OFFICIAL CORRUPTION AND STEALING FROM PUBLIC TREASURY IN NIGERIA: DISTINCTION WITHOUT A DIFFERENCE?*

Abstract
This paper analyzes and compares the offences of stealing and official corruption in Nigeria. It examines whether there is any real difference between the two property offences or if there is only a distinction without a difference. The Offence of Official Corruption in two other jurisdictions is briefly alluded to in this paper. This study recommends harmonization of all anti-corruption laws in Nigeria and a creation of a more elaborate constitutional framework with a view to effectively combating and abolishing all corrupt practices including stealing of public funds and property in Nigeria.

Keywords: Official corruption, Stealing, Public treasury, Discussion, Difference

1. Introduction

Official corruption poses serious threats to the political stability and security of societies. It undermines democratic institutions, socio-economic developments, ethical values and justice. It jeopardizes sustainable development and the rule of law. Offences of Official Corruption are offences of corruption dealing with public officers and are geared towards ensuring accountability and transparency in the management of public affairs. Nigeria's response to corruption dates back to the pre-colonial era, when offences relating to corruption and abuse of office were included in the Criminal Code.

2. Official Corruption and Abuse of Office in Nigeria

Offences of corruption by public officers cover acts such as bribery and extortion. Although bribery and extortion are forms of corruption, there is however notable difference between the two as stated by the court in *Abu Osidola v. Commissioner of Police*[1] as follows: 'While extortion injures the individual who is made to yield to it, bribe injures the common weal, not the giver of the bribe. It is made an offence for the protection of the community, not for the protection of persons who pay bribes'. In the Australian case of *R v. Pangallo*[2] for instance, the court stressed the deterrence purpose of the offence of bribery.

2.1. Bribery

Sections 98, 98A, 98B, and 98C of the Criminal Code[3] deal with cases of official corruption and abuse of office. Section 98 concerns situation where a public officer invites bribes on account of his action. A public official is defined under section 98D of the Code to mean any person employed in the public service (as defined in the interpretation section 1(1) of the Criminal Code) or any judicial officer within the meaning of section 98C. Section 98 makes it an offence for any public officer to *corruptly* ask for or to agree or attempts to receive or obtains any property or benefit of any kind for himself and any other person, or bribes etc., on account of anything done or to be done afterwards or omitted, or any favour or disfavour already shown to any person by the public officer in the discharge of his official duties.[4] Such a public officer is guilty of official corruption and is liable to imprisonment for seven years both under the Criminal Code and the Penal Code.[5] One way by which it can be proved that a public officer has received a bribe corruptly is that if during the prosecution for the offence it was proved that the officer received a bribe, promise or benefit from any person who is seeking or has a contract or seeking any other thing from government department where the officer is serving, it will be deemed that he received it corruptly, unless the contrary is proved.[6] Section 98A deals with situations where any person on account of actions of a public officer corruptly gives, confers or procures any property or benefit for a public official or corruptly promises or offers to give or to procure or attempt to procure any property or benefit for a public official or for any other person on account of the public officer's act or omission in relation to the performance of his duties. The public officer is guilty of the felony and is liable to imprisonment for seven years.[7] The offence under

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[1] 1958 N.R.N.L.R. 42 at 46
[2] (1991) 56 A Crim. R. 441
[3] Cap C41, Laws of the Federation of Nigeria, 2004.
[4] S. 115 of the Penal Code.
[5] S. 98(1) (a)(b)(i) and (ii) of the Criminal Code but under section 115(c) (1) Penal Code with fine or both.
[6] S. 98(2) (a) and (b) of the Criminal Code.
[7] *Ibid*, s. 98A(1).

section 98A covers situations where such bribe was invited by or from any person acting on behalf of or related to such a person.

