

# LEGAL ANALYSIS OF THE CONSTITUTIONALITY OF THE LAGOS STATE PUBLIC COMPLAINTS AND ANTI-CORRUPTION COMMISSION LAW, 2021

## 1.0 INTRODUCTION

1.1 The Lagos State Governor, Mr. Babajide Sanwo-Olu on the 19th of April 2021, assented to the Lagos State Public Complaints and Anti-Corruption Commission Bill (“the Law”). The Law established the Lagos State Public Complaints and Anti-Corruption Commission (“the Commission”) and bestowed it with exclusive powers to investigate financial crimes and corruption cases involving the finances of the Lagos State Government. Furthermore, the law mandates anti-graft agencies such as the Economic and Financial Crimes Commission (EFCC), the Independent Corrupt Practices and Other Related Offences Commission (ICPC) and other anti-graft agencies to hand over corruption cases that fall into this category to the Commission. This law is the first of its kind and raises some questions as to its constitutionality and resulting validity.

1.2 This article would examine the propriety of enacting such a Law vis-à-vis the relevant provisions of the Constitution of the Federal Republic of Nigeria, 1999 (“The Constitution”). This includes an appraisal of Section 4 of the Constitution and the 2nd Schedule, Part 1 & 2 of the Exclusive and Concurrent Legislative List as well as material case law on the extent of power conferred on State Legislatures.

## 2.0 THE LAGOS STATE PUBLIC COMPLAINTS AND ANTI-CORRUPTION COMMISSION LAW: KEY PROVISIONS

2.1 Section 13(3) of the law provides that “the Commission shall upon the commencement of this law take over the investigation of all anti-corruption and financial crimes cases involving the finances and assets of Lagos State Government being investigated by any other agency.”

Equally, Section 13(5) states that “the Commission shall have the power to the exclusion of any other agency or body to investigate and coordinate the investigation of corruption and financial crimes cases involving the finances and assets of the state government.”

### 3.0 MATERIAL CONSTITUTIONAL PROVISIONS: JURISDICTION OF HOUSES OF ASSEMBLY OF STATE

3.1 The legislative powers of a State of the Federation are vested in the House of Assembly of the State.<sup>1</sup> Section 4(7) of the Constitution specifically confers on the House of Assembly of a State the power to “make laws for the peace, order and good governance of the State or any part thereof concerning the following matters-

- (a) any matter not included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution;
- (b) any matter included in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to this Constitution to the extent prescribed in the second column opposite thereto; and
- (c) any matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.

Each of the foregoing would be examined in detail below; in an attempt to delineate clearly the extent of the law-making power of State Houses of Assembly.

#### 3.2 Matters not included in the Exclusive Legislative List

3.2.1 Part 1 of the Second Schedule to the Constitution provides a list of items within the exclusive legislative competence of the National Assembly. The List contains a total of 68 (sixty-eight) items which are quite numerous to be reproduced here. Therefore, only the items relevant to this article would be examined. These are Items 60(a), 67 and 68. For ease of reference, the said items are reproduced below:

3.2.2 Item 60 “The establishment and regulation of authorities for the Federation or any part thereof-

- (a) to promote and enforce the observance of the Fundamental Objectives and Directive Principles contained in this Constitution;”

3.2.3 **Item 67** “Any other matter with respect to which the National Assembly has power to make laws in accordance with the provisions of this Constitution.”

**Item 68** “any matter incidental or supplementary to any matter mentioned elsewhere in this list.”

1. Section 4(6) of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended)



3.2.4 The National Assembly is vested with the exclusive power to make laws on any of the foregoing matters. Item 60(a) specifically covers lawmaking for the promotion and enforcement of Fundamental objectives and directive principles of state policy as contained in Chapter II of the Constitution. Section 15(5) of the said Chapter charges the State with the responsibility to abolish all corrupt practices and abuse of power. Read together, it is clear from the provisions of Sections 4(3), 15(5) and Item 60(a) that the National Assembly is vested solely with the power to make laws for the establishment and regulation of authorities to abolish all corrupt practices and abuse of power. This position has been upheld by the Supreme Court in ***Attorney-General of Ondo State v. Attorney-General of the Federation & Ors***<sup>2</sup> and in the latter case of ***Olafisoye v. Federal Republic of Nigeria***.<sup>3</sup>

