

Fighting Judicial Corruption in Nigeria

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Abstract: *This paper examines the fight against judicial corruption in Nigeria. It analyses the arrest of judges and legal practitioners in respect of corrupt practices. It also re-echoes government effort at tackling judicial corruption through the legislature, the executive and the judiciary. It questions the powers of the Department of State Services in respect of investigation and arrest over corrupt practices. It further examines the sanctity of the judiciary in the effort at ridding the judiciary of corruption in Nigeria. The paper also makes comparison with some selected jurisdictions such as the United States of America and Ghana which provide some useful lessons for Nigeria. The paper concludes that there is the need for judicial officers and legal practitioners to shun corrupt practices because judicial corruption diminishes public confidence and interest in the judiciary.*

Keywords: Judiciary, Sanctity, Arrest, Corruption, Prosecution and Punishment.

INTRODUCTION

Judicial corruption is as old as prostitution. Hence, the Holy Books enjoined judicial officers to be upright, honest, impartial and shun bribery.¹ Therefore, a judicial officer must be conscious of his oath of office. He must realize that he is a holder of a delegated

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¹ The Bible (Revised Standard Version), in Deuteronomy 16:18 – 20 says "You shall appoint judges and officers in all your towns, which the LORD your God gives you, according to your tribes; and they shall judge the people with righteous judgment. You shall not pervert justice; you shall not show partiality; and you shall not take bribe, for a bribe blinds the eyes of the wise and subverts the case of the righteous. Justice, and only justice, you shall follow, that you may live and inherit the land which the LORD your God gives you." Similarly, in the Holy Quran in Sural Nisaa Chapter IV verse 135, it was revealed by the Holy Prophet (SAW) as follows: "O you who believe! Stand out firm for justice, as witnesses to Allah, even though it be against yourselves, or your parents, or your kin, be he rich or poor, Allah is a Better Protector to both. So follow not the lusts, lest you avoid justice; and if you distort your witness or refuse to give it, Allah is ever well...acquainted with what you do."

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authority from the Almighty God who alone is the perfect Judge and before whom he shall stand at the fullness of time to render account and receive his due.²

A judicial officer is a specie of mankind by the very nature of his judicial office. According to Giwa,³ to the common man, a judicial officer is the representative or personification of God on earth. He stated further that a judicial officer such as a High Court Judge who has the power to condemn a person to death rightly or wrongly fit into such description.⁴ Perhaps, it is this understanding that has influenced the National Judicial Council (NJC) not to be too hard on corrupt judicial officers by not prosecuting them where they commit infraction of their oath of office. There is also no reference to what should be the position as to the proceeds of judicial corruption by the NJC where a judicial officer is found culpable in respect of judicial corruption such as bribery or extortion. The implication is that such proceeds of judicial corruption is left for the dismissed or retired judicial officer to enjoy. It is perhaps this seeming deficiency that has encouraged steady increase in judicial corruption in Nigeria and led to arrest of judges in Nigeria sometime in October, 2016.

Arrest of Judges over Corruption in Nigeria

The arrest of judicial officers over corruption is very recent in Nigeria's history. Judges have not been arrested in respect of corrupt practices committed as judicial officers. The norm is that until the NJC investigates a judicial officer for his breach of his oath of office and removed from office, he cannot be prosecuted.⁵ However, the action of officials of the Department of State Services (DSS) on that fateful night of 7th of October, 2016 between the hours of 10pm and the early hours of 8th October, 2016 seemed to have threatened the established legal order. The arrest of the judicial officers was executed by officials of the DSS over alleged judicial corrupt practices.⁶ These judicial officers and their families had their homes broken into, their sleep forcefully and rudely interrupted, searches were conducted and reputation tarnished.⁷ The DSS anchored their action on the overriding and compelling necessity to eradicate corruption in the Nigerian judiciary. The executive arm of government through the Attorney-General of the Federation justified the action of the DSS on the ground that there were various petitions of alleged corrupt practices by judicial officers received by his office, the Economic and Financial Crimes Commission and the DSS.⁸ The AGF maintained that the action of the executive and the DSS was constitutional relying on section 15(5) of the 1999 Constitution.⁹ It is argued

² PC Obiorah, 'The Judiciary in the Eye of the Storm: The Role of the Lawyer' being a paper delivered at the 2019 Law Week of the Nigerian Bar Association, Warri Branch on 4th July, 2019 at 5.

³ AO Giwa, "Appointment of Judicial Officers: An Examination of the Governing Considerations" <https://www.academia.edu/46927611/appointment_of_judicial_officers_an_examination_of_the_governing_considerations/> accessed 4 June, 2021.

⁴ *Ibid.*

⁵ *Nganjiwa v. F.R.N.* (2017) LPELR – 43391 (CA).

⁶ JB Daudu, 'Corruption and the Judiciary: Matters Arising' <<https://www.thisdaylive.com/index.php/2016/10/18/corruption-and-the-nigerian-judiciary-matters-arising/>> accessed 9 December, 2019.

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.*

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that the incidence of arrest of judges over corruption in Nigeria is largely due to systemic failure by the NJC to be proactive in the discipline of judicial officers in Nigeria.

The NJC and other stakeholders in the justice sector including the Nigerian Bar Association viewed the arrest of judges in Nigeria as a denigration and intimidation of the judiciary as an arm of government.¹⁰ The way and manner the operation was executed undermined the independence of the judiciary even though it is conceded that judicial officers do not have immunity against arrest for commission of a crime. President Muhammadu Buhari acknowledged the fact that majority of the judicial officers in Nigeria are incorruptible and are performing their judicial functions in the best spirit of their oath of office.¹¹

Arrest of Legal Practitioners over Corruption in Nigeria

The arrest of legal practitioners in respect of corrupt practices is also novel in Nigeria just like the arrest of judges. It is novel not that legal practitioners just like judicial officers have immunity against arrest where they commit an infraction of the law but it is something that has not occurred in Nigeria where the lawyer is acting in his professional capacity as a lawyer. The lawyer is seen as a human rights' defender, a minister in the temple of justice and the conscience of the society. As such, a legal practitioner enjoys a high regard and respect in the society and the ordinary man in the society sees the lawyer as untouchable. Whenever he speaks, it is believed he is speaking the truth and acting within the confines of the law. In order to maintain this standard of nobility among men, the Rules of Professional Conduct¹² was promulgated to regulate the conduct of lawyers in Nigeria. The Rules of Professional Conduct for Legal Practitioners in Nigeria (popularly referred to as the RPC) was made pursuant to section 12(4) of the Legal Practitioners Act.¹³ The punishment for the breach of any of the provisions of the RPC is provided in section 12(1) and (2) of the LPA¹⁴ It must be pointed out that the punishment does not empower the Legal Practitioners Disciplinary Committee (LPDC) to deal with issues of crime but infamous conduct of the lawyer involved.