Section 98B covers cases where any person apart from the public officer, corruptly asks for, receives or obtains a bribe for himself or any other person or corruptly agrees or attempts these, on account of anything already done or omitted to be done by a public official in connection with his duties. The person is guilty of official corruption and is liable to imprisonment for seven years.[8] Under section 98B, it is unnecessary to prove that any public officer counseled the commission of the offence, or that the accused believed that any public officer would do the act in question or that the accused intended to give the bribe or benefit in question or any part of it to a public officer.[9]

While the wording of these sections appears too technical, an analysis of the elements of both offences of corruptly receiving and giving will aid our understanding of these. These elements are hereunder set out as follows:

The guilty act
Under sections 98, 98A and 98B CC, guilty act consists in mere asking for a bribe, giving or receiving it. Under section 98, mere asking without having received constitutes the offence. Note therefore, that the liability of a public officer who having asked for the bribe thereafter changes his mind not to receive it will not be affected, although the court might be lenient in his punishment. Under section 98, it is not a defence that the public officer did not subsequently do the act or omission.[10] Also, it need not be proved that the accused fulfilled his promise.[11]

The manner of the act
Under sections 98, 98A and 98B CC, the offering or giving, receiving of the bribe must have been corruptly done. In section 98A for instance, you must note that the act, i.e. giving the bribe or a promise of it, must have been corruptly done. The offence is committed if the offeror intends to sway or deflect the public officer from the honest and impartial performance of his duties.[12] In *Ogbu v. R*[13] the giving of a bribe to influence the appointment of someone as a village head was held to constitute the offence of corruptly giving. Note however, that under section 98 a public servant will still be guilty of corruptly receiving a bribe irrespective of whether he did not do the act or omission, contrary to the decision in *Biobaku v. Police*,[14] which was decided based on the old section 98 (1) of the Criminal Code which has now been deleted and replaced by the current section 98 in order to prevent situations where public officers who are manifestly corrupt evade punishment. Also, a person acts corruptly if he offers a bribe to a public officer; it does not matter that he intend to expose the officer as corrupt.[15] For offences under sections 98 to 98B a judicial officer cannot be arrested without a warrant and no prosecution shall be commenced against a judicial officer except on a complaint or information signed by or on behalf of the Attorney-General of the Federation or of the State (section 98C(1) and (2)) CC. For the purposes of offences of official corruption, a judicial officer is defined under section 98C (3) CC.

The giving or receiving must relate to public officer's duty
Note that, under sections 98 and 98A, the giving or receiving of the bribe must relate to the duties of the public officers' office.[16] However, under the sections, a public officer can be rightly convicted if he asks or receives for any other person. In that sense, it is submitted that the bribe may relate to the other person's duty.

2.2. Extortion by public officers
Section 99 of the Criminal Code provides for the offence of extortion by public officers, where the officer takes or accepts a bribe for the performance of his duties, any reward beyond his proper pay and emoluments, or any promise of reward. The punishment is imprisonment for three years. It would appear however, that looking at the wording of section 99 nothing suggests extortion. Rather, note that extortion is committed where the public officer uses his office to obtain or receive property or benefit which ordinarily the person who gives will not part with but for the threat. The right section of the Criminal Code dealing with extortion is section 406, which provides the offence of demanding property with menace with intent to steal it. The punishment for this is imprisonment for three years.

[8] See section 98B(1) (a) (b) (i) and (ii) CC.
[9] See section 98B(2)(a)(c) and (d) CC.
[10] See section 98(3)(a) and (b) CC
[11] See *Sogbanmu v. C.O.P.* 12 W.A.C.A. 356.
[12] See *Biobaku v. Police* (1951) 20 N.L.R. 30.
[13] 1959 N.N.L.R. 22
[14] supra
[15] See the English case of *R v. Smith* 1960 2 QB 431.
[16] See *R v. Eka* 1945 11 W.A.C.A.

The definition of extortion in section 291 of the Penal Code as intentionally putting another in fear of any injury to that person or any other and thereby dishonestly induces the person so put in fear to deliver to any person any property or document of title or anything convertible to valuable property, is unambiguous. The punishment is up to five years imprisonment or with fine or both.[17] In the English case of *Thorne v. Motor Trade Association*,[18] per Lord Wright, a menace was interpreted as a threat of any action that is detrimental to or unpleasant to the person addressed. The wording of section 406 of the Criminal Code and that of section 291 of the Penal Code in substance, accords with this definition.

