

# **CORRUPTION AND FINANCIAL CRIMES IN NIGERIA: GENESIS, TREND AND CONSEQUENCES**

**By Mr. E. A. Owolabi\***

## **INTRODUCTION**

In its 2004 report on worldwide corrupt practices, Transparency International (T. I.) survey covered 146 countries. In that report, Nigeria was rated the third most corrupt country, beating Haiti and Bangladesh to the second and last positions respectively. The report was an improvement over that of 2000 when Nigeria was reported as the most corrupt country in the world. Statistically, Nigeria's Corruption Perception Index (CPI) was 1.2 in the year 2000, contrasting those of Finland (10.0), Denmark (9.8) and New Zealand (9.4). Expectedly, Nigeria rose up stoutly to criticize the 2004 T. I. report, pointing out serious defects in the manner the results were arrived at. These included the following: (T.I. Report 2004)

- (i) Only the bribe takers, not givers or abettors, are punished, while the CPI ignores the origin of the bribes from western companies;
- (ii) Irregular and uncontrolled country coverage, the list of countries changes from year to year;
- (iii) Biased sample: more than 90.0 per cent of the world is missing; the sample is private sector oriented, overwhelmingly male and the well-off;
- (iv) Imprecise and sometimes ignorant sources — some sources are used that do not measure corruption levels at all;

**\*Mr. E. A. Owolabi is a retired Deputy Director, International Economic Relations Department, Central Bank of Nigeria and Senior Lecturer CETEP City University, Lagos.**

- (v) Far too narrow and imprecise definitions of corruption are used, couched entirely in terms of public extortion, with the private sector as its victim;
- (vi) Does not measure trends: and therefore cannot reward genuine reformers, even if the reforms are making a difference; and
- (vii) The index is misused by development agencies in making decisions as to which countries to “reward” with aid.

The focus of the T. I. 2004 report was, however, more on the oil sector as a revenue source for most oil producing countries. The sector was seen as a continuous source of corruption around the world. Peter Eigen, Chairman of T. I. Board of Directors, (2004) observed that, “In these countries, public contracting in the oil sector is plagued by revenue vanishing into the pockets of western oil executives, middlemen and local officials.” He suggested that oil companies could help fight corruption by making public details of payments made to government and state-controlled oil firms. Access to vital information, according to him, will minimize the opportunity for the payment of kickbacks to secure oil tenders, a practice that has blighted the oil industry in transition and post-war economies. Reconstruction will be wrecked by a wasteful diversion of resources to corrupt elites unless there are strict anti-bribery measures. (Eigen, 2004).

According to Gray and Kaufmann (1998), in practice corruption may be well organized or chaotic. When well organized, the required amount of bribe is well known, and the payment guarantees that the desired favour will be obtained. Under chaotic corruption, however, the bribe offerer needs to bribe several officials with no guarantee either that he will not

face further demands for bribes or that the favour being sought will actually be given. Both types exist in Nigeria.

Corruption is a universal disease and every country is making effort to fight it. The fact that much corruption in developing countries has important industrial countries' participation is commonplace knowledge. The frequent accusations against multinational oil mining companies in their corrupt practices for bribing government officials, local chiefs and elites of the Niger Delta region of Nigeria are a testimony to the truth. This often results in social discontent and violence.

This paper is not about corruption in the oil sector, it is rather about the general corrupt practices and financial crimes in Nigeria, the trend since before independence and the hindrance these have constituted for the development of the country. Also, mention is made of some of the initiatives and laws, which have been introduced to fight the vice.

Part I is a brief definition of corruption, its causes and financial crimes, the latter, principally money laundering. In Part II, an attempt is made to trace the historical trend of corruption in Nigeria, covering the colonial, the late colonial and postcolonial periods. Part III is a brief sketch of the cost/harm of corruption. Some of the initiatives and measures, which the country has taken to fight the vice of corruption and financial crimes are enumerated in Part IV. Part V is mainly on the two most recent agencies for fighting corruption, whose mandates cover investigation, prosecution and ensuring conviction of offenders, thereby making them a departure from their anti-corruption predecessors. These agencies are the Independent Corrupt Practices and Other Related Offences Commission (ICPC) and the

Economic and Financial Crimes Commission (EFCC). A brief concluding part attempts to underline the importance of successfully fighting these crimes, without which the development process of the country will continue to suffer serious setbacks.

