The LAW & COVID-19

Analysis on the applicable laws and facts surrounding the Mismanagement of covid-19 intervention fund/palliative in Nigeria, Kenya and Ghana.
The Corona virus disease struck in 2019 and was declared a pandemic by the World Health Organization in 2020. At the time of the publication of this paper, Nigeria had received a total of $5.6bn intervention fund from 10 institutions, local and global alike as donation towards curbing and ameliorating the spread and effect of the disease.

The analysis on the applicable laws and facts surrounding the mismanagement of Covid-19 intervention fund in Nigeria, Ghana and Kenya became necessary due to the allegation of mismanagement and misappropriation amongst public officials in Nigerian To ensure that these findings are actionable, we have submitted facts and petitions to relevant government anti-corruption bodies to ensure the allegations are further investigated and perpetrators are brought to book and, where appropriate, Gavel has commenced the monitoring of cases in court in relation to Covid19 corruption cases.
This research seeks to identify cases of mismanagement and misappropriation by government actors and stakeholders involved in the procurement, distribution and utilization of Covid-19 palliative resource, funds and relief materials across Nigeria, Kenya and Ghana with the aim of applying extant provisions of applicable anti-corruption laws in these three countries to all corruption allegation against the listed state actors. The allegations levelled against actors in this paper should inform and gear up necessary investigation by anti-corruption agencies in these countries to promote transparency and accountability within the Country.

Primary source of materials such as the Constitution of the Federal Republic of Nigeria 1999 (as amended) and Constitutions of Ghana and Kenya respectively, the Criminal Code, the ICPC Act, the EFCC Act, and various anti-corruption laws applicable in Nigeria, Ghana and Kenya will be employed in the writing of this paper. Secondary sources such as journals, articles and internet materials will also be used in carrying out this research.
About Us

Gavel is a not-for-profit/non-governmental organization with the aim of increasing the pace of justice delivery through access to justice, digital technology and citizens’ engagement. Since our inception three years ago, we have tracked court cases, promoted transparency and accountability in the justice sector and also provided free legal support for indigent persons while advocating for the rights of indigent Nigerians.

Our work in these areas has revealed a gaping hole in the fabrics of the nation especially in the areas of corruption and anti-corruption campaigns, abuse and brutalization of Nigerian citizens by the police, and the ever-growing numbers of indigents inmates in prisons awaiting trials.

We have so far continuously monitored and tracked anti-corruption cases in court and provided necessary data to the public on these cases. This is aimed at galvanizing the conversation around these cases and to advocate for their early resolution. We have represented numerous victims of human rights abuse in court and we have been able to get recompense for them.

About GAVEL

Love Ikhine
Oluwaseyi Arowosebe
Oluwafemi Ajibade
Nelson Olanipekun

Design/visualization Analyst:
Oluwadamilare Ayankoya.

Research Team
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Introduction

Following the Corona virus disease which brought the world and global economy to a standstill in 2020, the novel disease popularly known as the Covid-19 left in its wake a trail of staggering economy, broken dreams and millions of persons with no hope of ever reuniting with their loved ones, physically. The disease which was initially reported to the World Health Organization on 30th December, 2019, was subsequently declared a global pandemic on 11th March, 2020. This dreaded declaration called for an urgent need for presidents of various countries across the globe to strategize and reevaluate policies and decisions aimed solely at ensuring that citizens of their country are not met with untold hardship as a result of their decisions and actions.

While the reality of Covid-19 had dawned in some countries around the world, Nigeria was yet to confirm any case of the novel virus until the 27th February, 2020. The first patient who happened to be an Italian citizen had just returned from Milan to Nigeria and was confirmed by the Virology Laboratory of the Lagos State University Teaching Hospital as being infected with the virus. The Nigerian Government in collaboration with the Federal Ministry of Health immediately swung into action, taking decisions aimed at preventing an outbreak of the disease in Nigeria. Alas, it wasn’t to be, as Nigeria and its people caved under the weight of the deadly virus which necessitated the immediate need for a lockdown in over 24 states of the Country, borders were shut and interstate travel bans were effected to curb the spread of the disease. The economy and everything with it gradually came to a halt. A total of 163,888 cases have been recorded and Nigeria has received the sum of USD 5.6 billion as intervention funds from local and international organisations. Nigeria being a country of approximately 200 Million people, the per person allocation of the intervention fund stands at USD 28 (₦10,640).
As with seasons, Ghana had quite a different experience. Ghana confirmed its first two cases of Coronavirus on Thursday, 12th March, 2020. Both individuals had returned to Ghana from Norway and Turkey and were subsequently confirmed to be infected with the virus by the Noguchi Memorial Institute for Medical Research in Ghana. As with countries with confirmed cases of the virus around the world, the Government of Ghana worked assiduously to contain the spread of the virus which eventually resulted in a decision to impose partial lockdown restrictions on hotspots of the disease such as Kumasi, Accra and Kasoa in the Central Region of Ghana. A total number of 91,009 cases were recorded across Ghana and USD 1.3 billion was received as intervention funds. Given that Ghana’s population is approximately 31 Million, a per person allocation of the fund stands at USD 42 (242.7 cedis).