It is noteworthy that despite the provisions of sections section 99 and 406 of the Criminal Code, section 404(1)(a) of the Code is however often used for public officers who extort money or other property. This is because of the use of the words 'under the colour of' in that section. Thus, a public officer who corruptly and under the colour of his employment demands or takes property from any person is guilty of an offence, notwithstanding that no threat was used. The punishment is imprisonment for five years. According to the definition of the words 'under the colour of' decided in the English decision of *Wallace Johnson v. R*,[19] this phrase was held to require some element of pretence on that part of the public officer that he was entitled to the money or that he has a duty to receive it. In *Potts Johnson v. C.O.P.*,[20] for instance, a woman welfare officer threatened three prostitutes that unless they pay her a certain sum of money, she would cause them to be repatriated. The prostitutes seeing that their means of livelihood is endangered paid the officer the money and she was held guilty under section 404. Following the decision in Potts Johnson, it may be right to submit that it is not necessary under section 404 that there should be pretence at to the fact that the public officer is entitled to the money and that it is sufficient if the public use the power or influence of his office to demand for the money. This decision is therefore not in accord with that of Wallace Johnson on the same point. However, in *Motayo v C.O.P.*,[21] the decision in Potts Johnson was rightly reversed on the basis that the words 'under the colour of' requires some element of pretence that the public officer is legally entitled to the money as decided in Wallace Johnson.[22] In any case, it is important to know that the essential requirement under section 404(1)(a) is that, the demanding or taking must be done corruptly, with the element of corrupt intent accompanying either the demanding or taking simultaneously.[23] Other offences of official corruption are contained under sections 101, 102 and 103 relating to public officers knowingly acquiring interest directly or indirectly in government contract or agreement made on account of the public service, etc., with different grades of punishment.

2.3 Abuse of office

Under the Criminal Code, it is an offence for a public officer to abuse the authority of his office by doing or directing to be done, any arbitrary act prejudicial to the rights of another. Such officer is guilty of a misdemeanour, and is liable to imprisonment for two years. Where the act done or directed to be done by the pubic officer is for the purposes of gain, he is guilty of a felony, and is liable to imprisonment for three years.[24]

3. The Offence of Stealing In Nigeria

Section 390 of the Criminal Code of Nigeria creates the offence of stealing. This offence as defined under the Code, a person who fraudulently takes or converts to his own use or to the use of any other person anything capable of being stolen, is said to steal that thing.[25]

Things Capable of being stolen

Under the Nigerian Criminal Code, it is not everything that can be stolen.[26] The following are capable of being stolen:

i. Every inanimate thing which belongs to any person and which is movable;
ii. Every inanimate thing which belongs to some person and which is capable of being made movable, as soon as it is made movable although it is made movable in order to steal it.

[17] See section 292 PC.
[18] 1937 AC 797 at 817
[19] (1938) 5 W.A.C.A. 56
[20] (1947) 12 W.A.C.A. 198
[21] (1950) 13 W.A.C.A. 22
[22] In other words, the public officer should extort money or property under section 404(1) CC under the guise or pretence of being legally entitled to it and which his employment gives a cloak of legality to in the mind of the giver. Unfortunately, the decision in Motayo's case has not been followed in other cases. See *Otiti v. I.G.P.* 1960 L.L.R. 123; *Azubogu v. C.O.P.* (1948) 12 W.A.C.A. 358.
[23] See *R. v. Okuma* (1936) 13 N.L.R. 106.
[24] Section 104 CC.
[25] Section 383 (1) of the Criminal Code, Cap C41, Laws of the Federation of Nigeria, 2004.
[26] Section 382 of the Code contains a list of things capable of being stolen.

It follows from the foregoing that for any inanimate thing to be capable of being stolen, it must be owned by a person and must either be movable or capable of being made movable; hence land cannot be stolen since it is not movable and cannot be movable.[27] Also, an ownerless property cannot be stolen. A thing may be ownerless for instance, because it is incapable of being owned at all or because it is abandoned. At common law, a corpse cannot be subject of ownership and therefore cannot be stolen.[28]

Taking

To constitute a taking, it is not necessary for the thief to take the thing completely into his physical possession. On the contrary, a person is deemed to have taken a thing if he moves it or causes it to move.[29] For instance, if A with intent to steal a book from B's briefcase begins to take out the book whereupon B suddenly shouts at him and he drops the book back into the briefcase, A's conduct constitutes stealing and not merely an attempt to steal.[30]

Converting

Unlike taking, the Code does not say what constitutes a conversion. It is suggested, however, that the word 'conversion' in section 383 has the same meaning, which it bears in the parlance common law.[31] Dealing with the meaning of conversion Atkin J. (as he then was) said *inter alia* that:

> Dealing with goods in a manner inconsistent with the right of the true owner amounts to a conversion, provided that it is also established that there is also an intention on the part of the defendant in so doing to deny the owner's right or to assert a right which is inconsistent with the owner's right.[32]

The above description of conversion received judicial certification in the case of *Ajiboye v. The State*[33]. Conversion includes such acts as: taking possession, refusing to give up possession upon demand, disposing of the goods to a third person, or destroying them (Note 86). For conversion to amount to stealing, it must be done with one of the fraudulent intents under section 383 (2) of the Criminal Code. In *Onwudiwe v. Federal Republic of Nigeria*,[34] Niki Tobi JCA (as he then was), stated that: 'Conversion is both an offence and a tort. Conversion does not have a life of its own in the Criminal Code but is parasitic on the offence of stealing. As a matter of law, the definition of stealing under section 390 of the Criminal Code includes larceny, embezzlement and fraudulent conversion. It is the fraudulent nature that separates it from the tort of conversion'.[35] As it is pointed out, the prosecution has to show that the act of conversion is done for the use of the accused or to the use of any other person. Where, therefore, some money was moved by the accused from one safe to another in the same room, the Court held that no offence was committed, though the two safes from where the act was done belonged to his employer.[36]

The Elements of Fraud

It is not every taking or conversion that will suffice to support a charge of stealing. In order to constitute the offence of stealing, there must be an element of fraud. Section 383 of the Code sets out six intents which would render a taking or conversion fraudulent. In considering whether or not there existed one of these six fraudulent intents, the test is by determining what was the intent of the accused person at the time of the taking or conversion.[37] These six intents are as follows:

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[27] *Ojiko v. Inspector General of Police* (1956) 1 F.S.C. 62. A received money from B in order to buy land in A's name and then transfer same to B. A bought the land but refused to transfer same to B. The Court held that A was not guilty of stealing the money since he spent same for the purpose it was intended. Also, it was held that A was not guilty of stealing the land because land is not movable and hence not capable of being stolen.

[28] ATH Smith, *Stealing the Body and it Parts*, [1976] Crim. L.R. 622 cited in CO Okonkwo, *Criminal Law in Nigeria*, p. 296.

[29] Section 386 (6).

[30] cf. *R v. Taylor* [1911] 1 K.B. 674. Cited in CO Okonkwo,

[31] CO Okonkwo, *Criminal Law in Nigeria*, p. 288.

[32] *Lancashire and Yorkshire Railway Company v. MacNicol* (1919) 88 L.J.K.B. 601 at 605.

[33] (1994) 8 NWLR (P. 364) 599 at 602.

[34] (2006) 10 NWLR (Pt. 988) at 428, *per* Niki Tobi JCA (as he then was).

[35]The definition of Stealing in *Black's Law Dictionary* also uses the words: 'Larceny, embezzlement and fraudulent.' See Garner B.A. (ed.), *supra* n. 25.

[36]*R. v. Anyadiagwu* (1984) 9 WACA 67.

[37] Cf. *R v. Williams* [1953] 1 All E.R. 1068; *fl. v. Trebilcock* (1858) D. & B. 453. See CO Okonkwo, *Criminal Law in Nigeria*, p. 291.

a) **An intent permanently to deprive the owner of the thing of it.**[38] This is the commonest intent in cases of stealing.[39] If the intent is merely to deprive the owner temporarily,[40] it is not stealing unless there is also any of the other intents set out in section 383 (2) of the Code. A conditional taking (i.e with intent to keep only such of the goods as are valuable) would not suffice.[41] It is submitted elsewhere,[42] that motive of gain is not of moment in deciding whether a permanent deprivation is fraudulent. As such if A takes or converts B's property and in turn leaves him some more valuable property, the taking or conversion may still constitute the offence of stealing without the extraneous consideration of the motive.