## **PART I**

### **CORRUPTION AND FINANCIAL CRIMES**

Although it is very difficult to define corruption, some attempts have been made at some descriptions, which would communicate the meaning of the concept. The International Monetary Fund (IMF) defined corruption as “abuse of authority or trust for private benefit: and is a temptation indulged in not only by public officials but also by those in positions of trust or authority in private enterprises or non-profit organizations” (IMF, 2000). To the United Nations Convention Against Corruption (UNCAC), however, in 2002, the only option open in attempting to define corruption was to mention specific acts of corruption. This is the approach adopted in the ICPC Act where it merely states that “Corruption includes bribery, fraud and other related offences”. According to Justice Emmanuel Olayinka Ayoola, Chairman ICPC, “the commonest form of corruption in Nigeria used to be bribery but in recent years this has been overtaken in level of prevalence by embezzlement and theft from public funds, extortion, abuse of discretion, abuse of public power for private gain, favouritism and nepotism, conflict of interest, extortion and illegal political party financing”.

It had been the general opinion that corruption and governance cannot be measured in quantitative terms; but in recent years organizations and non-governmental organizations (NGOs) such as Transparency International and the World Bank have been able to produce/construct adequate

indicators on these. The World Bank has such indicators covering more than 200 countries, on six dimensions, namely, voice and accountability; political stability and absence of major violence and terror; government effectiveness; regulatory quality; rule of law; and control of corruption. Paolo Mauro (1998), mentioned three principal causes of corruption, which are:

- (i) Government restrictions and intervention, which lead to excessive profits. These include trade restrictions (tariffs and import quotas), favourist industrial policies (subsidies and tax deduction), price controls, multiple exchange rate practices, foreign exchange allocation schemes, government-controlled credit;
- (ii) Natural resources, e.g., (crude) oil whose supply is limited by nature where huge profits are available to those who extract it; officials who allocate extraction rights are likely to be offered bribes;
- (iii) Where civil servants are paid low wages and have to resort to collect bribes in order to feed their families;
- (iv) And to this we may add, lack of adequate and sustainable retirement benefits, under which serving officials would want to provide for their future through corruption and fraudulent practices.

Financial crimes may be traceable to some of the enumerated aspects of corruption, e.g., embezzlement, theft from public funds, abuse of discretion and abuse of public power for extortion. Usually, huge amounts stolen from these sources, which cannot be legitimately explained as earnings, are siphoned and hidden across the borders to foreign banks regarded as safe haven. The correct term for moving money in this manner is money laundering. In other words, money laundering is defined

as “the conversion of criminally obtained money into apparently lawfully obtained money by re-cycling the tainted money through banks and other legitimate financial institutions” NEPAD, (2003).

The amount of money laundered every year is not exactly known but informed guesses estimate that it could amount to from about 2.0 to 5.0 per cent of world Gross Domestic Product (GDP) IMF, (2004). Several international conventions, standards, best practices and resources to address money laundering have been and are being developed. These efforts have been expressed in United Nations conventions, reports, and programmes, with support from various regional organizations.

In 1989, the G-7 of the most advanced countries in its Economic Summit Group established the Financial Action Task Force (FATF) to develop and promote policies to combat money laundering. The FATF has come up with its “Forty Recommendations” dealing with legal requirements, financial and banking controls. Other measures introduced by the international community include the Statement on Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering by the Basel Committee on Banking Regulations and Supervisory Practices, the IMF’s and World Bank’s Financial Sector Assessment Programme (FSAP) and the Fund’s Offshore Financial Centre (OFC) initiative.