Where a complaint involves the commission of a crime, the Committee after considering the complaint of infamous conduct and ordered the appropriate punishment ought to refer the criminal aspect to the police or other law enforcement agencies for investigation, arraignment and trial since it is only a regular court that is invested with powers or jurisdiction to try criminal offences that can try such a lawyer on the criminal allegations. This is the basis of the decision in *Obiageli v. FCE, Zaria and Others*.¹⁵ It is therefore argued that punishment by the Committee or an administrative body does not dissipate the criminal liability of the commission of a crime which involves professional misconduct by a lawyer or a judicial officer.

¹⁰ *Ibid.*

¹¹ I Nnochiri, 'CJN to Buhari: Obey Court Orders' *Vanguard* (Lagos, November 21, 2017) 5.

¹² The extant one is the Rules of Professional Conduct for Legal Practitioners, 2023.

¹³ Cap. L11, LFN, 2004.

¹⁴ *Ibid.*

¹⁵ (2014) LPELR – 24010 (CA) 1 at 46 – 47.

In the history of the legal profession in Nigeria, lawyers found culpable of professional misconduct involving commission of crimes have never been referred for prosecution by the committee. The practice has not actually encouraged discipline in the legal profession. It was in only 2016 that EFCC did its investigation and charged the duo of Rickey Tarfa and Joseph Nwobike, both of them very senior members of the Bar, to court for corrupt practices of giving bribes or gratification to judges to pervert the cause of justice amongst other counts. The trial convicted Mr. Joseph Nwobike on some of the counts. He was sentenced to one month's imprisonment.¹⁶ His conviction was affirmed by the Court of Appeal but subsequently quashed by the Supreme Court on the ground that the offence of attempting to pervert the course of justice is not a criminal conduct that can be regarded as an economic and financial crime which the EFCC can investigate and prosecute.¹⁷ Recently, Bello Adoke, a Senior Advocate of Nigeria and former Attorney-General of the Federation was arrested and arraigned by the Economic and Financial Crimes Commission for money laundering and his alleged role in the controversial 1.3 Billion US Dollars Malabu oil deal while he was Attorney - General of the Federation.¹⁸

Tackling Judicial Corruption Through Enabling Organs of State and Laws

The governmental powers of every democratic and civilized country is vested in the legislative, executive and judicial arm of the government. While the legislative arm makes the law, the executive arm executes the laws and initiate policies for the governance of the country and the judicial powers is vested in the judiciary to interpret the law.¹⁹ It is the responsibility of the three arms of government to collaborate to fight corruption and ensure a peaceful society for its citizenry as enshrined in section 15(5) of the Constitution that the State shall abolish all corrupt practices and abuse of power. Effort shall be made to consider government's effort at tackling judicial corruption through enabling organs of State and laws.

The Economic and Financial Crimes Commission (EFCC)

The EFCC²⁰ was established in 2002 pursuant to the EFCC Act.²¹ The EFCC was established to administer the provisions of the EFCC Act. The Commission has the responsibility to investigate financial crimes including advance fee fraud, money laundering, *et cetera*.²² The Commission is also charged with responsibility of enforcing the provisions of the Money Laundering Act, the Advance Fee Fraud and Other Fraud Related Offences Act, Miscellaneous Offences Act and any other law or regulations

¹⁶ Global Legal Insights, 'Bribery & Corruption Laws and Regulations' <<https://www.globallega.com>> accessed 20 April, 2020.

¹⁷ Appeal No. SC/CR/161/2020: Dr. Joseph Nwobike SAN v. F.R.N. Judgment delivered by Tijjani Abubakar, JSC, on 20 December, 2021 at Abuja.

¹⁸ K. Ogundele, 'EFCC Files N500M Fraud Charges Against Adoke, Accomplice' <<https://www.punchng.com>> accessed 20 April, 2020.

¹⁹ Sections 4, 5 and 6, CFRN, 1999, (as amended).

²⁰ Hereinafter referred to as EFCC or the Commission.

²¹ Cap. E1, LFN, 2004 but later replaced with EFCC (Establishment) Act No. 1, 2004.

²² *Ibid.* Section 6(1) (6).

Publication of the European Centre for Research Training and Development –UK relating to economic and financial crime.²³ EFCC has demonstrated courage in the arrest and prosecution of judicial officers in Nigeria. The commission arrested, arraigned and prosecuted Justice Rita Ofili-Ajumogobia with Godwin Obla, a Senior Advocate of Nigeria on 18 count charge of money laundering, unlawful enrichment, illegal concealment, corruption, forgery amongst others before the Federal High Court, Lagos presided over by Justice A.L. Allagoa. The charges were later quashed.²⁴ The commission also arrested and arraigned Justice Nganjiwa of the Federal High Court for judicial corruption. The defendant raised a preliminary objection to the charge that being a judicial officer, EFCC cannot prosecute him until he has been tried and dismissed by NJC which was upheld by the trial court and affirmed by the Court of Appeal.²⁵ EFCC also arrested, arraigned and prosecuted Justice Yinusa on allegations of bribery. However, in the course of the prosecution, the defendant's suspension as a judicial officer was lifted by NJC. This led the trial court to discharge him of the bribery charges against him. However, EFCC has appealed against the order to the Court of Appeal.²⁶ It is argued that these judgments appeared to be a setback to EFCC in the fight against judicial corruption. Section 46 of the EFCC Act defines economic and financial crime. By the definition, the Commission has the powers to investigate and prosecute offences bordering or involving corrupt practices including judicial corruption. This is because there is specific reference to phrase 'any form of fraud' 'bribery' and 'any form of corrupt malpractices' in the meaning of economic crime as defined by the Act above. The Attorney-General of the Federation has supervisory authority over the Commission as he has powers to make rules or regulation for the Commission in exercise of its duties, functions or powers by virtue of section 43 of the EFCC Act. Section 43 of the Act gives the Attorney-General of the Federation the power to make rules or regulation with respect to the exercise of any of the duties, functions or powers of the Commission.

It is argued that in the exercise of such power, a compromised or corrupt Attorney - General of the Federation may abused this power in order to frustrate the Commission in its fight against corruption. Michael Aondoakaa, the Attorney-General of the Federation under Musa Yar' Adua was accused of abusing his powers under the above section and that he frustrated the Commission when Mallam Nuhu Ribadu was the head of the Commission.²⁷

It is also the statutory responsibility of EFCC to enforce the provisions of the Money Laundering Act.²⁸ In prohibiting money laundering, section 1 of the Money Laundering

²³ *Ibid.* Section 7(2).

²⁴ R Egbe 'Court Clears Justice Ofili-Ajumogobia of Money Laundering Charges' <<https://www.thenationonline.net/court...>> accessed 12 December, 2021.

²⁵ Nganjiwa's case n. 5 above.

²⁶ Channels Television, 'EFCC Appeals Order Discharging Justice Yinusa of Bribery' <<https://www.channelstv.com>> accessed 12 December, 2021.

²⁷ D Shibayan, 'Aondoakaa, Nwabueze Tried to Destroy EFCC, says Ribadu' <<https://www.the.cable.ng/aond...>> accessed 24 April, 2020.