b) **Intent permanently to deprive any person who has any special property in the thing of such property.** This provision protects the right of a person who, though not the owner of the property, has some special interest in it. The term 'special property' includes a charge or lien or any right arising from or dependent upon holding possession of the thing in question. For example, the finder of a lost article has a special property in the article,[43] and the pledgee of goods has special property in the goods pledged.[44] It follows that under this head, a general owner of goods who is not in possession of them may be guilty of stealing his own goods.[45]

c) **Intent to use the thing as a pledge or security.** Under this head, if for example Mr. A takes Mr. B's goods and pledges them or gives them to another person as a collateral/security for a loan or money, it would constitute stealing. It is believed, however, that where A is in lawful possession of B's goods and pledges them out of necessity on a condition which he can satisfy immediately; this ought not to be stealing.[46]

d) **Intent to part with it on a condition as to its return which the person taking or converting it may be unable to perform.** It is submitted that many cases which fall under the previous head will also be stealing under this head but the latter is wider than the former. Suppose X who has never driven a Car nor learnt to drive tells Y that he can drive properly and Y doubts it which led to the duo making a bet. Y stakes his Wrist Watch and X takes Z's Wrist Watch from a nearby table and stakes same. The Watches are handed over to A on condition that he is to give the two Wrist Watches to the winner of the bet. This would constitute stealing under this head and not the previous one.[47]

e) **Intent to deal with it in such a manner that it cannot be returned in the condition in which it was as at the time of taking.**[48] The point is that under this head, the thing taken or converted cannot be returned in substantially the same condition as it was when it was taken or converted.[49] Thus, where the alteration in the condition is too slight or infinitesimal, it would not constitute stealing under this head.

f) **In the case of money, an intent to use it at the will of the person who takes or converts it, although he may intend afterwards to repay the amount to the owner.**[50] It is submitted that the intent here is self-explanatory. For instance, in *State v. Odimayo*,[51] the accused received a loan from a Housing corporation to build a house on a piece of land which he mortgaged to the corporation but he used the money to contest an election instead. He was rightly convicted of stealing because the money still belonged to the Corporation until he used it for the specific purpose for which he received it,[52] and it was of no moment that he might have intended to repay/refund it afterwards. The case of *R v. Orizu*,[53] gives

[38] *R v. Hall* (1849) 2 C. & K. 947; *R v. Holloway* (1849) 2 C. & K. 942.
[39] CO Okonkwo, *Criminal Law in Nigeria*, p. 291.
[40] *R v. Ninedays* (1959) 4 F.S.C. 192.
[41] In *R v. Easom* [1971] 2 All E.R 945, a policewoman placed her handbag on the floor in a cinema. The accused person who sat behind her took it and searched it for money which he intended to steal. There was no money in it but cosmetics, tissues, etc and so he quickly replaced it. His conviction for stealing the handbag and its contents was quashed because he did not intend to deprive her of them. cf. *C.O.P. v. Akpata* [1967] 1 All N.L.R. 235.
[42] CO Okonkwo, *Criminal Law in Nigeria*, p. 292 relying on the case of R v. Cabbage (1815) R. & R. 292.
[43] *Armory v. Delamirie* (1722) 1 Stra. 505.
[44] *Rose v. Matt* [1951] 1 K.B. 810.
[45] CO Okonkwo, *Criminal Law in Nigeria*, p. 293. See Section 388 of the Criminal Code.
[46] *Ibid*
[47] *Ibid*, p. 294.
[48] In a Queensland case of *R v. Bailey* [1924] Q.W.N. 38., A used B's car for three days without B's knowledge or permission. There was a gallon of petrol in the car when A removed the car and A used the petrol for driving the car. The Court held, that A could be properly convicted of stealing the petrol in the car and not of stealing the car since the wear and tear to the car occasioned to the car by reason of the way A used it was too slight to establish an intent
[49] CO Okonkwo, *op.cit.*
[50] *R v. Williams*, supra; *R v. Cockburn* [1968] 1 All E.R. 466; *R v. Rao* [1972] Crim. L.R. 451; *R v. Feeley* [1973] 1 All E.R. 341.
[51] [1967] N.M.L.R. 92.
[52] See Section 385 of the Criminal Code.
[53] (1954) 14 W.A.C.A 455. In this case, the accused collected money from certain persons as deposit for sending them to America on scholarship. He did not send them and did not refund the money on demand or within a reasonable time thereafter. He was convicted of stealing under this paragraph.