Kenya had its first case of corona virus confirmed by its Ministry of Health on 12th March, 2020 since the beginning of the outbreak in March. The confirmed case of Covid-19 was a lady returning from the United States of America to Nairobi and accordingly confirmed by the National Influenza Centre Laboratory, Kenya. With a confirmed case of the viral disease, the Kenyan Government was saddled with the responsibility of ensuring the lives of its citizens were safe from the disease plaguing the World. The government of Kenya eventually imposed an initial lockdown for a period of 21 days, banning road travel and flights in and out of the country. Kenya recorded a total number of 139,842 covid19 cases. The effect of this restriction quite visibly plunged the economy and citizens of Kenya into great hardship, to cushion the effect the Country has received the sum of USD 0.7 billion in intervention funds. Kenya’s population at approximately 53 Million, per person allocation of the said intervention fund is at USD 13 (1397 Kenya shillings).
To ameliorate the hardship that occasioned the lockdown of all activities and States in all countries listed above, Government, well-meaning individuals and Organizations across the globe donated financially for the purpose of cushioning the effect of the disease on these Countries’ Health sector and Citizens. These donations were to be managed by government and private stakeholders to provide palliative relief measures for the most hit demography, especially the rural areas and the low-income communities. While measures were being put in place to address the pangs of hunger and loss of lives that came with the Covid-19 pandemic, corruption thrived amongst public servants and institutions saddled with the responsibility of ensuring that citizens, hospitals and isolation centres were beneficiaries of intervention funds.

This research therefore seeks to examine the instances of corruption and unaccountability in all three countries stated above, the officials and institutions involved, corruption laws applicable in these instances and appropriate legal recommendations.
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Anti-Corruption legislation is always construed to ensure that society is adequately protected against the cankerworm of corruption with its attendant destructive effect on the body polity of society— Alhaji Sanni Dododo v. EFCC & Ors (2013) NWLR (pt. 1336) 468 at 511. The laws enacted to protect Nigeria from the endemic called corruption are listed below—

1. Constitution of the Federal Republic of Nigeria 1999 (as amended)— Also known as the grundnorm of the land. The Nigeria Constitution is supreme and as such has a binding effect on all persons and authorities throughout the Federal Republic of Nigeria. Where any law is inconsistent with provisions of the Constitution, the Constitution shall always prevail and such law shall be void to the extent of its inconsistency.


3. Economic and Financial Crime Commission Act (EFCC)


LAWS APPLICABLE TO COVID-19 RELATED CORRUPTION CASES IN GHANA.

3. Serious Fraud Offence Act, 1993 (Act 466)
5. Public Procurement Act, 2003 (Act 663)
6. 
7. Penal Code
LAWS APPLICABLE TO COVID-19 RELATED CORRUPTION CASES IN KENYA.

2. Penal Code Cap 63
5. Public Procurement and Disposals Act, 2016
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ALLEGATIONS OF CORRUPT PRACTICES WITHIN THE COVID-19 INTERVENTION FUND CHAIN

Prior to covid-19 emergence in Africa, many African countries have been bedevilled with corruption. With increase in poverty, global economic depression and despair, public and political officers corruptly profited from the pandemic. We have outlined below ten allegations:

“A lack of transparency results in distrust and a deep sense of insecurity”- Dalai Lama.

To ensure improved transparency, accountability and reduced incidents of corrupt practices, the Nigeria Open Contracting Portal (NOCOPO) was created with the aim of ensuring competitive, value for money standard and practices for the procurement and disposal of public assets. With the occurrence of Covid-19 in Nigeria, all states were therefore mandated to input details of projects embarked on, source of project funding, contract sum for projects embarked on and other necessary information for active participation and engagement by the citizens of Nigeria. It has, however, been discovered that amongst the myriads of projects undertaken by the Nigeria Centre for Disease Control, Abuja, a certain project for the supply of oral and nasal swab amounting to forty-four million, one hundred thousand naira (44,100,000)\(^1\) with the source of funding being the Covid-19 intervention fund and a total of 7 days project completion is devoid of the name of the contractor who handled such project. Listed as number fifty (No. 50) of 135 projects embarked upon by the Nigeria Centre for Disease Control, Abuja, the supply for oral and nasal swab is the lone project without a named contractor.