The terrorist attack on the United States of America on September 11, 2001 made the fight against money laundering and financing terrorism and other crimes a top priority for the international community. In this connection, FATF served notice on Nigeria in 2002 warning that it would blacklist the country unless significant steps were taken to address the

deficiencies in its fight against financial crimes. It was threatened that on October 31st of that year FATF would impose the sanctions.

## **PART II**

### **HISTORY OF CORRUPTION IN NIGERIA**

Corruption or corrupt practice has a long history in all human societies. It does in Nigeria. This section attempts to trace the historical periods through which Nigeria has passed with corruption. The section benefits substantially from the paper of Justice Ayoola referred to earlier.

- (i) Colonial Period: Colonialism, western education, the development of urbanization and monetization of the economy were all attended by growth of individualism. All these brought dramatic changes in relationship and the way of doing things. The consular court system disrupted the traditional administration, which the white colonialists met. In its place was appointed the highly flawed indirect rule under which appointment of personnel was arbitrarily made. Oftentimes, appointees were unknown people, different from the traditional heads and chiefs. Many of the appointed people were of questionable character who often became intoxicated by power, leading them to abuse and misuse of office, including showing favours to criminals. Corruption in the Indirect Rule system soon got to the attention of the colonialists, as most of the warrant chiefs prospered materially through the proceeds of bribery and corruption. Also the local councils established by them were fertile grounds for corruption.
- (ii) Late and Post-Colonial Period: The nationalists who took over the government from the colonialists before full independence was

attained exhibited corruption. The Foster-Sutton Commission of Inquiry set up to look into the management of the African Continental Bank owned by the Eastern Region government in the mid 1950s? and the Coker Commission of Inquiry in the early 1960s which considered the affairs of some Western Region Government corporations found the conduct of the key actors of government as falling short of high ethical standards expected of public office holders. Also, at the Federal government and regional levels corruption characterized the First Republic (1960-1966). There were electoral corruption and malpractices involving the use of money to buy votes, employment of thugs to intimidate political opponents, hiring of assassins to eliminate opponents, hijacking of electoral boxes and materials, and the printing of fake voting cards. Naturally, those who attained power through corrupt means had no other ambition than to serve self and promote ulterior interests at the disadvantage of the larger society. The once cherished culture of probity in public affairs soon yielded place to a culture of graft and the standard of public morality continued to deteriorate.

- (iii) The Military Periods (1966-1979; 1983-1998): Corruption was widespread among the political class before the military struck in January 1966. Although the military gave prominent position to corruption as the reason for staging the coup and the subsequent coups, unfortunately, military regimes tended to be more corrupt than the regimes they seemed to have come to correct. Despotism, which inevitably characterizes military regimes destroyed a culture of accountability. Characteristically, military regimes upon taking power, in fighting against corruption, would remove from office or dismiss some individuals allegedly for corrupt practices; forcibly

seize corruptly acquired property; confiscate property through legislation (decree), directed against particular individuals; and ban and disqualify persons from holding public office. The credibility of such actions was, however, put in doubt for any durable culture of probity. Ethical programmes such as WAI-C (War Against Indiscipline and Corruption) and MAMSER (Mass Mobilization Socio-Economic Reconstruction) introduced against corruption were short-lived and largely ineffectual.

Moreover, the efforts were largely seen to be insincere as a result of the perceived life-style and sudden inexplicable acquisition of wealth by serving service personnel, their relatives and their contractor friends and accomplices, because of their own lack of transparency in governance. In later years, military regimes were seen as institutionalizing corruption and corrupt practices and enthroning a culture of graft.

The relatively brief intervening four years of civilian administration, 1979-1983, was a disappointment because the confidence the populace had placed on it was badly shattered. It turned out, however, in the words of Mallam Nuhu Ribadu, Executive Chairman of EFCC, that the regime was “characterized by gross financial indiscipline and profligacy, wanton waste, political thuggery, disrespect for the rule of law, and bare-faced free-for-all looting of public funds through white elephant projects” Ribadu, (2006).

### **PART III**

#### **THE COSTS OF CORRUPTION**

In economic and moral terms, corruption is very costly. It undermines confidence in the government, whose moral authority is diminished.