²⁸ AA Ige, 'A Review of the Legislative and Institutional Frameworks for Combating Money Laundering in Nigeria' [2012] (1) *NIALS Journal of Criminal Law and Justice*; 95 – 130.

Publication of the European Centre for Research Training and Development –UK
 Act provides that except in a transaction through a financial institution, no person shall make or accept cash payment of a sum greater than ₦500,000 by an individual and ₦2 million by a company. It was therefore surprising that judicial officers were arrested with large sums of money in different currencies from the comfort of their homes. Hence, the few judicial officers that were arraigned in court upon their arrest by the DSS officers were charged with offences bordering on money laundering.²⁹ For instance, Justice Ngwuta was arraigned in counts 1 to four with respect to money laundering contrary to section 15(2)(d) and (3) of the Money Laundering (Prohibition) Act.³⁰ Also, Paul Usoro was arraigned on a ten count charge, he stood trial on counts five to ten bordering on money laundering contrary to section 15(2)(d) and (3) of the Money Laundering (Prohibition) Act. However, he was discharged and acquitted because there was no *prima facie* case made against him at the close of prosecution's case.

The Independent Corrupt Practices and Other Related Offences Commission (ICPC)

The ICPC came into being pursuant to section 3 of the ICPC Act. ICPC is charged with the responsibility of the implementation of the ICPC Act. In other words, it has the responsibility of the investigation and prosecution of offenders with respect to offences bordering on corrupt practices. The Act in addition to providing for the orthodox offences of bribery and corruption moved further to expand the frontiers of both the Criminal Code Act and the Penal Code Act in respect of corruption.³¹

Section 2 of the ICPC Act defines corruption to include bribery, fraud and other related offences and also give an elaborate definition to gratification. The section also defines a public officer to mean apart from judges of the superior court of record to include magistrates and judicial officers in the customary courts or tribunals. Section 6 of the ICPC Act imposes three major responsibilities on the Commission to wit: to receive and investigate reports of conspiracy to commit, attempt to commit or actual commission of offences created by the Act and in appropriate cases prosecute the offenders; to examine review and enforce the correction of corruption – prone system and procedures of public bodies with a view to eliminating or minimizing corruptions in public life; and to educate and enlighten the public on and against corruption and related offences with a view to enlisting and fostering public support for the fight against corruption.³² The penalties under the ICPC Act range from one year imprisonment to a maximum sentence of seven years imprisonment. Where fines and forfeiture are provided for, these are usually in addition to the term of imprisonment.

²⁹ I Nnochiri, 'Money Laundering: How Justice Ngwuta Hid Evidence of Graft – FG' *Vanguard* (Lagos November 22, 2016) 1, 5 and 38

³⁰ Charge No. FHC/ABJ/C/232/2016: F.R.N. v. Sylvester Nwali Ngwuta.

³¹ AT Akujobi, 'Perspective on Corruption and Its Control in Nigeria' in D.C. Maidoh and others (eds), *Judicial Administration and Other Legal Issues in Nigeria: Essays in the Honour of Honourable Justice R.P.I. Bozimo, Chief Judge of Delta State* (Malthouse Press Ltd, 2010) 163; See generally sections 8 – 26 of the ICPC Act.

³² *Ibid.*

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 ICPC has investigated a lot of allegations of cases bordering on bribery and corruption including those involving judicial officers. In case of *F.R.N. v. Ali Balogun*,³³ the Commission arraigned the defendant, a Chief Magistrate in the Federal Capital Territory before the Federal Capital Territory High Court for demanding and receiving gratification. The defendant was subsequently convicted.³⁴ The Commission also investigated and arraigned another Chief Magistrate Jonathan Folmi Adams and a police prosecutor, Reuben Ali in Bauchi for demanding and receiving gratification contrary to section 8 (1) of the ICPC Act, 2000 sometime in 2006. In the course of trial, the 2nd defendant died and the case was struck out.³⁵ Similarly, the Commission arraigned and prosecuted Ibrahim Shabafu, a Chief Magistrate and two others in Minna, Niger State for demanding, bribery and receiving gratification in course of judicial duties contrary to section 8 (1) of the ICPC Act, 2000.³⁶ The Commission was also investigating Justice Gladys Olotu³⁷ for alleged corrupt practices when the judge instituted seeking declarations and perpetual injunction to stop the investigation of the alleged corrupt practices against her by ICPC. The case has suffered several *de novo* trial.³⁸

Similarly, the Commission has also exhibited its powers of investigation and prosecution over legal practitioners. The Commission investigated one Benjamin Iluobe, a legal practitioner. In the course of investigation, Benjamin Iluobe³⁹ sued the Commission and others to the Federal High Court, Benin City seeking declaratory reliefs and perpetual injunction for alleged breach of his fundamental rights. The plaintiff, however withdrew his case against the Commission on 16 September, 2009.⁴⁰ Also, while the Commission was investigating Yakubu Mele, a legal practitioner, he instituted an action⁴¹ wherein he sought declarative and injunctive reliefs to stop his arrest and investigation on grounds of alleged breach of his fundamental right. The case was however dismissed on 24 June, 2014.⁴² Also in the case of *Chief Nkereuwem Akpan v. ICPC & 38ors*,⁴³ the Commission investigated, arraigned and prosecuted the appellant who is a legal practitioner for corrupt practices and was convicted. The appellant appealed against the judgment seeking an order to set aside the judgment and an order of re-trial.⁴⁴ Also exercising its statutory powers of investigation and prosecution, the Commission investigated, arraigned and prosecuted one Sylvester Ubazi, a Deputy Director with Legal Aid Council and holds simultaneous appointment as Assistant Commandant of Nigeria Security and Civil Defence Corps. He was charged with false information to public officers and use of

³³ FCT/HC/1/2003.

³⁴ ICPC, "Status of Criminal Cases" <<https://www.icpc.gov.ng>> accessed 12 December, 2021.

³⁵ *Ibid.*

³⁶ NSHC/MN/ICPC/1C/2007: *F.R.N. v. Ibrahim Shabafu and 2 others*.

³⁷ FHC/ABJ/CS/221/2014: *Hon. Justice Gladys Olotu v. A.G.F. and others*.

³⁸ ICPC, n. 34 above.

³⁹ FHC/B/CS/15/2008: *Benjamin Iluobe Esq. v. Sgt. Erasmus Ehi and 19 others*.

⁴⁰ ICPC, n. 34 above.

⁴¹ BA/34/2014: *Yakubu Mele v. ICPC*.

⁴² ICPC, n. 34 above.

⁴³ Appeal No. CA/A/2014.

⁴⁴ ICPC, n. 40 above.