> the impression or suggestion that there must be demand and failure to repay or an inability to repay at the time of conversion. However, it may please us to note that no such impression or suggestion appears on the face of this paragraph though it may be reasonable to infer such in some cases. For example, if X gives Y a sum of ₦10.00 (Ten Naira only) to keep for him and Y spends this money being able and willing to refund it both at the time of spending it and upon X's demand therefor, this ought not to constitute stealing.[54] In such a case, it would even be difficult to establish that the particular N10.00 (Ten Naira only) spent by Y is that which belong to X in so far as Y has another Ten Naira and or could refund Ten Naira to X upon demand at any time.

Finding of Lost Property

A finder of lost property does not convert it fraudulently provided that as at the time of the alleged taking or conversion he does not know the owner and believes on reasonable grounds that the owner cannot be found.[55] In a case wherein the accused of removing or using some corrugated iron sheets belonging to the government, his conviction for stealing was quashed because he acted *bona fide* and believed that the said sheets were abandoned.[56]

Punishments for Stealing

Under section 390 of the Criminal Code, any person who steals is guilty of a felony and is liable, where no specific punishment is provided, to imprisonment for three years. There are special punishments provided for under the Code,[57] which apply in the certain special cases. For example, the Code specifies that if the thing stolen is a testamentary instrument, whether the testator is living or dead; or if it is a postal matter or any chattel, money, or valuable security, contained in any postal matter, the offender is liable to imprisonment for life. There are some other special cases of stealing for which the Code specifically prescribes that the punishment is imprisonment for two years or for seven years as the case may be.

4. Interrogating the Legal Nexus between Stealing and Official Corruption in Nigeria

It is important for us to recall that that by virtue of Section 36 (12) of the Nigerian Constitution, a person shall not be convicted of a criminal offence unless the definition of that offence and the penalty therefor are founded in a written law, and a written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law.[58] Section 15(5) of the Nigerian Constitution merely vests power in the State to 'abolish all corrupt practices and abuse of power',[59] but the Constitution does not define corruption. The Nigerian Criminal Code and the Penal Code also do not provide a sufficient definition of corruption. It is the bid to satisfy the objective of this constitutional provision that successive administrations have enacted laws and established institutions with the view to combating corruption. In the Corrupt Practices and Other Related Offences Act (2000)[60], corruption is specifically explained to 'include bribery, fraud and other related offences. The Economic and Financial Crimes Commission (Establishment) Act 2004[61] in its section 46 provides that:

> Economic and Financial Crimes mean the non-violent, criminal and illicit activities committed with the objectives of earning wealth illegally…individually or in a group or in organized manner thereby violating existing legislations governing the economic activities of the government and its administration and it includes any form of fraud, narcotics, drug trafficking, money laundering, embezzlement, bribery, looting….

In the light of the foregoing, it is submitted that in Nigeria, the offences of stealing and official corruption are, as of first importance, distinct from each other. Elsewhere, it is contended that the offence of official corruption under section 98 of the Criminal Code is not committed if the public officer innocently receives the money but formed the corrupt intention only sometime afterwards. This is because the corrupt intent must accompany the receipt of the money to constitute the phrase 'corruptly receives'.[62] In any case, this study observes that stealing

[54] CO Okonkwo, *Criminal Law in Nigeria*, p. 295.
[55] S. 383 (5). For 'reasonable grounds', see *Soko v. R* (1961) R. & N. 847
[56] *R v. Vega* (1938) 4 W.A.C.A. 8. See *Unimokong v C.O.P*. (1965) 9 E.N.L.R. 32.
[57] *Ibid.*
[58] The Constitution of the Federal Republic of Nigeria, 1999 (as amended).
[59] *Ibid.*
[60] Cap. C31, Laws of the Federation of Nigeria, 2004.
[61] Cap. E1, Laws of the Federation of Nigeria, 2004.
[62] Reliance is usually placed on the case of *A.G. v Kajembe* (1958) E.A. 505 at 513 where the East African Court of Appeal held on section 91 (1) of the Tanganyika Penal Code which had a marked similarity to section 98 of the Criminal Code, that 'where the accused person having innocently received the money, subsequently decided to, and did misappropriate the money and convert it to his own use, that might well have constituted some other offence such as theft…' In this case, a woman has given money to a police constable to give to a complainant in the hope that the, satisfied with such compensation for his stolen bicycle, the complainant would withdraw the case against her brother whom he accused of stealing it. The

as defined under the Criminal Code would subsume what the EFCC Act refers to as embezzlement and looting which may arise from fraudulent conversion by a public officer of anything capable of being stolen. Again, since section 2 of the ICPC Act defines corruption to include *any form of fraud and other related offences*, it is therefore submitted that cases of stealing by fraudulent conversion would constitute official corruption where the offender is a public officer or public servant. By parity of reasoning, this inquiry posits that generally the offence of official corruption can be committed if the public officer innocently receives the money but formed the corrupt intention to fraudulently convert or divert the money only sometime afterwards. This is because corruption statutorily includes any form of fraud, and other related offences, such as fraudulent conversion, embezzlement and looting which are species of the offence of stealing.