The standard provided by NOCOPO stipulates that all procurements by institutions and health centers must be adequately stated on the website which consequently makes the said project run foul of the requirements stipulated for transparency and accountability.

Kogi State may be referred to, as the proverbial and modern day “land of Goshen”, for while some State governors fell over themselves to ensure effective measures were put in place to flatten the curve of Covid-19, Kogi State declared itself exempted from the “pandemic”. The Confluence State under the leadership of Governor Yahaya Bello had seemingly devised a most effective means of tracking corona virus by the use of a risk assessment software procured at the cost of a whooping Ninety million, Seven hundred and Twenty Thousand Naira (N90,720,000). If the cost of this software is in tandem with obtainable market prices in the tech industry is what was disproved by a local journalist who claims that same software now goes for a paltry sum of 300,000 from the same company that developed it for the Kogi State Government. Unfortunately, the risk assessment software which was procured at such ridiculous amount has however stopped running due to the fact that contractual terms between the Kogi State Government and the said company responsible for hosting the software was for a term of 1 year only.

Kogi State Government had received a total of 4.5 billion naira being monies obtained from loans, donations and support from the Federal Government in 2020, of the total amount stated above, N90,720,000 was spent on the software tracking app which the State Commissioner of Information, Mr. Fanwo, was unfortunately unable to corroborate as he claimed that the procurement of the software project was less than a million naira. It then becomes mind boggling how financial records certified by the Accountant General of Kogi State- Momoh Jibirin and the Commissioner of Finance- Asiru Idris reveals (N90,720,000) as the cost for procurement for the software. When contacted by journalists, the state Commissioner for information, Mr Fanwo did not specify the amount spent on the project but claimed it cost the government less than a million naira.
What steps should be taken to nip this brazen act of inconsistency and corruption thriving in Kogi State? What process has the Nigerian Constitution and anti-corruption laws provided to checkmate such open and arbitrary stealing? What does the laws provide for in instances such as this? How do we ensure proper accountability of funds received by the Federal Government to States?

3 STEALING AND RECEIVING OF PALLIATIVE BY OFFICIALS OF THE OYO STATE MINISTRY OF LOCAL GOVERNMENT AND CHIEFTAINCY AFFAIRS

A corrupt act needs not meet a certain requirement or magnitude to qualify as corruption—Nelson Olanipekun.

“Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organised crime, terrorism and other threats to human security to flourish. It hampers efforts to alleviate poverty, undermines political stability and economic growth and diminishes the country’s attractiveness for investment.”

On the 30th December, 2020, Sunday Akinleye, a 43-year-old, Adebiyi Azeez, 50-year-old and Mrs. Kafayat Babalola met their Waterloo as they were apprehended by security officers for stealing and selling 40 bags of sugar from Oyo State Covid-19 palliative. Mr. Sunday Akinleye, an Assistant protocol officer saddled with the responsibility of distributing palliative at the Ministry of Local Government and Chieftaincy Affairs conspired with Mr. Adebiyi Azeez, a driver to make use of the official vehicle of the State to deliver the bags of sugar to Mrs. Kafayat.

The trio were subsequently charged at the Iwo Road Magistrate Court with 3 counts, to wit—conspiracy to steal, stealing and receiving of stolen properties. Their actions contravened sections 516, 390 (9) and 427 of the Criminal Code of Oyo State. They have, however, been granted bail by the court and the matter subsequently adjourned for further hearing.

One of the ways which the Lagos State Government devised to ensure that the viral and sporadic spread of the Covid-19 disease can be controlled was to provide designated health facilities where residents of Lagos State can get tested at no cost when they suspect symptoms of the disease or contact with an infected person. However, this measure was frustrated by officials of public testing laboratories who redirected patients to private owned laboratories or laboratories with known private-public partnership with the Government.

A local journalist who suspected himself to be infected with likely symptoms of Covid-19 visited designated public laboratories for free testing but was turned down and redirected to private laboratories for the Covid-19 test which costs Fifty thousand naira only (N50,000). A week after scouring the State for government designated laboratories including and not limited to- Yaba Infectious Disease Hospital, Lagos University Teaching Hospital (LUTH), International Organization for Migration Clinic, Nigeria Centre for Disease Control (NCDC) Central Public Health Laboratory and Nigeria Navy Reference Hospital, the feedback from these public institutions ranged from redirecting him to a private hospital or mention of the testing centers not functioning. After consulting all listed laboratories and the NCDC, the journalist visited the Nigeria Institute for Medical Research and was offered to be tested for free, 24 hours after taking the covid-19 test, the result was sent to his email. He tested negative.

