria as a State party are public officers. Although EFCC, ICPC, Code of Conduct Bureau and other institutions set up to combat corruption are working round the clock, the battle rages on.

#### **4.2 WEAK IMPLEMENTATION OF TRANSPARENCY STATUTES**

Since the commencement of the civilian regime in 1999, many anti-corruption laws have been passed to fight corruption in Nigeria. These include Corrupt Practices and other Related Offences

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<sup>91</sup> Constitution of Federal Republic of Nigeria 1999(as Amended), Cap C23 Law of the Federation of Nigeria, S. 308.

<sup>92</sup> M. Mowoe, Constitutional Law in Nigeria (Malthouse Press Limited, 2008) 169.

<sup>93</sup> Deborah Musa. Appeal Court Stops Yahaya Bello's Contempt Proceeding, against EFCC. The Punch (3 May 2024). Accessed from <https://www.punchng.com>> accessed 6 May 2024.

<sup>94</sup> Ibid.

<sup>95</sup> EFCC, 'EFCC Arraigns Yahaya Bello for Alleged N110.4 billion' (27 November 2024)< <https://www.efcc.gov.ng/efcc/news-and-information/news-release/10552-efcc-arraigns-yahaya-bello-for-alleged-n110-4billion-fraud>> accessed 12 April 2025.

<sup>96</sup> CA/k/628K/2018.

<sup>97</sup> EFCC, 'Setting the Records Straight in Investigating of Humanitarian Ministry' Media & Publicity (18 April 2024) <https://www.efcc.gov.ng> accessed 6 May 2024.

Act 2000,<sup>98</sup> Economic and Financial Crime Commission (Establishment, etc) Act 2004,<sup>99</sup> Advance Fee Fraud and Other Fraud Related Offences Act (1995, No. 13, 2005 No. 26),<sup>100</sup> Money Laundering Act 2003,<sup>101</sup> Dishonoured Cheques (Offences) Act,<sup>102</sup> Recovery of Public Property (Special Provisions) Act, 1984,<sup>103</sup> Public Procurement Act,<sup>104</sup> Fiscal Responsibility Act,<sup>105</sup> Allocation of Revenue (Federation Account, etc) Act.<sup>106</sup> Nigerian Extractive Industries Transparency Initiative (NEITI) Act 2007.

The Code of Conduct Bureau was the first anti-corruption agency dedicated to the prevention, investigation, and prosecution of public officers in Nigeria. The Fifth Schedule of the 1979 Constitution provided a list of codes of conduct for public officers. The weak implementation of the constitutional provisions has militated the performance of the CCB and CCT. CCB charged 889 people at CCT but secured conviction of 45 in 10 years.<sup>107</sup> The rate of conviction is low.

Other transparency laws such as EFCC Act and ICPC Act could not be implemented fully because they operate as organs of the government when most of the infractions of the laws are also from the public sector. Out of the 22 members of the EFCC, only four are not public officers.<sup>108</sup> Item 2(1)(0) states that “four eminent Nigerians with cognate experience in any of the following, that is, finance, bank law or accounting” should be members. In the same vein, the Corrupt Practices and Other Related Offences Act does not state the manner the full membership of the Commission is to be constituted.<sup>109</sup> It merely states the criteria for being members of the Commission which include “persons of proven integrity”<sup>110</sup> and the categories of representation to include agents of the executive arm.<sup>111</sup>

All these gaps in the laws combine to nurture public sector corruption in Nigeria, and if

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<sup>98</sup> Cap C31, LFN 2004.

<sup>99</sup> Cap E1, LFN 2004.

<sup>100</sup> Cap A6, LFN 2004.

<sup>101</sup> Cap M18, LFN 2004.

<sup>102</sup> Cap D11, LFN 2004.

<sup>103</sup> Cap R4, LFN 2004.

<sup>104</sup> 2007 Act No 14.

<sup>105</sup> 2007 Act No 31.

<sup>106</sup> Cap A15, LFN 2004.

<sup>107</sup> Ade Adesomoju, ‘CCB Charged 889 Persons at CCT, Secured Convictions of 45 in 10 years.’

<sup>108</sup> EFCC Act, section 2(1).

<sup>109</sup> CPC Act, Section 3(3)(4)(6)(7).

<sup>110</sup> Ibid.

<sup>111</sup> Section 1(2)(a)-(a).

they thrive unhindered, they will hinder the successful implementation of AfCFTA in Nigeria.

### **4.3 PROCUREMENT FRAUD**

Section 1 of the Public Procurement Act establishes the National Council on Public Procurements with all full-time members being the nominees of the executive arm and are appointed by the President while the part-time members are to represent the interest of the professional bodies, and society and the media.<sup>112</sup> Despite the fact that this Council is to “consider and approve policies on public procurement in Nigeria,<sup>113</sup> it has never been put in place since the Act’s commencement in 2007.