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position to confer corrupt advantage upon himself.⁴⁵ The case is on appeal in respect of a
ruling of no case submission.⁴⁶

The Code of Conduct Bureau (CCB)

The Constitution⁴⁷ and the Code of Conduct Bureau and Tribunal Act established the Code of Conduct Bureau.⁴⁸ The essential purpose and objective of the Bureau is to establish and maintain a high standard of morality in the conduct of government business and to ensure that the actions and behaviour of public officers conform to the highest standards of public morality and accountability.⁴⁹ The duties of the Bureau includes ensuring compliance with, and where appropriate, enforce the provisions of the code of conduct or investigate complaints on non-compliance with or breach of the provisions of the code of conduct or any law in relation thereto. It also has the duty to investigate the complaint and where appropriate, refer such matters to the Code of Conduct Tribunal.⁵⁰ The essence of the Code of Conduct Bureau is to curtail corruption and fraud in public office. It is, therefore argued that there is need for the Bureau to strengthen or enlarge its staff to enable it to carryout search and compliance with the code of conduct. The Bureau should also try to live up to expectation by ensuring that every form submitted to it is verified to ascertain the authenticity of the declarations made therein by public officers.

Where a public officer fails to comply or make a full or complete declaration and he makes a written admission of such breach or non-compliance, he will not be referred to the Code of Conduct Tribunal for trial. This the proviso to section 3 of the Code of Conduct Bureau and Tribunal Act. However, it is surprising that the case of Walter Onnoghen, CJN as was then, was treated differently by the Code of Conduct Tribunal in breach of the proviso to section 3 of the Act. Onnoghen responded to the accusation of false assets declaration by the Code of Conduct Bureau stating that he forgot to update his asset declaration forms and gave reasons for the non-compliance in his written admission.⁵¹ It is argued that with that written admission of breach or non-compliance, it was sufficient for the Bureau not to have referred or arraigned Onnoghen before the Code of Conduct Tribunal in the face of the clear provisions of the proviso to section 3 of the Code of Conduct Bureau and Tribunal Act. It was also safe for the Code of Conduct Tribunal to decline jurisdiction to hear and determine the matter relying on the said proviso. Onnoghen was suspended from office as CJN, tried, convicted and banned from holding public office for ten years by the Tribunal.

⁴⁵ HU/54C/2011: *F.R.N. v. Sylvester Ubazi*.

⁴⁶ ICPC, n. 34 above.

⁴⁷ Fifth Schedule, CFRN, 1999 (as amended).

⁴⁸ Section 1, Code of Conduct Bureau and Tribunal Act, Cap. C15, LFN, 2004.

⁴⁹ *Ibid.* Section 2.

⁵⁰ *Ibid.* Section 3.

⁵¹ SWN Onnoghen, 'My Defence: CJN Onnoghen Replies Code of Conduct Bureau' <<https://www.pmnewsnigeria.com>> accessed 20 April, 2020.

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Without prevarication, the CJN and other Justices of the Supreme Court are appointed by the President on the recommendation of the National Judicial Council (NJC) subject to confirmation by the Senate under section 231(1) and (2) of the 1999 Constitution as amended. The power to remove the judicial officers of this category can only be exercised in compliance with section 292(1) of the 1999 Constitution.⁵² The 1999 Constitution does not give any power to the President to suspend a judicial officer. The power to suspend a judicial officer is vested in the NJC pursuant to the Judicial Discipline Regulations, 2017.⁵³ The provision relating to suspension of a judicial officer in the Regulations is contained in Regulation 24 which provides for interim suspension of a judicial officer pending final decision. By section 292(1) of the 1999 Constitution, the President can only remove the Chief Justice of Nigeria, and other judicial officers stated therein, who are heads of courts, acting on an address supported by two third majority of the Senate. In Onnoghen’s case, there was a flagrant breach of section 292(1) of the 1999 Constitution by the President and it was a manifest violation of the principle of separation of powers, the suspension and usurpation of the supervisory powers of the NJC as enshrined in the 1999 Constitution as amended.⁵⁴

The Code of Conduct Tribunal (CCT)

The Code of Conduct of Tribunal is a creation of paragraph 15(1) of the Fifth Schedule to the 1999 Constitution and section 20(1) of the Code of Conduct Bureau and Tribunal Act. The Tribunal consists of a Chairman and two other members.⁵⁵ The Chairman must be a person who has held or is qualified to hold office as a Judge of a superior court of record. The Chairman and the members of the Tribunal are appointed by the President of the Federal Republic of Nigeria upon the recommendation of the National Judicial Council.⁵⁶ The Tribunal has the exclusive jurisdiction to try and punish any public officer found guilty of the contravention of any of the provisions of the Code of Conduct and the Code of Conduct of Conduct Bureau and Tribunal Act.⁵⁷ Where the Tribunal adjudged any public officer guilty of contravention of any provisions of the Code of Conduct and the Conduct of Conduct Bureau and Tribunal Act, it can impose any of the following

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ *Ibid.* at 6.

⁵⁵ Paragraph 15(1), Fifth Schedule, CFRN, 1999, (as amended) and Section 20(2), Code of Conduct Bureau and Tribunal Act, Cap. C15, LFN, 2004..

⁵⁶ *Ibid.* Paragraph 15(2) and (3); Section 20(3) and (4).

⁵⁷ In *Adamu v. FRN* (2018) LPELR – 46029(CA), the Court of Appeal per Jauro JCA, held that at this juncture, I deem it necessary to refer to the case of *Ekperokun v. University of Lagos* (2004) 16 WRN 90 at 132 lines 32 – 36 where the apex Court per Obaseki state thus “A determination of guilt under the Code of Conduct is not within the original jurisdiction of the Court or any other Court of law except the Code of Conduct Tribunal and an appeal from such determination lies only to the Court of Appeal. See *Ahmed v. Ahmed* (2013) 15 NWLR (Part 1377) 274 at 329 per Chukwuma – Eneh, JSC”... the foregoing provisions are clearly ambiguous and construed literally mean that any breaches of any provisions of the said 5th Schedule or matters of non-compliance with any provisions of the Code “shall” meaning that it is mandatory that it must be made to the Code of Conduct Bureau that has established its Tribunal with the exclusive jurisdiction to deal with any violations of any provisions under the Code.... The lower court therefore lacked jurisdiction to convict under the Code of Conduct Bureau and Tribunal Act.

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punishments without prejudice to the penalties that may be imposed by any law where the breach of conduct is also a criminal offence under the Criminal or Penal Code or any other enactment or law.⁵⁸ The punishments include: removal from office, banned from holding any public office for a period not exceeding ten years; and seizure and forfeiture to the State of any property acquired in abuse of office or as a result of corruption.

Based on the above provision of the law, Onnoghen, CJN as he was then, was arraigned and tried by the Code of Conduct Tribunal. He was eventually found guilty on all the six counts charge preferred against him and was convicted by the tribunal on 18 April, 2019. The tribunal ordered that him to vacate his office as CJN, banned from holding public office for ten years and also ordered to forfeit his undeclared accounts and assets to the federal government.⁵⁹ Justice Adeniyi Ademola, his wife, Olabowale and Joe Agi, S.A.N.⁶⁰ were also arraigned at the CCT for failure to declare his assets to the Bureau and for engaging in private business contrary to sections 5 and 6 of the CCB and Tribunal Act and punishable under section 23 of the same Act.