3.2.5 The Court equally placed reliance on Items 67 and 68 in concluding that the National Assembly can validly make laws bordering on the abolition of corruption by creating offences, investigating and instituting same in Court. Section 2, Part III to the Second Schedule further strengthens this when it provides an interpretation on “***incidental and supplementary matters***” as contained in Item 68, thus:

*“in this Schedule, references to incidental and supplementary matters include, without prejudice to their generality, references to-*

*(a) offences;*

*(b) the jurisdiction, powers, practice and procedure of courts of law; and*

*(c) the acquisition and tenure of land.” (Emphasis Ours)*

3.2.6 It is clear from the foregoing then that legislating on corruption and financial crimes falls within the exclusive legislative list. Consequently, it appears that the House of Assembly of a State is precluded from making laws on such matters.

### **3.3 Matters included in the Concurrent Legislative List set out in the First Column of Part II of the Second Schedule to the Constitution.**

3.3.1 Part II of the Second Schedule to the Constitution provides the following items as constituting the Concurrent Legislative List, that is matters over which both the National Assembly and Houses of Assembly of States share jurisdiction:

- a. Allocation of revenue;
- b. Antiquities and monuments;

2. (2002) LPELR-623(SC) Pp. 51-53, Paras. D-A

3. (2004) LPELR-2553 (SC) p. 67, Paras. A-B



- c. Archives;
- d. Collection of taxes;
- e. Electoral Law;
- f. Electric Power;
- g. Exhibition of cinematograph films;
- h. Industrial, commercial or agricultural development;
- i. Scientific and technological research;
- j. Statistics;
- k. Trigonometrical, cadastral and topographical surveys; and
- l. University, technological and post-primary education.

3.3.2 The National Assembly is vested with the power to make laws concerning the afore listed matters as it concerns the Federation while the House of Assembly of each State retains the law-making power as it concerns the State. There is no reference, here, to corruption and financial crimes.

#### **3.4 Any Matter with respect to which it is empowered to make laws in accordance with the provisions of the Constitution**

3.4.1 Earlier, we identified Chapter II of the Constitution which provides for the Fundamental Objectives and Directive Principles of State Policy. Section 13 of the said Chapter provides:

***“It shall be the duty and responsibility of all organs of government, and all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of this Chapter of the Constitution.” (Emphasis Ours)***

3.4.2 We also identified Section 15(5) which charges the ‘State’ with the responsibility to abolish all corrupt practices and abuse of power. Section 318 of the Constitution defines “State” when used otherwise than in relation to one of the parts of the Federation, to include government.



The Supreme Court in interpreting the word “State” as used in section 15(5) and defined in section 318 as well as examining the question who is charged with the responsibility stated in section 15(5), held as follows:

*“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 case 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. It is doubtful however if the third tier, viz the local governments can legislate on the subject there is no provision under Section 7 and the Fourth Schedule that empowers them to do so.”<sup>4</sup> (Emphasis Ours)*

3.4.3 From the foregoing, it is explicit under this heading, flowing from Section 4(7) (c) of the Constitution, that the House of Assembly of a State has the power to legislate in order to prohibit corrupt practices and abuse of power. The Lagos State Public Complaints and Anti-Corruption Commission Law is therefore to this extent constitutional and validly made by the Lagos State House of Assembly.