However, since the commencement of the Act in 2007, Nigerian Government has not been able to put in place the National Council of Public Procurement (NCPP) which is supposed to oversee the functions of the BPP, established under section 4. A cardinal function of the NCPP is to “(d) receive and consider, for approval, the audited reports of the Bureau of Public Bureau and (e) approve changes in the procurement process to adapt to improvements in modern technology.”<sup>114</sup>

Given the important functions of the NCPP, one wonders how the legal vacuum has not been filled over the years. Commentators have argued that the failure to activate this important organ of NCPP breeds corruption, lack of transparency and probity.<sup>115</sup>

It has been observed that due to part implementation of the PPA, fraudulent activities continue in Nigeria’s procurement process, especially with the regime of no objection clause and the attitude of implementers of the BPP.<sup>116</sup> Section 39 PPA provides that “Certificate of No Objection” should be issued on the conditions that “it is not feasible for the procurement entity to formulate detailed specifications for the goods or work or, in the case of services, to identify their characteristics---” and ‘where the goods and services are subject to rapid technological advance’ and finally, “where the tender proceedings have been utilized but were not successful or the tenders were rejected by

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<sup>112</sup> Section 1(2)(a)-(g).

<sup>113</sup> Ibid.

<sup>114</sup> Ibid, S. 4 (d) & (e).

<sup>115</sup> Anthony Ailemen, ‘Why FG, should activate National Council on Procurement BusinessDay (October 23, 2023). Accessed from <https://www.businessday.ng> accessed 5 May 2024; Abdullahi Nafiu Zadawa and Abul Aziz Hussin, ‘A Review of the Challenges of Public Procurement Reforms Initiatives in Nigeria’. Social Sciences Postgraduate Seminar (2015) <<https://core.ac.wc>> accessed 5 May 2024.

<sup>116</sup> Afonne Emmanuel, ‘NGO prays court to nullify BPP’S Certificates of no objection issued since 2007’ News Agency of Nigeria (August 4, 2023). Accessed from <<https://www.nannews.ng>> accessed 5 May 2024.

the procuring entity under an open competitive bid procedure.” It has been stated that procurement fraud alone costs Nigeria over #300billion yearly.<sup>117</sup>

Based on the above and to facilitate corruption-free procurement in the public sector, the PPA requires full and transparent implementation which requires immediate setting up of NCPP to oversee the activities of BPP.

#### **4.4 INDEPENDENCE OF THE JUDICIARY**

##### **Independence of the Judiciary**

To be an impartial arbiter in the fight against corruption, the judiciary must be an impartial and independent arm of the Government. Judicial independence has been construed as” “the insulation of the administration of the judiciary and the decision-making process of the judges, their appointments, promotions, and removal from the external control by governmental and non-governmental bodies or individuals.”<sup>118</sup> This definition from an eminent jurist, Kawu CJ, captures the whole essence of the independence of judiciary as conceived by the CFRN 1999. The constitution provides for the appointment, discipline and removal of judges of superior courts of records.<sup>119</sup>

The issue that readily comes up is whether these provisions which saddle the executive arm (the President and the Governors) the responsibility of appointing judges upon the recommendation of the National Judicial Commission (NJC), and in the case of Heads of the Courts, subject to the approval of the legislature guarantee judicial independence? The NJC’s only role is the recommendation of appointment or the removal of a judge to the President or the Governor, which he is not bound to accept. This constitutional arrangement may likely hinder the independence of the judiciary in the exercise of its role in the fight against corruption, especially in cases involving members of the executive and the legislative and their cronies.<sup>120</sup>

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<sup>117</sup> Mathias Okwe, ‘Procurement fraud costs Nigeria over #300billion yearly – Forensic Institute.’ *The Guardian* (May 4, 2021). < <https://www.guardian.ng>> accessed 5 May 2024.

<sup>118</sup> S.D. Kawu. ‘Extermination of Corruption: The Role of the Judiciary’. In Yusuf O. Ali (ed.) *Anatomy of Corruption in Nigeria: Issues, Challenges & Solutions* (Yusuf O. Ali,2016), 415-448.

<sup>119</sup> See CFRN 1999 (as amended) Sections 231; 238; 254B; 256; 261; 266; 271; 276 and 281 and Part I, Para 1, Third Schedule of the constitution.

<sup>120</sup> S.D. kawu , 432.

In embarking on a sustainable battle against corruption, it is suggested that any constitutional provision which saddles the executive and the legislative arms of government with the appointment or promotion of judge should be amended. Borrowing from the recommendation of Kawu CJ,<sup>121</sup>

--- I suggest that the roles of the NJS and the Executive/Legislative be reversed so that recommendation for appointment or removal of a judge from office is made by the President or Governor through the respective Judicial Service Commissions with inputs from NBA, while the appointment or removal is done finally by the NJC subject to no other authority.