The Department of State Services (DSS)

The State Security Service now known as the Department of State Services is established pursuant to section 1(c) of the National Security Agencies Act.⁶¹ By section 2(3) of the Act,⁶² the Department of State Services is charge with responsibility to: prevent and detect within Nigeria any crime against the internal security of Nigeria; protect and preserve all non-military classified matters concerning the internal security of Nigeria; and carryout such other responsibilities affecting internal security of Nigeria as may be determined by the National Assembly or the President.

In the history of the Nigerian judiciary, judges were arrested for the first time through a coordinated raid by the operatives of the DSS at different parts of the country for alleged judicial corruption. Their homes were searched and were arrested in the wee hours of 8 October to the dawn of 9 October, 2016. The seven judicial officers were arrested in the raid are Inyang Okoro, Nwali Ngwuta, Innocent Umezulike, Muazu Pindiga, Mohammed L. Tsamiya, Adeniyi Ademola and Kabiru Auta.⁶³ The amount of raw cash found in the

⁵⁸ Paragraph 18(1),(2) and (3), Fifth Schedule, CFRN, 1999, (as amended), section 23(1), (2) and (3) of the Code of Conduct Bureau and Tribunal Act, Cap. C15, LFN, 2004.

⁵⁹ I Nnochiri, 'CCT Trial/Conviction: Appeal Court Decides Onnoghen's Fate Today' <<https://www.vanguardngr.com>> accessed 12 Defember, 2021.

⁶⁰ FCT/CCT/CR/21/2016: *F.R.N. v. Ademola and 2 others*. They were discharged by the tribunal on 5 April, 2017 on an application of a no case submission by their counsel. See also L. Nwabughio, 'Justice Ademola's Acquittal: Presidency Frowns as FG Appeals Judgment, Files Fresh Case at CCT' <<https://www.vanguardngr.com>> accessed 12 December, 2021.

⁶¹ Cap. N74, LFN, 2004.

⁶² *Ibid.*

⁶³ E Okakwu, 'Why SSS Arrested Judges, Raid their Homes' <<https://www.premiumtimesng.com>> accessed 12 December, 2021.

Publication of the European Centre for Research Training and Development –UK judges’ homes in the process of the raid was unbelievable.⁶⁴ The untouchables were touched and precedent was laid down.⁶⁵ The federal government arraigned Ngwuta at the Federal High Court while Ademola was arraigned at the Code of Conduct Tribunal. The federal government in *F.R.N. v. Ngwuta*⁶⁶ preferred a thirteen count charge against Justice Ngwuta which included money laundering and alleged that he engaged in private business as a public officer contrary to section 6(6) of the Code of Conduct Bureau and Tribunal Act. He was also alleged to have refused to declare his assets as a public officer contrary to section 15 of the Act.⁶⁷ In the case of *F.R.N. v. Ademola and 2 others*,⁶⁸ an eighteen count charge was preferred against Justice Ademola and the other two defendants at the CCT. The first count was that he failed to declare his asset to the CCB which is an offence contrary to section 15 of the CCB and Tribunal Act and punishable under section 23(2) of the same Act. The other count states that he engaged and participated in private business contrary to section 6 of the CCB and Tribunal Act and punishable under section 23(2) of the same Act.⁶⁹

By section 2(3) of the Act, it is only paragraph (a) thereof that has semblance of a duty to prevent and detect crime but the crime must be such that is against the internal security of Nigeria. It is argued that the offence of corruption and economic and financial crimes have never been shown or established to be crimes affecting or against the internal security of Nigeria. As such, the DSS is not one of the agencies empowered by law to investigate, arrest and prosecute matters bordering on or relating to corruption or economic crimes including judicial corruption. The provisions of section 2(3) of the Act has been interpreted by the Federal High Court, Warri Judicial Division in *Mr. Aaron Ikimi v. Director, State Security Service & 3ors.*⁷⁰ The court, after reproducing the provisions of section 2(3) of the National Security Agencies Act held:

The simplest interpretation that can be given to this section by any independent legal mind is that the Respondents are only charged with the responsibilities of detention [sic] and prevention of any crime against the internal security of Nigeria. It is also clear from the section that the respondents have no power to investigate a petition or allegation of ordinary economic crime such as payment of tax and professional fees of lawyers which

⁶⁴ S Daniel, I Anaba, J Onoyume, B Agande and C Ochai, ‘DSS ‘Recovers Over N360M From Three Judges’ Houses’ *Sunday Vanguard* (Lagos, October 9, 2016) 1 and 4 where it was reported that the raw cash recovered from some of the judicial officers’ homes is as follows: Justice Adeniyi Ademola, N54million, \$171,779.00, 80.00 pounds, 1,010.00 rupees, 4,400.00 euro; Justice Nwali Sylvester Ngwuta N35,208,000, \$319,475, 25,890 pounds, 280 euro, 380 UAE, 1420 Gambia Dallalis, 4 Argentine notes, 20 Ghana cedis; Justice John Inyang Okoro N4,350,000, \$38,833, 25,890 pounds, 1,000.00 euro.

⁶⁵ KO Mrabure, ‘Judicial Immunity and Judges Raid Conundrum in Nigeria’ [2018] (26) *Sri Lanka Journal of International Law*; 186 – 187.

⁶⁶ FHC/ABJ/C/232/2016.

⁶⁷ Mrabure, n. 65 above.

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ (Unreported) Suit No. FHC/WR/CS/72/2014 delivered on 20 January, 2016 at the Federal High Court, Warri by Hon. Justice MS Abubakar.

Publication of the European Centre for Research Training and Development –UK in my view does not pose a threat to the internal security of Nigeria. If I may add, it is the constitutional responsibilities of the Nigeria Police and the EFCC to detect, prevent, investigate and prosecute economic crime of whatever dimension within the extant Nigerian laws. See section 4 of the Police Act and sections 6 and 7 of the EFCC Act. Flowing from above, the DSS lacks the powers to act outside their statutory purview.⁷¹ It is, therefore argued that the DSS lack powers to investigate and arrest persons accused of corrupt practices including judicial officials.

The executive arm of government *qua* the Attorney-General of the Federation, Mr. Abubakar Malami has argued strenuously that the DSS has powers to carry out the raid on the judicial officers and the arrest of the judicial officers that was done in October, 2016 was proper relying on the section 2(3) of the National security Agencies Act. However, the courts have interpreted the said section and arrived at the conclusion that the DSS has no such powers except where the crime poses threat to the internal security of Nigeria.