5. Official Corruption in Kenya and India

5. 1. Anti-Corruption Regulation Survey of Kenya[63]

Kenya has a series of laws that cover bribery. These include: the Constitution of Kenya, 2010, the Penal Code, the Anti-Corruption and Economic Crimes Act, the Public Officers and Ethics Act, the Elections Act, the Leadership and Integrity Act and international treaties. The principal statute that covers bribery of all kinds is the Anti-Corruption and Economic Crimes Act of 2003 (ACEC). Chapter 6 of the Kenyan Constitution deals with leadership and integrity. This Chapter applies mainly to State Officers. Article 76 (1) of the Kenyan Constitution provides that a gift or donation to a State Officer on a public or official occasion is a gift or donation to the Republic and shall be delivered to the State unless exempted under an Act of Parliament. Any state officer who contravenes this Article can be removed from office and disqualified from holding any other public office. The Kenyan Constitution further prohibits a state officer from maintaining an account outside Kenya except in accordance with an Act of Parliament, and from seeking or accepting personal loan or benefit in circumstances that compromise the integrity of the State Officer.[64] The term 'public officer' is defined under the Leadership and Integrity Act, No. 19 of 2012 (LIA) by reference to the meaning assigned to it under Article 260 of the Constitution. Article 260 of the Constitution defines 'public officer' as any state officer or any person, other than a state officer, who holds a public office. The term 'public office' is defined under the Constitution to mean an office in the national government, a county government or the public service, if the remuneration and benefits of the office are payable directly from the Consolidated Fund or directly out of money provided by Parliament.

5.2. The Prevention of Corruption Act, 1988: An Anti-Corruption Tool In India[65]

The Prevention of Corruption Act 1988 (hereinafter referred to as 'the Corruption Act') was enacted to consolidate different anti-corruption provisions from various pieces of legislation under one umbrella and to make them more effective. The Corruption Act, inter alia, widened the scope of the definition of a 'public servant'; enhanced penalties provided for offences in earlier laws; incorporated the provisions of freezing of suspected property during trial; mandated trial on a day-to-day basis, prohibited the grant of stay on trial; etc. Since the Corruption Act is the main law for dealing with offences pertaining to corruption in India, its salient features are discussed below.

Definition of 'Public Servant' in India

The Corruption Act deals with corruption in the public sector by public servants. Though the Corruption Act does not cover corruption in the private sector, the definition of 'public servant' in section 2 of this Act even covers certain categories of people who are not employed by the government. The Corruption Act does not only cover persons employed by the government or in the regular pay of the government but also persons remunerated by fees or commission for the performance of any public duty by the Government but not employed by it. The latter category is very important in my opinion because, by virtue of their position, such persons enjoy considerable power and can abuse the same to indulge in corrupt activities. The Corruption Act thus includes the Ministers, members of Parliament, State Legislative Assemblies, Municipal Corporations, State Cooperative Societies etc in its fold.

policeman had kept the money. The Court remarked that under subsection (1) it is the mental attitude of the recipient of the bribe that is vital, whereas under subsection (2) it the mental attitude of the giver. It from the decision in this case that the receiver of money may be guilty because he had a corrupt intention even though the donor's intention be not corrupt.

[63]Jones Day *Anti-Corruption Regulation Survey of Select Countries,* available at <http://www.jonesday.com/files/Publication/8a15a2cf-9d6d-43cd-942e 015493d8db26/Presentation/PublicationAttachment/f5d92402-d49e-4afc-a74f-01a5b9fde574/AntiCorruption%20Regulation%20Survey%202015%20%5BFINAL%5D.pdf> accessed on 28 May 2022.