It is a most tragic occurrence that hospitals listed for the purpose of freely testing patients with the Covid-19 symptom have diverted most suspected patients to private laboratories for the purpose of enriching the purses of these private laboratories.

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Ibid

Ibid
5 CACOVID 19 PALLIATIVE AS SOUVENIR FOR MOJISOLA ALLI-MACAULAYS’ BIRTHDAY.

“Corruption is paid by the poor”– Pope Francis

In the early hours of 30th October, 2020, social media users went into a frenzy and most social platforms went agog with news of Mojisola Alli-Macaulay, member representing Amuwo Odofin 1 at the Lagos State House of Assembly, as pictures and videos surfaced online with donations from the Coalition Against Covid (CACOVID) palliative being used and shared as souvenirs for her birthday.

The pictures which went viral on social media revealed donations of food stuffs from the Coalition Against Covid such as cartons of Indomie Noodles, Garri etc.

6 ALLEGED ILLEGAL WITHDRAWAL OF 900 MILLION COVID 19 INTERVENTION FUND FROM THE LOCAL GOVERNMENT JOINT ACCOUNT FUNDS.

“Corruption is a cancer, a cancer that eats away at a citizen’s faith in democracy, diminishes the instinct for innovation and creativity.” – Joe Biden

The pandemic was met with great skepticism and labelled a hoax by the Cross River State Government. Governor Ben Ayade declared the state free of the pandemic and was of the unpopular opinion that the use of masks alone would suffice to curtail the spread of the virus. Indeed, the People’s Paradise remained “free of the virus” until the 7th of July, 2020 when the National Centre for Disease Control (NCDC) confirmed five cases of Covid-19 in the State. Until NDDC’s announcement in July, the People’s Paradise was the only south southern state in Nigeria with no confirmed case of the virus, regardless of the known fact that Akwa Ibom, Cameroon and Benue, states which Cross Rivers

14 Sahara TV. Retrieved April 10th 2021, from https://www.youtube.com/watch?v=_eVPP2d5Wh0
borders with had all recorded confirmed cases of the virus.\(^{19}\)

Governor Ayade disregarded any form of testing or contact tracing\(^{20}\) as he relied on his foolproof plan of masks and a minimum number of 5 persons per gathering to stop the virus from infecting the people of Cross Rivers State. Of the Covid-19 allocation made to the State by the Federal Government, the Efik Leadership Foundation\(^{21}\) in its letter to President Muhammadu Buhari alleged the illegal withdrawal of Nine Hundred Million Naira (N900,0000,0000) by Governor Ayade from the Local Government joint funds in the State ostensibly marked for Covid-19 interventions.\(^{22}\) Whatever purpose the money withdrawn by the Governor served is unknown to all as there exists no form of accountability on the use of such an amount neither has the claims been investigated nor letter addressed to the government been responded to.\(^{23}\)

7

ALLEGED MISAPPROPRIATION OF Sh. 7.8 MILLION MEANT FOR THE PURCHASE OF EMERGENCY PPE

“We need to tell each other our stories. We need to show that everyone — our neighbours, our families, our community leaders — everyone we know is touched by corruption.”— Jennifer Lawrence.

The pandemic plunged the Kenyan economy into a dire and critical state. The ripple effect of Covid-19 was revealed in the unemployment crisis that rocked Kenya with at least 13 million persons out of jobs,\(^{24}\) an exponential increase in the number of persons defaulting in payment of their rents and commuters who resulted to walking due to the exorbitant cost of transportation.\(^{25}\)

The Kenyan health sector suffered a great hit from the pandemic as the system lost at least 14 doctors\(^{26}\) in the space of 4 months and health workers in public hospitals decried poor quality of supplies and defective personal protective equipment. Kenya received goodwill donations from the international community and over 2 billion dollars\(^{27}\) worth of aid and grants to help in the fight to curb the virus. Unfortunately, preliminary findings revealed that laws guiding procurement in the Country were flouted when

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\(^{19}\) Ibid

\(^{20}\) Ibid

\(^{21}\) Ibid

\(^{22}\) Ibid

\(^{23}\) Ibid


\(^{25}\) Ibid


tenders were being awarded. The sum of Sh7.8 was allegedly misappropriated. Reports from the Kenya Ethics and Anti-Corruption Commission established criminal culpability on the part of public officials in the purchase and supply of Covid-19 emergency commodities at Kenya Medical Supplies Authority. Further investigation has revealed nepotism in the process of companies that benefited from tenders and contracts for supplies of medical emergency commodities and instances of purchasing PPEs and other Covid-19 medical needs at grossly inflated prices.