The Sanctity of the Judiciary in the Fight Against Judicial Corruption

Eradicating judicial corruption is a noble fight which must be encouraged. However, in so doing the independence and the sanctity of the judiciary must not be compromise for any reason. The reason is that the judiciary is the last hope of the common man and the arm of government that promotes the rule of law which is the foundation of constitutional democracy. The point has been made that the action of the executive to invade and arrest judicial officers in recent times undermined the revered institution of the judiciary. While Nigerians are still groping with that unfortunate occurrence, a sitting Chief Justice of Nigeria, Justice Walter Onnoghen was accused of breach of Code of Conduct for Public Officers and was arraigned before the Code of Conduct Tribunal. In less than three days from the receipt of the petition, investigation was concluded and the executive through the office of the Attorney-General of the Federation was ready to arraign Justice Onnoghen at the Code of Conduct Tribunal despite Onnoghen's written defence in compliance with the proviso to section 3 of the CCB and T Act.⁷² As if there was a pre-meditation, the Tribunal, which from all intent and purposes, appears to be an administrative Tribunal of the executive proceeded to assume jurisdiction over the case, suspended Justice Onnoghen from office and ultimately convicted him. This could be seen as a ploy to cow the judiciary to subtle control by the executive.⁷³ It is however argued that it is not in the good image of the judiciary for its head to have over Three Million United States Dollars in five accounts and fail to declare it on assumption of office as Chief Justice of Nigeria; only to claim that his last declaration could cover it when such accounts were not declared in his last declaration or were not opened as at the time of his last declaration of assets while he was acting as Chief Justice of Nigeria. It is, respectfully argued that this smacks act of infidelity. Hence, the head of the judiciary in

⁷¹ *Tawakalitu v. F.R.N.* [2011] ALL FWLR (Pt. 561) 1413 at 1489 paragraphs E – F.

⁷² Onnoghen, n. 51 above.

⁷³ I Nnochiri, and others, 'Plot to Cow Judges Ahead of 2019 Polls – NBA' *Vanguard* (Lagos, January 14, 2019) 1, 5 and 42.

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Nigeria for the first in time in history of Nigeria was docked before an administrative tribunal over which the judiciary has no control, took his plea, stood trial and eventually convicted.⁷⁴ To establish the fact that the Code of Conduct Tribunal is subject to the executive control, upon a petition to the National Judicial Council against the Chairman of the Tribunal, Mr. Danladi Umar for judicial misconduct during the Onnoghen's case, Mr. Umar replied this:

With regard to the prayer of the petitioner for an appropriate sanction against the Chairman, it is important to note that the Chairman and members of the tribunal, not being judicial officers, are not constitutionally subject to any disciplinary proceeding by either the National Judicial Council or the Federal Judicial Service Commission but the Presidency. The petitioner alleged that judicial oaths were breached and that the National Judicial Council should consider appropriate sanctions. It is to be noted that the Chairman and members of the Code of Conduct Tribunal are not judicial officers. This is predicated on the fact that the Chairman and members of the tribunal, during swearing-in, only subscribe to official oaths and not judicial oaths. Therefore, not being a judicial officer, I did not subscribe to judicial oath as alleged.

It is argued that the above response of the Chairman of the Tribunal underscore the fact of whose interest the Code of Conduct Tribunal serves, where it belongs and to whom it reports. It is a tribunal of the executive and part of the executive or one of the means through which the executive discharge its functions. That being the case, in any case before the Tribunal, the executive appears to be the accuser, the prosecutor and the judge. This is in breach of right to fair hearing as enshrined in section 36 of the 1999 Constitution. The Supreme Court in the case of *Garba & Ors v. University of Maiduguri*⁷⁵ after dealing with breach to the right to fair hearing held that '*the court will not inquire whether such evidence or representation did work to the prejudice of the person being investigated. It is sufficient that it might. The risk of it is enough.*'

A fortiori, a trial that is centres around the executive as the accuser, prosecutor and the judge cannot be said to be a fair trial. There is therefore, the need to insulate the Code of Conduct Tribunal from the executive because it is a court or tribunal that determines the rights and obligations of persons against the government. There is need to ensure its independence and impartiality to safeguard the rights of those that stand trial at the tribunal. By the very nature and function of the Tribunal, it is a special of court that should be placed under the disciplinary control of the NJC that recommends persons for appointment to the Tribunal. In essence, the power to recommend for appointment should include the power to exercise disciplinary control and to recommend for removal.

It is argued that in order to maintain the sanctity of the judiciary in the fight against corruption, NJC should be allowed to hear, determine and discipline the suspect judicial

⁷⁴ I Akinlotun, 'Onnoghen's Arraignment Takes the Wind Out of the Judiciary's Sails' *The Nation* (Lagos, February 17, 2019) 56.

⁷⁵ [1986] 1 NWLR (Pt. 18) 550 at 618.

_____ Publication of the European Centre for Research Training and Development –UK officer. Where the alleged misconduct involves commission of crime known to law, NJC owe it a duty to hand over such a judicial officer to the appropriate law enforcement agency for prosecution and there is nothing wrong for the Council to give evidence of their findings against such judicial officer at the criminal trial. The Court of Appeal rightly made the point on the procedure to follow in the prosecution of a serving judicial officer who commits a crime in the celebrated case of *Nganjiwa v. F.R.N.*⁷⁶ wherein the Court of Appeal held that it is the duty of the National Judicial Council to investigate and come up with a disciplinary action and thereafter the law enforcement agencies can take over. This is to protect the institution of the judiciary from the vagaries of the executive and the legislature who are politician with political interests and affiliations. This is so because the offence is alleged to have been committed in the active line of duty of the judge as a judicial officer. This also will prevent an unnecessary allegation, arrest and arraignment meant to harass and intimidate judicial officers in the course of their judicial functions. It is argued that this process will ensure that the judiciary is virile and independent in order to perform its constitutional role to the citizenry. This is without prejudice to the conditions of removal of heads of courts as contained in section 292(1) of the 1999 Constitution which gives the executive acting in collaboration with the legislature to remove such heads of court in appropriate situation.

Judicial Corruption in Some Selected Jurisdictions

It is necessary to examine modus operandi of fighting judicial corruption in some selected jurisdictions such as the United States of America and Ghana and how judicial corruption is tackled in those countries. This will determine whether there is any lesson for Nigeria to aid and further strengthen the fight against judicial corruption in Nigeria.

Procedure For Dealing with Judicial Corruption in the United States of America

The American Constitution⁷⁷ amongst others provides for the appointment and tenure of federal judges. Article 3 of the Constitution provides to the effect that judges shall hold their office during good behaviour and shall at all time during the course of their service, receive compensation or salary which shall not be altered to their disadvantage while in office. Article 2, section 2 of the Constitution provides that the judges shall be appointed by the President with the advice and consent of the Senate. Article 2 section 4 the Constitution provides that the President, Vice - President and all civil officers of the United States shall be removed from office on impeachment for conviction of treason, bribery or other higher crimes and misdemeanors. Only the Senate can act and try judicial officers with removal from office once the House of Representatives on a majority vote brings a charge for removal from office against a judicial officer.⁷⁸

The United State has a code of conduct for its federal judicial officers.⁷⁹ This code of conduct defines ethical rules that apply to federal judicial officers and provides

⁷⁶ (2017) LPELR – 43391 (CA).