#### 4.0 CONSTITUTIONALITY OF SECTIONS 13, SUBSECTION 3 AND 5 OF THE LAW

4.1 It is important to bear in mind, however, that a State House of Assembly shares the power to make laws prohibiting corrupt practices and abuse of power concurrently with the National Assembly. On the meaning of ‘concurrent’, the Supreme Court in *Olafisoye v. FRN* had this to say:

*“The word ‘concurrent’ is defined by the Concise Oxford Dictionary as ‘existing together’. What is meant therefore when a matter is said to be concurrent to Federal and State Governments is that their powers in respect of it exist side by side together. In other words, the powers of both Governments in respect of the matters are co-existent, not mutually exclusive; the power of one does not exclude that of the other. Both Governments can, in theory at least, act on the matter. But their powers need not necessarily be co-extensive in the sense of extending Over the entire field of the matter; they may co-exist only in respect of some aspects of it.”<sup>5</sup>*

4.2 Both Houses can validly make laws to prohibit corruption and abuse of power. In the course of co-existing, an overlap is inevitable that is a situation where one law intends to divest the other of its power as is in the instant case.

4. Attorney-General of Ondo State v. Attorney-General of Federation (supra) Pp. 55-56, Paras. D-C

5. Supra p. 78, Paras. C-F



The Constitution anticipates this and Section 4(5) takes care of any such dispute. It provides:

***“If any Law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other law shall to the extent of the inconsistency be void.”***

4.3 The Supreme Court in, **Attorney-General of Ondo State v. Attorney-General of the Federation & Ors**, recognized this provision when deciding on the power to legislate on the subject of corruption and abuse of power, it held as follows:

***“Although the power to legislate on the subject is given to the National Assembly and State House of Assembly, when both exercise the power, the legislation by the National Assembly will prevail by virtue of Section 4 Subsection (5) of the Constitution...”***<sup>6</sup>

4.4 It has been argued that corruption and crime are not in the exclusive legislative list and as such, the Lagos House of Assembly has more powers to create the law for the benefit of the State than the National Assembly. Respectfully, this assertion is incorrect especially when exposed to the light of Sections 4(3) & (5), 15(5), Items 60(a), 67, 68 and Section 2 of Part III to the Second Schedule of the Constitution as well as the decisions of the Apex Court considered here. Establishing and regulating authorities to handle corruption matters is clearly within the Exclusive Legislative List. A State House of Assembly only gained competence to legislate on such matters due to the saving provisions of Section 4 sub-section 7, paragraph c and Sections 15(5) and 318 of the Constitution.

4.5 Generally, powers granted to the EFCC and other relevant anti-corruption agencies are broad and extend to all parts of the Federation. Section 13 (5) of the Law conflicts with relevant provisions of existing Acts of the National Assembly on the subject matter. A good example is the provision of Section 6 of the Economic and Financial Crimes Commission Act<sup>7</sup> which provides that the Commission shall be responsible for the coordination and enforcement of all economic and financial crimes laws and enforcement functions conferred on any other person or authority.

4.6 Therefore, while it can be safely concluded that the Lagos State House of Assembly has the constitutional power to establish an anti-corruption agency to tackle corruption within its jurisdiction (subject of course to the provision of Section 4(5) of the Constitution);

6. IBID

7. Cap. E, Laws of the Federation of Nigeria, 2004.



the same cannot be said of its power to take over or divest the EFCC, ICPC or any other Agency created by an Act of the National Assembly of their powers. Section 13, sub-sections 3 and 5 of the Law are consequently ultra vires the power of the Lagos State House of Assembly.

## 5.0 CONCLUSION

5.1 The essence of this opinion is to address the constitutionality of the exercise of law-making power by the Lagos State House of Assembly in enacting the Lagos State Public Complaints and Anti-Corruption Commission Law. It has been established that the making of the Law is well within the legislative competence of the Lagos State House of Assembly. However, having the power to make the law is one thing; keeping the law within the clear limits of the power is another. It is our view then that certain provisions of the Law, to wit, section 13(3) & (5) run foul of Section 4(5) of the Constitution. Consequently, these sections, and indeed any other section inconsistent with Section 4(5) of the Constitution, are to the extent of that inconsistency void.

### Authors

Ifeoma Solanke  
Associate

Oluwadara Afon  
Junior Associate