President Uhuru Kenyatta has ordered for the prosecution of all public officials and institutions involved in the KEMSA corruption scandal and at the time of this report, six senior officials have been recommended for prosecution by the Ethics and Anti-Corruption Commission (EACC)

"We need to tell each other our stories. We need to show that everyone - our neighbors, our families, our community leaders - everyone we know is touched by corruption." - Jennifer Lawrence.

Corruption permeates the fabric of every society and negatively impacts everyone in its wake. It reflects in all spheres of the nation and trickles down to the lowliest of grassroots activities. On the 24th March, 2021, three officials of the Oyo State Road Traffic Management Agency were arrested by officials of the Nigeria Security and Civil Defence Corps (NSCDC) for allegedly stealing seventy (70) bags of maize meant for distribution as Covid-19 palliative. The trio were arrested while loading the palliative into a waiting vehicle. At the time of this report, they have been granted bail by the NSCDC and will be accordingly prosecuted pending the arrest of a fourth person who also conspired with them to commit the criminal act.
NDDC’s UNACCOUNTABILITY IN EXECUTION OF COVID-19 RELATED PROJECTS IN DELTA STATE

Covid-19 is not just a health or economic crisis, it is a corruption crisis—Alison Mathews.

The Niger Delta Commission was rocked with financial recklessness and the height of corruption between the year 2019–2020. Now popularly known as “the fainting MD”, former acting managing director of the NDDC, Prof. Kemebradikumo Pondei wreaked unimaginable financial havoc on the Commission and consequently on all indigenes of the nine states the commission is made up of. It is worthy of note to state that the Niger Delta Commission received 3.14 billion allowance for Covid-19 intervention in all 9 states, however, NDDC spent a total of 1.5 billion as covid-19 palliative for its staff, with one staff receiving a ridiculous amount of ten million naira.

As of 31st May, 2020, Delta State had recorded 83 confirmed Covid-19 cases and the report of how government officials and persons living in the State were managing the spread of the virus wasn’t a particularly palatable one. When asked what Covid-19 interventions had been made by the NDDC in the State, Dr. Michael Nwoko responded that there had been no interventions prior to the pandemic or even when the State was dealing with curbing spread of the virus. A Delta Liaison Office personnel saddled with the responsibility of managing government relations between the state and a multitude of national, regional and private stakeholders revealed that though he saw a memo authorizing the erection of two isolation centers in all nine NDDC states, he was unable to specify or state locations for the isolation centers in Delta State and as well as other States.

Did the NDDC build and commission two isolation centers in all nine states? Were the other commissioned isolation centers in Abia State one and same as the isolation centers authorized by the Commission? Answers to these questions are yet unknown as the President of the Federal Republic of Nigeria in December 2020 removed Prof. Pondei and appointed Effiong Okon Akwa as interim administrator of the NDDC.
SALE OF PERSONAL PROTECTIVE EQUIPMENT (PPE)
BY HOSPITAL WORKERS IN GHANA

Democracy must be built through open societies that share information. Corruption is the enemy of development, and of good governance—Atifete Jahjaga

Health workers were the greatest hit as Covid-19 ravaged Ghana, it was however unfortunate that some persons within the health sector saw the pandemic as a golden opportunity to make money while putting the lives of their colleagues at risk. A total of 96 doctors and nurses had tested positive for the virus at the beginning of the pandemic \(^{40}\) this unfortunate incident did not however deter some persons from taking advantage of the pandemic by diverting and selling PPEs, hospital produced nose masks and other medical commodities used for treatment and protection from Covid-19.

Thomas Osei \(^{41}\) and Divine Kumordzi, \(^{42}\) members of staff of the Accra Regional Hospital Ridge, were engaged in the selling off of medical grids, overalls, plastic face shields, facemasks produced by the hospital \(^{43}\) in the midst of health workers battling with lack of sufficient PPEs.

\(^{40}\) Retrieved March 1st, 2021 from https://www.youtube.com/watch?v=sWFi9s-fIA
\(^{41}\) Ibid
\(^{42}\) Ibid
\(^{43}\) Ibid
Introduction

Corruption defies a specific definition. Therefore, several definitions have been attributed to it by many people. Corruption may be defined as anti-social behaviour conferring improper benefits contrary to legal and moral norms, and which undermines the authorities’ capacity to secure the welfare of all citizens; it may also be defined as the abuse of public office for private gain or as a behavior on the part of officials in the public sector, whether politicians or civil servants in which they improperly and unlawfully enrich themselves or those close to them by the misuse of public power entrusted to them.