⁷⁷ Constitution of the United States of America, 1787.

⁷⁸ *Ibid.* Article 1.

⁷⁹ Federal Judicial Centre, ‘How the Federal Courts Are Organized’ <<https://www.fjc.gov/federal/courts>.

Publication of the European Centre for Research Training and Development –UK regulations regarding performance of judicial functions and engagement in and outside their official activities. The code of conduct provides that a judge should uphold the integrity and independence of the judiciary; avoid impropriety and the appearance of impropriety in all activities; perform the duties of the office fairly, impartially and diligently; may engage in extra-judicial activities that are consistent with the obligations of judicial office; and judge should refrain from political activity.⁸⁰

Hitherto, the United States' Congress maintains an oversight on federal judicial officers with the United States Department of Justice and Public Integrity Section. The public integrity section was charged with overseeing the federal government's effort to fighting corruption and prosecute elected and appointed public officers at all levels which include the judicial officers. As a result, the public integrity section has exclusive power over allegations of criminal conduct on the part of federal judicial officers for investigation. Where the outcome of the investigation is against any provision of Article 3 of the United States Constitution, the subject judge is thereby required to be removed from office which involves the process of impeachment by the House of Representatives and conviction in the Senate.⁸¹

In 1980, Congress passed the Judicial Councils Reform and Judicial Conduct and Disability Act (hereinafter referred to as Judicial Conduct Act) and signed into law by President Jimmy Carter. The philosophy of the Judicial Conduct Act is to enable judicial officers to monitor the professional conduct and competence of their learned brothers without resort to the cumbersome machinery of impeachment.⁸² There is also the Judicial Conference which later replaced the public integrity section. Under the Judicial Conduct Act, any person can file a complaint against a judicial officer for misconduct. The complaint is filed with the Chief Judge of the circuit court except where the Chief Judge is the subject of the complaint. The Chief Judge will look into the complaint and sent a copy of the complaint to the subject judge for his response. The Chief Judge may dismiss the complaint if it is frivolous or where it does not conform to statutory requirements or is related to the merit of a case decided by the judge. The Chief Judge can also terminate the complaint in situation where corrective actions have already been taken against the judge.⁸³

Where the allegation cannot be determined through the informal mechanism of the Chief Judge, the Chief Judge is required to refer the complaint to an investigation committee appointed by him from among district and circuit judges of the circuit. The investigation committee will now conduct an investigation on the alleged judicial misconduct and report to the Judicial Council of the circuit. The committee has powers to recommend

[nsf/autoframe?openagent&nar=menu/&page=/federal/courts.nsf/page/183](#)> accessed 20 December, 2019.

⁸⁰ *Ibid.*

⁸¹ *Ibid.* See also ML Volcansek and others, *Judicial Misconduct: A Cross-National Comparison* (University Press of Florida, 1996) 87 – 100.

⁸² Volcansek, n. 80 above at 101 – 102.

⁸³ *Ibid.*

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dismissal of the complaint, certify disability, urge the subject judicial officer to retire voluntarily, reprimand or censure the subject judicial officer either privately or publicly or where the disciplinary action involves removal from office as a judicial officer, refer the matter to the Judicial Conference of the United States which is composed of judges elected from all the circuits and presided over by the Chief Justice of the United States' Supreme Court. The Judicial Conference may certify to the House of Representatives that impeachment may be justified in the circumstances of the case.⁸⁴ The removal of such judge becomes a process of impeachment involving Congress that is the House of Representatives and the Senate. A judicial council of a circuit consists of the Chief Judge of the circuit with an equal number of circuit judges and district judges of the circuit.⁸⁵ There is also Judicial Disciplinary Commission for the States in the United States due to the federal nature of the country. The elementary function of the judicial disciplinary commission is to provide a procedure for enforcement of the code of judicial conduct in force within the jurisdiction. The grounds for judicial discipline in most States include conviction for a felonious crime, willful misconduct in office, corrupt practices, willful and persistent failure to perform the duties of a judicial officer, habitual intemperance or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.⁸⁶ The commissions have authority to retire a judge for disability that seriously interferes with the performance of his duties.⁸⁷

Where a judicial officer charged with a criminal offence continues in office, the credibility of the judicial system is substantially affected. In such circumstance, the judicial disciplinary commission in the State has the mandate to take immediate action by suspending the judicial officer with or without pay pending the determination of the criminal trial. Where the judicial officer is found guilty at the criminal trial up to the appeal level and the conviction is sustained, the commission will automatically recommend his removal from office as a judge. In most cases, the judge concerned resigns after the conviction has become final.⁸⁸ The fact that there is an acquittal of the judicial officer on the criminal charge does not constitute a bar to the disciplinary commission from investigating the judicial misconduct. The commission will still proceed with its investigation against the subject judge and if found liable, take the appropriate disciplinary action.⁸⁹ In coming to conclusion of liability against a subject judge, the evidence of the misconduct must be clear and convincing. This is also the standard the State Supreme Court adopts in their independent review of the evidence before the disciplinary commission.⁹⁰

Procedure For Dealing With Judicial Corruption in Ghana

⁸⁴ *Ibid.*

⁸⁵ Section 332(a) 28 U.S. Code.

⁸⁶ Article VI, Section 18, California Constitution, 1879, (As Amended); Article VI, section 23(3)(b), Colombia Constitution, 1964; Art. VI, Section 30(2) Michigan Constitution, 1964.

⁸⁷ Article VI(1), Section 4, Arizona Constitution.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

⁹⁰ Volcansek, n. 81 above at 104 – 110.