The argument of the eminent jurist, if put into consideration in the subsequent constitutional amendment, could assist in the war against corruption as judges would hold no fear of the security of their appointments, or undue disciplinary actions.

Another challenge from the judiciary in the effective implementation of AfCFTA is the lack of financial autonomy, adequate remuneration and infrastructural facilities to ease the task of the judiciary, especially at the state level. It is believed that if the judiciary at the federal and state levels could enjoy financial independence, adequate wages and salaries and infrastructure, its performance on corruption war will substantially improve.

#### **4.5 ATTITUDE OF THE BAR TO CORRUPTION CASES**

In most cases, the counsel embarks on the use of injunctions to slow down the course of justice. In *Destra Investments Limited v Federal Republic of Nigeria*,<sup>122</sup> Aka'ahs JSC, while delivering the lead judgement detested the practice when it was stated that:

The appeal is a storm in a teacup. Learned Counsel should expend his energies and knowledge of the law in ensuring the orderly development of society through strict adherence to the rule of law and where a person or company has been accused of an infraction of the law, the duty that the senior counsel owes by the privilege bestowed on him is to help the accused person/company to clear their name

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<sup>121</sup> *Ibid*, 432

<sup>122</sup> (2019) All FWLR (Pt. 1012) (Pt. 1012) (822, Paras D – F).

through the legal due process and not to seek the impression that his duty is to erect road blocks to frustrate justice from running its course (Paras D-F).

This comment from the Supreme Court speaks volumes of the attitudes of some senior Nigerian lawyers to upholding the path of justice in corruption allegations.<sup>123</sup>

#### **4.6 THE ROLE OF SOCIETY**

The critical role society plays in commission, trial and conviction for corruption crimes cannot be underestimated. In *AG Ondo v AG Federation*,<sup>124</sup> Uwais CJN stated:

Corruption is not a disease which affects public officers alone but society as whole. If it is therefore to be eradicated effectively, the solution to it must be pervasive to cover every segment of society.

In the *orbiter* of the eminent jurist, the whole society is afflicted with the menace of corruption. But it appears that civil servants are central to the control of corruption in Nigeria because no political or public office holder can commit a corrupt act without the knowledge, connivance or acquiescence of them.<sup>125</sup>

#### **4.7 INEQUITABLE DISTRIBUTION OF RESOURCES**

Nigeria is rich in human and natural resources. Nigeria's civil servants are generally not well rewarded by the political class. The wages paid to the public sector workers, relative to the private sector payment, are a source of low-level corruption.<sup>126</sup> The low pay for work in public service predisposes civil servants to use their positions to take bribes as a way of making up for the little income.<sup>127</sup>

In the distribution of natural resources, political leaders, senior public officers in the legislative and judiciary have access to a large proportion of the resources. Under the Land Use Act 1978,<sup>128</sup> land is vested in the Governor for the use of the citizens. But in practice, this land is not available

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<sup>123</sup> Josiah Oluwole, 'Why corruption trials of 16 ex-governors linger in Nigerian courts since 2007.' Premium Times (December 13, 2017). Accessed from <https://www.premiumtimesng.org> on May 5, 2024.

<sup>124</sup> (2002) 7 NWLR (Pt. 722) 306 at 567.

<sup>125</sup> SD Kawu, 'Extermination of Corruption: The Role of the Judiciary' 446.

<sup>126</sup> Yusuf O. Ali, 'The Fight against Corruption in Nigeria Myth or Reality,' in Yusuf O. Ali Anatomy of Corruption in Nigeria: Issues, Challenges & Solutions (Yusuf O. Ali, 2016) 1-31.

<sup>127</sup> Ibid.

<sup>128</sup> Cap L5, LFN 2004.

for residential and productive ventures for the low-income earners due to the tortuous and bureaucratic procedures which must be followed, some of which are laden with corruption. Land in urban centres is mostly allocated to the political leaders, senior public officers and their families and business associates, while it is difficult for those who do not have the necessary “connections” to have access to land allocation.<sup>129</sup> In order to have access to land to site a company, the complex procedure, and the intermediaries in public offices, make the payment of bribes inevitable. A foreign investor may, because of corruption, find it difficult to access land resources to locate his office.

The poor income distribution continually creates opportunities for the public sector leaders to amass wealth, not to talk of other privileges connected illegally by this group. According to the Nigerian Financial Intelligence Unit,<sup>130</sup> the ICPC report released in May 2021 indicated that Nigeria had lost an estimated \$400billion to illegal fund flows between 1960 and 1968, which was attributable to corruption, trade mispricing, tax evasion and money laundering, and other illegal methods.