What law defines corruption?

In Nigeria, the fight against corruption began in earnest with the enactment of the Corrupt Practices and Other Related Offences Act, 2000. The Act further established the Independent Corrupt Practices Commission. The Corrupt Practices and Other Related Offences defines Corruption to “includes bribery, fraud and other related offences”. The Corrupt Practices Act was enacted to prohibit and prescribe punishment for corrupt practices and other related offences. Section 15(5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides that “the State shall abolish all corrupt practices and abuse of power”. This provision thus authorizes the enactment of the Corrupt Practices Act to promote effective practices aimed at eradicating corruption.
The principal legislation for corruption in Ghana is the Criminal Offences Act 1960 (now amended by Criminal Offences Amendment Act, 2012 (Act 849). The Act does not specifically define corruption but provides for sections that proscribe corruption by a public officer (Section 239), corrupt promises (Section 29) etc. Section 35(8) of the 1992 Constitution also provides as follows—“The State shall take steps to eradicate corrupt practices and abuse of power”. This provision therefore empowers institutions to establish and promote effective practices aimed at the eradication of corruption.

The Anti-Corruption Act and Economic Crimes Act, 2003 defines corruption to mean—“(a) an offence under any of the provisions of sections 39 to 44, 46 and 47; (b) bribery; (c) fraud; (d) embezzlement or misappropriation of public funds; (e) abuse of office; (f) breach of trust; or (g) an offence involving dishonesty—(i) in connection with any tax, rate or impost levied under any Act; or (ii) under any written law relating to the elections of persons to public office.
International Conventions


Agencies/institutions empowered to investigate Corruption within the context of covid-19 relief Value chain.

In Nigeria, two agencies are primarily saddled with the responsibility of investigating and prosecuting culpable officials in the highlighted instances of covid-19 corruption above.

The Independent Corrupt Practices Commission is saddled with the responsibility and empowered by Section 6 of the ICPC Act to receive, investigate and prosecute accordingly anyone who has conspired, committed or attempted to commit any offence under the ICPC Act or any Act prohibiting Corruption. In Yakubu & Anor V. Federal Republic of Nigeria (2009) LPELR-8848, the appellate court reaffirmed the powers and function of an officer of the ICPC, the court held thus–

"Officers of ICPC are not robots or puppets on strings; they cannot be put into a box or enclosure and told not to move beyond a point. They are empowered by the Act to investigate allegations of corruption made against any person. They do not go into the streets to fish out allegations but act on the reports made to them, but if in the process of investigating an allegation, they uncover any breach of financial or other regulation that is prohibited by the Act, nothing whatsoever should stop them from proceeding to act on it. Section 6 (b) of the Act merely spells out one of the duties of ICPC – that of examining practices, systems or procedures of

them, where in its opinion, such practices, systems or procedures aid or facilitate fraud or corruption. Sub-section 6 (a) of the Act specifies a duty, one that empowers ICPC to receive and investigate any report of a conspiracy to commit, attempt to commit or the commission of any offence under the Act or any law prohibiting fraud or corruption.” Per AUGIE, J.C.A. (Pp. 16-17, paras. C-A)

The Economic Financial Crimes Commission was established pursuant to Section 1 of the Economic and Financial Crimes Commission, Establishment Act (2004). The Commission is responsible for the investigation of all economic and financial crimes, coordination and enforcement of all economic and financial crime laws etc. It is worthy of note to state that Section 46 of the EFCC Act 2004 defines economic and financial crime to mean:

“The non-violent criminal and illicit activity committed with the objective of earning wealth illegally either individually or in a group or organized manner thereby violating existing legislation governing economic activities of Government and its administration and includes any form of fraud..., bribery, looting, and any form of corrupt malpractices....

Though the ICPC and EFCC are listed as primary anti-corruption agencies, there exists other institutions and individuals who within the context of Covid-19 corruption listed above are empowered to investigate and cause to be prosecuted suspected players in the Covid-19 corruption saga. They are:

A. The Attorney General of the Federation and all AGs of 36 States of the Federation - The Attorney General of the Federation is empowered by Section 174 (1) (a) of the Constitution of the Federal Republic of Nigeria, 199 (as amended) to institute and undertake criminal proceedings against any person before any court in Nigeria in respect of any offence created by or under any Act of the National Assembly.