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The Constitution of Ghana in Article 151(1) provides that a person holding a judicial office may be removed from office by the Chief Justice on grounds only of stated misbehavior, incompetence or inability to perform his functions arising from infirmity of body or mind and upon a resolution supported by the votes of not less than two-thirds of all the members of the Judicial Council. By Article 152(2) of the Constitution, a subject judicial officer shall be entitled to be heard in his defence by himself or by a lawyer or other expert of his choice. The Judicial Council is made up of the Chief Justice as Chairman, the Attorney-General, a Justice of the Supreme Court nominated by the Justices of the Supreme Court, a Justice of the Court of Appeal nominated by the Justices of the Court of Appeal, a Justice of the High Court nominated by the Justices of the High Court, two representatives of the Ghana Bar Association, one of whom shall not be less than twelve years post call, a representative of the lower courts or tribunals, the Judge Advocate-General of the Ghana Armed Forces, the head of Legal Directorate of the Police Service, the editor of the Ghana Law Reports, a representative of the Judicial Service Staff Association nominated by the association, a chief nominated by the National House of Chiefs and four other persons who are not lawyers appointed by the President.⁹¹ Meanwhile, Article 146 of the Ghana Constitution provides for the removal of the judicial officers of the superior courts and Chairmen of Regional Tribunals. A judicial official of the superior court or a Chairman of a Regional Tribunal shall only be removed from office for stated misbehavior, incompetence or on ground of inability to perform the functions of his judicial office arising from infirmity of mind or body. The procedure for the removal of judicial officers is that where the President of Ghana receives a petition or complaint for the removal of a judicial officer of a superior court of judicature other the Chief Justice or for the removal of the Chairman of a Regional Tribunal, the President is legally bound to refer the complaint to the Chief Justice who shall determine whether there is a prima facie case. Where he finds that there is a prima facie case, the Chief Justice shall set up a committee comprising of three Justices of the superior courts or Chairmen of the Regional Tribunals or both approved by the Judicial Council and two other persons who are neither members of Council of State, members of parliament nor lawyers appointed by the Chief Justice upon the advice of the Council of State. The committee shall investigate the complaint and make its recommendations to the Chief Justice who thereafter forward same to the President. Where the complaint is for the removal of the Chief Justice, the President shall, acting in consultation with the Council of State, appoint a committee comprising of two Justices of the Supreme Court, one of whom shall be appointed as Chairman by the President and three other persons who are not members of the Council of State, neither members of parliament nor lawyers. The committee shall investigate the complaint and make its recommendation whether the Chief Justice should be removed from office or not. In the investigation or proceedings of the committee, the subject judicial officer is entitled to be heard in his defence either by himself or by a lawyer or other expert of his choice. The President, shall, in each case, bound to act on the recommendation of the committee.⁹²

⁹¹ Articles 151 and 153, Constitution of Ghana, 1992, (as amended).

⁹² Article 146(1) – (9), Ghana Constitution, 1992, (as amended).

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Where the petition is pending before the committee that is investigating it, the President, in the case of the Chief Justice, acting on the advice of the Council of State, by warrant signed by him suspend the Chief Justice and in the case of other judicial officers of superior court or a Chairmen of a Regional Tribunal, the President may suspend him on advice of the Judicial Council.⁹³ This is to ensure that the investigation is not in any way prejudiced or interfered with by the subject judicial officer.

Lessons for Nigeria

It is important to draw the necessary lessons on the areas where Nigeria has to improve its mechanism with respect to the fight against judicial corruption in order to strengthen the judiciary and ensure public confidence. From the United States of America, the Judicial Council refers cases bordering on removal of judicial officers to the Judicial Conference of the United States which may certify to the House of Representatives that impeachment of the subject judicial officer is justified in the circumstance. Similarly, in Ghana, the committee that investigates allegation of judicial misconduct or alleged corruption against a judicial officer is also external to the Judicial Service Commission and that makes its proceedings more impartial and ensures fair hearing. This is unlike the procedure with NJC in Nigeria wherein members of the panel that investigates allegation of judicial misconduct or corruption against judicial officers are drawn from among the members of the Council. There is no procedure to investigate the panel to ascertain whether due process is followed in the course of their investigation by NJC and there is no room or provision for appeal against the recommendation of the panel or the National Judicial Council. In Ghana, the committee is akin to a panel of neutrals. In the Nigerian experience, NJC is the investigator, prosecutor and the judge. This procedure runs contrary to section 36 of the 1999 Constitution and the decision in *Garba v. University of Maiduguri*⁹⁴ where the Supreme Court held that the procedure adopted by the respondents runs foul of the principle of fair hearing and that the plaintiffs/appellants were not given fair hearing during the investigation by the panel of the University and that the investigating panel in the case was the prosecutor, witness and a judge; therefore there was likelihood of bias in arriving at the decision by the investigating panel of the respondent University.

It is suggested that NJC should adopt the practice of constituting its investigating panel outside its members. The Judicial Service Commission can act as the panel and forward its findings to NJC. Under the prevailing practice of the National Judicial Council, the Council refers any petition or complaint against a judicial officer to an investigation committee drawn from the Council to investigate the complaint and made recommendation to the same Council.⁹⁵ By this system in Nigeria, members of the investigating committee are also members of the National Judicial Council and are judicial officers.⁹⁶

⁹³ *Ibid.* Article 146(10).

⁹⁴ [1986] All N.L.R. 149.

⁹⁵ Regulation 12 of the Judicial Discipline Regulation, 2014.

⁹⁶ *Ibid.* Regulation 13.

In the United States of America, where a judicial officer is charged with a criminal offence he must be placed on suspension. This is a laudable action because a judge must have a high moral authority and must live above board. So, where a judicial officer is under investigation for *prima facie* judicial misconduct or alleged judicial corruption, NJC or the appropriate authority should place such subject judicial officer on suspension because his integrity, morale and status as a *judex* is at stake. In Ghana, once a judicial officer is under investigation for a *prima facie* misconduct that would culminate in his removal, the President acting on the advice of the Council of State in the case of the Chief Justice or the Judicial Council in the case of other judicial officers, suspends the judicial officer from office. This should be made applicable to Nigeria whether a criminal offence is involved or not provided that the judicial officer is being investigated for judicial misconduct that may lead to removal from office. In doing so, the National Judicial Council should look at the petition or complaint to ensure that it discloses a *prima facie* case against the subject judicial officer.

There is also a remarkable lesson from the United States of America which Nigeria must consider and where necessary adopt. In the United States, the fact that a judicial officer is exculpated at the criminal trial for a misconduct involving the commission of a crime does not *ipso facto* discharge the judicial officer from liability at the disciplinary committee. The philosophy behind this approach is to enhance the credibility of the judicial system. In Nigeria, judges were arrested with huge sums of money in various currencies during the raid by officials of DSS, whether rightly or wrongly. Some of them were arraigned in court but were later discharged and acquitted. The fact of their acquittal or non-arraignment in court is not sufficient for NJC to allow them to resume their judicial functions. The Council ought to, in the circumstance, investigate the circumstance leading to such huge sums of money being in the homes of such judicial officers in order to enhance credibility in the judicial system in the face of public outcry of judicial corruption in Nigeria.

CONCLUSION

The point has been made that judicial corruption is a threat to democracy, good governance, rule of law and that it erodes public confidence in the judiciary. It has been shown in this paper that the DSS does not have powers in the investigation and arrest over corruption cases in Nigeria. It may collaborate with other law enforcement agencies to share intelligence.

The role of the Judicial Service Commission in the discipline of judicial officers should be expanded under the 1999 Constitution as amended so as to assist in the discipline of judicial officers and fight against judicial corruption as obtainable in other climes. The point was also made that the judiciary is an imperative partner in the fight against corruption as no one arm of government or government agency can be the prosecution, witness and the judge at the same time. In spite of the fight against judicial corruption in Nigeria, the judiciary should be virile and courageous to discharge its constitutional

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mandate. Above, all stakeholders in the administration of justice sector including the judicial officers and legal practitioners should avoid corrupt practices and shun practices that seem to ridicule and diminish the judicial arm of government because the judiciary is the last hope of the common man and promoting the rule of law which results to a peaceful and civilized society.