[64] Article 76 (2) (a) & (b)of the Constitution of Kenya, 2010. cf. The Leadership Integrity Act of Kenya.

[65] DC Jain, *Effective Legal And Practical Measures For Combating Corruption: A Criminal Justice Response: An Indian Perspective*, available at <http://www.unafei.or.jp/english/RS_No77/No77_12PA_Jain.pdf> accessed on 27 May 2022.

Offences and Penalties under the Indian Corruption Act

Various acts of omissions and commissions defined as offences under the Corruption Act can be broadly divided into the following categories:

(i) **Bribery of Public Servants:** punishable by sections 7, 10, 11 & 12 of the Corruption Act. Sec. 7 punishes a public servant or a person expecting to be a public servant, who accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act. The important point to note is that even the sheer demand of a bribe or agreeing to accept a bribe is an offence under this law. Actual exchange of a bribe is not an essential requirement to be prosecuted under this law.

(ii) **Embezzlement, Misappropriation of Property by Public Servants:** punishable by sec. 13 (1) (c) of the Corruption Act. Sec. 13 (1) (c) punishes public servants who dishonestly or fraudulently misappropriate or convert to their own use any property entrusted to them as a public servant. This offence is punishable with a minimum imprisonment of one year, extendable up to seven years, and also with a fine.

(iii) **Abuse of Functions by Public Servants:** punishable by sec. 13 (1) (d) of the Corruption Act. Sec. 13 (1) (d) punishes public servants who abuse their official position to obtain for themselves or any other person, any valuable thing or pecuniary advantage (quid pro quo is not an essential requirement). This offence is also punishable with a minimum imprisonment of one year, extendable up to seven years, and also with a fine.

(iv) **Illicit Enrichment of Public Servants:** punishable by sec. 13 (1) (e) of the Corruption Act.

(v) **Attempt at Certain Offences by Public Servants:** punishable by sec. 15 of the Corruption Act. An attempt at committing offences pertaining to criminal misappropriation of property or abuse of official position by a public servant is punishable with imprisonment for up to three years and also with a fine, under section 15.

6. Conclusion and Recommendations

Nigeria is not bereft of laws, which are enacted to combat corruption, but the problems have always been whether they are adequate in scope and functions and then the enforcement factor before other considerations. Nigeria's response to corruption dates back to the pre-colonial era, when offences relating to corruption and abuse of office were included in the Criminal Code. In 1966, the military administration stipulated further offences and included judicial officers as potential offenders. In Nigeria and other parts of the world, the offences against corruption serve many purposes apart from the general criminal law aims of punishing the offender and deterrence. In other words, offences against corruption are marks of disapproval of the acts of corruption but importantly they also protect the society against corruption. It is observed that the extant Constitution of Nigeria under its Chapter II donates power to the State to abolish all corrupt practices but sadly, the Constitution goes no further than the said blanket donation of power. In fact, instead of defining corruption and or making more specific provisions toward combating corruption, the Constitution turned back and declares non-justiciable the said Chapter II of the Constitution which contains the section that donates anti-corruption power to the State. It is noted that the offence of stealing under the Nigerian Criminal Code subsumes cases of looting, embezzlement and fraudulent conversion of things capable of being stolen; hence the offence of stealing may amount to corruption when the offender is a public servant or officer. It is finally observed that there is no harmonized Statute on Corruption. In the premises of the foregoing, the following recommendations are hereby offered:

1. The Constitution of Nigeria which is the organic law of the land should be amended to create a significant, meaningful and concrete constitutional framework toward combating official corruption squarely and toward the abolition of all corrupt practices in Nigeria. The provision of Article 76 of the Kenyan Constitution is a good example to emulate.
2. The National Assembly is urged to harmonize all laws on corruption in Nigeria and provide for stricter punishments for public officers who engage in corrupt practices. It is proposed that every Public Officer found guilty of official corruption or of stealing public fund or property should be liable to imprisonment for life unless he refunds or returns all his loots.
3. Embezzlement, looting, misappropriation of public fund should be specifically defined and punishments for each of them be prescribed.
4. Government officials and every public servant/officer should be constitutionally forbidden from maintaining a bank account outside Nigeria maintaining except in accordance with an Act of National Assembly, and from seeking or accepting personal loan or benefit in circumstances that compromise the integrity of the Public Officer.