B. The Nigeria Police Force as charged by Section 214 of the CFRN 1999 (as amended)

In Kenya, the Ethics and Anti-Corruption Commission (EACC) as established by the Ethics and Anti-Corruption Act, Act No. 22 of 2011 is empowered to conduct investigations on all Covid-19 related corruption claims such as the KEMSA instance above. It is charged with the responsibility of investigating report of corrupt practices when a report is given or on its own volition.
EXTANT PROVISIONS
OF LAWS PROMOTING ACCOUNTABILITY AND MEASURES
TO DEAL WITH CORRUPTION WITHIN THE COVID–19 RELIEF VALUE CHAIN

Applicable laws must be enforced to ensure that culpable persons in the Covid–19 corruption saga are prosecuted accordingly. Section 6 of the ICPC Act charging the ICPC to receive and investigate any report of commission of any offence under any law prohibiting corruption or fraud must be activated. The Government of Nigeria is bound by Section 15(5) of the CFRN 1999 (as amended) to abolish all corrupt practices and abuses of power and must be seen to do so regardless of whose ox is gored. Allegations of misuse and misappropriation of Covid–19 funds must be investigated by the Economic and Financial Crimes Commission.

The alleged unexplained withdrawal of 900 million by the Cross River State Governor from the Local Government Joint fund which was earmarked for Covid–19 project in the State must be investigated by the ICPC and Economic and Financial Crimes Commission. The alleged gross inflation of the Covid–19 software tracking app costing over 90 million by the Kogi State Governor must be properly investigated and the Government must be held accountable regardless of the immunity enjoyed by the state governors of the two states highlighted.

The discretionary powers of ICPC officials as stated by the appellate court Yakubu & Anor V. Federal Republic of Nigeria (supra) must be fully activated in all the instances of Hon. Mojisola Alli–Macaulay whose pictures saturated the internet with pictures of CACOVID palliative as birthday souvenirs must not be swept underneath the carpet. NDDC and all officials fingered in the misuse and misappropriation of Covid–19 funds must be brought to a place of accountability and it all begins with an investigation to ensure that all public officers and institutions are held accountable.
By virtue of Section 1 (1-3) of the Freedom of Information Act 2011 which states thus:

1. Notwithstanding anything contained in any other Act, law or regulation, the right of any person to access or request information, whether or not contained in any written form, which is in the custody or possession of any public official, agency or institution however described, is established. (2) An applicant under this Act needs not demonstrate any specific interest in the information being applied for. (3) Any person entitled to the right to information under this Act, shall have the right to institute proceedings in the Court to compel any public institution to comply with the provisions of this Act.

Any Citizen of Nigeria has the right to request documents evidencing the name of contractor and other questions incidental to the contract for purchase of Covid-19 medical supplies from the National Center for Disease, Abuja. Access could be granted or denied to information in the possession of any public official alleged to be a part of the Covid-19 corruption scandal. Where access is denied, the applicant must be informed in writing the reasons for its denial and the section of the Act on which it bases its denial. Where access to information is established as wrongfully denied the erring official or institution is liable to a fine of 500,000. Public records must also never be altered or destroyed by officials before they are given to anyone requesting access. The FoI Act promotes transparency and accountability and must serve its purpose to facilitate investigation into the allegations of corruption in the Covid-19 relief chain. The law exempts no one from culpability, investigation and likely prosecution. The law must swing against those who were found to have counselled, instigated, attempted, abetted, failed to report, and aided corrupt acts within the Covid-19 relief chain.

**JURISDICTIONAL IMPLICATIONS IN THE PROSECUTION OF COVID 19 RELATED CORRUPTION CASES IN NIGERIA.**

As earlier enunciated in the research above, the ICPC has substantial discretionary powers to investigate allegations of corruption and to prosecute them under the prosecutor powers and authority of the Attorney General of the Federation. See Ehindero V. FRN & Anor. The Supreme court in the mentioned case further validated the power of the ICPC to investigate and prosecute any person on allegations and indictments of corruption.

This brings up questions of jurisdiction in situations where the allegation or offence of corruption was committed in a state and not at the federal level.
Does ICPC have the power to investigate? does the state high court have the jurisdiction to entertain matters instituted by a federal agency like the ICPC?

The above question was settled by the court in the case of A.G Ondo State v. A.G Federation & Ors (2002) SC

The Court held, inter alia:

“Since the subject of promoting and enforcing the observance comes under the exclusive legislative list, it seems to me that the provisions of item 68 of the exclusive legislative list comes into play. Therefore, it is incidental or supplementary for the National Assembly to enact the law that will enable the ICPC to enforce the observance of the fundamental objectives and directive principles of state policy. Hence, the enactment of the act which contains provisions in respect of both the establishment and regulation of ICPC and the authority for the ICPC to enforce the observance of the provisions of section 15 subsection (5) of the constitution. To hold otherwise is to render the provisions of item 60(a) idle and leave the ICPC with no authority whatsoever. This cannot have been the intendment of the constitution.”