In recent times, the Federal Government had to suspend the Minister and other senior public officers in the Humanitarian Ministry for corruption.<sup>131</sup> The investigator EFCC reported that a sum of about 32.7billion naira and \$445,000 had been recovered, while the investigation was still on.<sup>132</sup> This illustrated the extent to which public officers stole national resources. This is a challenge for the implementation of a trade regime that would rely on an interface with the public officers, whose interests were on how to corner public resources for private use.

## **5.0 CONCLUSION**

### **5.1 SUMMARY**

The paper investigated corruption as an impediment to the implementation of AfCFTA in Nigeria. It undertook an overview of the state of corruption, identified challenges corruption in Nigeria

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<sup>129</sup> Chike Olisah, CAC uncovers 189 fake companies used for land allocation in Abuja. Naira metrics (November 2023) <<https://www.nairametrics.com>> accessed 6 May 2024.

<sup>130</sup> Nigerian Financial Intelligence Unit. Assessment of Money Laundering Typologies from Corruption in Nigeria (May 2023) <<https://www.nfiu.gov.ng>> accessed 6 May 2024.

<sup>131</sup> Chiamaka Okafor. Updated: Humanitarian, Ministry Scandal. Tinubu Suspends Beta Edu. Premium Times (January 8, 2024) <<https://www.premiumtimes.com>> 6 May 2024.

<sup>132</sup> EFCC. Setting the Record Straight on Investigations on Humanitarian Ministry (April 14/2024) <<https://www.efcc.gov.ng>> accessed 6 May 2024.

posed to AfCFTA and Africa trade and appraised the legal and institutional frameworks for tackling corruption in Nigeria.

It was concluded that corruption was pervasive in Nigeria's public life and that it had impacted negatively on international trade and commitments, not only in Nigeria but in the whole of Sub-Saharan Africa. It was revealed that the menace is sustained by political, economic, social and cultural factors. It was suggested that a wholistic understanding of corruption in Nigeria could only be done taking into consideration the diversity of the nation.

Although legal and institutional frameworks for tackling corruption in Nigeria, and indeed the Sub-Saharan Africa are robust, their functions sometimes overlap and each of them create separate commissions for fighting corruption, which do not help in waging sustainable battle against corruption. The multiplicity of these laws coupled with their regulatory agencies, created more hindrances to the pervasive corruption. Based on the analyses, some of these laws require amendments to streamline them for effective implementation.

The paper also identified and appraised challenges corruption posed to the implementation of AfCFTA in Nigeria to include lack of political will, weak implementation of transparency statutes, independence of the judiciary and the role of the society. It was suggested that political leadership and all other public sector stakeholders should join hands in ensuring that the war against corruption is won

## **5.2 RECOMMENDATIONS**

To implement AfCFTA effectively in Nigeria, a strong political will, followed with strong commitment and leadership by example is required<sup>133</sup>

1. The Nigerian Government needs to sustain its current efforts on the fight against corruption and strengthen the anti-corruption statutes and institutions to harness best practices from other jurisdictions. The agencies should be given requisite legal backing.

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<sup>133</sup> Sanusi Lamido Sanusi. 'Curbing Corruption in Nigeria for National Development. Practical Approaches'. in O.S. Adegoke, L. Adamolekun and Adamu B. Muazu (ed.) *Employment Generation and Attitudinal Change as Indispensable Tools for Good Governance and Rapid National Development. Proceedings of the 4<sup>th</sup> Forum of Laureates of the Nigerian National Order of Merit (NNOM) 29th – 30th November, 2021.*

2. Corruption fighting agencies need to be streamlined and the areas of jurisdiction of existing agencies should be well-defined, because the multiplicity of agencies and over-lapping functions could be counterproductive to the war against corruption among State Parties.
3. The independence of the judiciary under various constitutions of the State Parties should be guaranteed to ensure speedy dispensation of justice.
4. To reduce corruption in trade, there is need for an orientation shift in the public service to perform its role as a neutral and an anonymous agent in the implementation of national and international trade for sustainable national development.
5. Obstacles in the path of trade facilitation, promotion of openness and transparency evidenced in the onerous trade rules and regulations, unfair subsidy regimes and inconsistent tax and property legislations should be reformed to promote ease of trade.
6. Anti-corruption provisions of global and regional bodies such as UNCDC, AUCPCC and ECOWAS Protocol on the Fight against Corruption on due process, trade facilitation and liberalisation and accountability are recommended for incorporation into the operational principles of AfCFTA.
7. State Parties should establish strong domestic legal frameworks to curb corruption and these should handshake global and regional instruments on corruption control to aid the successful implementation of AfCFTA.