Item 67 under the exclusive legislative list read together with the provisions of section 4, subsection (2) provide that the National Assembly is empowered to make law for the peace, order and good government of the federation and any part thereof. It follows, therefore, that the National Assembly has the power to legislate against corruption and abuse of office even as it applies to persons not in authority under public or government office. For the aim of making law is to achieve the common good. The power of the National Assembly is not therefore residual under the constitution but might be concurrent with the powers of State House of Assembly and local government council, depending on the interpretation given to the word “state” in section 15 subsection (5) of the constitution. It has been argued by the plaintiff that the reference to “state” in section 15 (5) can be ascertained by reference to the definition in section 318 subsection (1) of the constitution. The latter section provides that the word “when used other than in relation to one of the component parts of the federation, includes government.” The same section of the constitution has defined “government” to include the government of the federation, or of any state, or of a local government councilor, any person who exercises power or authority on its behalf.” Going by these definitions the directive under section 15 subsection (5) of the constitution will apply to all the three tiers of government, namely, the federal government, state government and local government. In that cases, the power
to legislate in order to prohibit corrupt practices and abuse of power is concurrent and can be exercised by the federal and state governments by virtue of the provisions of section 4 subsections (2), (4)(b), and (7)(c) of the constitution.

The above exhibited the fact that the ICPC Act can be enforced in a state despite the fact that it was by the National Assembly and not respective state legislatures.

Also in Ehindero V. FRN & Anor the court also pronounced–

At page 139 of the report, the opinion of Uwaifo, JSC which says it all is inter alia thus: “Section 286(1)(b) of the Constitution makes it clear that any Court of a State (including the FCT) which is by the law of that State given jurisdiction to try persons accused of offences against the Laws of the State, shall have like jurisdiction with respect to Federal offences”. Specifically, on the prosecutorial powers of the ICPC viz-a-viz the power of the Attorney-General of the Federation under Section 174 of the Constitution, his Lordship had put it viz- “Section 6 of the Act says inter alia that it shall be the duty of the ICPC to prosecute offenders. However, Section 26(2) of the Act provides inter alia that every prosecution for an offence under the Act shall be deemed to be initiated by the Attorney –General of the Federation. It is no longer in doubt that the High Court of the FCT, like any State High Court, can be used as a venue for the prosecution of the offences under the ICPC Act. The informed opinion of Ejiwunmi JSC at page 190 of A.G, ONDO STATE v. A. G, FEDERATION & ORS (supra) is very clear on this. It is similarly beyond doubt that Sections 6(a), 26(2) and 61(1) of the ICPC Act are constitutionally valid. That was the loud and clear decision of this Court in A.G. ONDO STATE v. A. G. FEDERATION (supra). Curiously, the senior counsel for the appellant, very cognizant and seized of this fact, is not asking us, my Lords, to depart from it. In what appears to me to be mere gymnastics of quibbles, the learned senior counsel for the appellant had taken strenuous pains to distinguish between the words “initiate” and “Prosecution” as they appear in Sections 6(a), 26(2) and 61(1) of the ICPC Act to found his solace in the submissions, that the provisions did not say “Commission” have been given authority. Therefore, if the Act had contemplated a direct power to initiate from the Attorney-General of the Federation to ICPC, it should have stated so clearly. It is not so stated. “Any person or authority” used here means there must be express delegated authority to do so to initiate not “implied” authority or decision as the Court below held.

With the well thought out submissions of the supreme court in the cases above, the blanket power of the Attorney General to institute criminal proceedings in all courts has been emphasized and validated. The ICPC as an organization that operates under the delegated authority of the Attorney General thus has ample power to institute corruption charges against any and all persons so indicted. We also posit that similar anti-corruption agencies with similar powers can as well prosecute across all levels of government.
The ICPC from the foregoing is the strategic agency most suited to investigate corrupt practices in the management of the Covid-19 relief fund and materials and to ensure that palliatives provided are not diverted for personal gains at the expense of the poor and impoverished citizens most affected by the pandemic in Nigeria.

**Conclusion**

In conclusion, to ensure that these findings are actionable, we have submitted facts and petitions to relevant government anti-corruption bodies to ensure the allegations are further investigated and perpetrators are brought to book and, where appropriate, Gavel has commenced the monitoring of cases in court in relation to covid19 corruption cases. The ICPC has acknowledged the petitions and official investigations have been opened to look into these allegations. Gavel is currently working actively with the ICPC in order to provide them with as much as possible help in the course of the inquiry. This includes evidence sharing and logistics.