Economically, misallocation of resources is worsened by corruption, and government officials will not press for change in the regulations from which they enrich themselves. In fact, officials may press for more of such regulations and license procedures, hoping for more bribes.

Corruption aggravates income inequalities and poverty; those who benefit from bribery, kickbacks and preferential deals are not likely to be among the poorest. Corruption adversely affects economic growth, as it acts as additional tax on enterprises, raises costs and reduces incentives to invest. "Informal payments" on public projects may be many times their actual cost.

Corruption imposes a heavy burden on small and medium-sized enterprises, and tends to shift government spending away from socially beneficial investments, such as health, education, roads and communications towards unneeded "white elephant" projects, or lower quality infrastructure.

Corruption discriminates against honest foreign businesses as a result of lack of transparency in most acts of corruption. In this process, beneficial direct investments often pull out of the country.

Corruption reduces domestic savings and investment and stimulates capital flight, as it weakens domestic banking system. Corruption is one of the most important inhibiting forces on investment and growth, thereby lowering the living standards of the people. Pervasive corruption often discourages donors from providing more aid, which harms opportunity for economic growth.

From the above-enumerated costs of corruption, we can summarize some of what corruption has done to Nigeria in a few statements, in the words of Justice Ayoola:

- (i) The long duration of corrupt practices in Nigeria has sadly changed people's moral orientation. Corruption is now described in euphemistic terms, e.g., "the Nigerian factor," "egunje," etc., and the corrupt is honoured in the society by reason of his affluence.
- (ii) Mismanagement and assault on public treasury and the general decay in ethics and values have had devastating consequences on the economy and resulted in the impoverishment of the people at all levels.
- (iii) Nigeria's GDP per capita fell from US \$1,010.00 in the early 1980s to US \$300.00 in 1999. From recent reliable surveys, above 70.0 per cent of the population lives below poverty line, less than US \$1.00 per day.
- (iv) Currently, the sixth largest crude petroleum producer in the world, Nigeria still imports most of the refined products consumed domestically. Curiously, recently the Trade Minister of Indonesia, an oil rich country itself, announced that an agreement would soon be signed to make Indonesia import crude oil from Nigeria. This is easily understandable by the fact that Indonesia has a large capacity to refine its crude while Nigeria does not. And the greatest advantage is derived from refined products rather than crude.
- (v) Over the years, corruption has become so widespread, enabling economic and organized crimes to flourish. Nigeria was condemned to the status of a pariah state and consistently rated as one of the most corrupt countries in the world.

- (vi) Foreign investors may be reluctant to invest in Nigeria for fear of losing their money to swindlers and fraudsters.
- (vii) By far the most tragic cost of corruption is the way it spreads and perpetuates itself from generation to generation. A youth who sees his parent's prosperity through corrupt practices, which might have included the child's admission to school, will invariably be convinced that corruption is the best means to "make it in life". At adulthood, while in position of authority he would invariably know no other way of life. Many of our present-day leaders may have been brought up this way. The virus of corruption is like a malignant cancer whose growth is very tough to control, unless the patients are personally convinced of its dangers and have a radical change of life-style and culture.

#### **PART IV**

#### **SOME INITIATIVES AND MEASURES TAKEN TO FIGHT CORRUPTION AND FINANCIAL CRIMES IN NIGERIA**

Especially during the years of military rule, Nigeria made an impressive body of laws and took other initiatives in the war against corruption and financial crimes. These are in addition to the criminal and penal codes that have existed since the colonial period, under which official corruption and other offences were tried. The laws and decrees include the following:

- Investigation of Assets (Public Officers and Other Persons) Decree of 1968
- The Corrupt Practices Decree 1975
- Public Officers (Special Provisions) Decree 1976
- Recovery of Public Property Decree 1984

- National Drug Law Enforcement Agency (NDLEA) Act, 1990. This was the first law made in Nigeria to make money laundering a criminal offence
- The promulgation of the Mutual Assistance in Criminal Matters within the Commonwealth (Enactment and Enforcement) Act No. 13 of 1988, designed to bring Nigeria's municipal law in line with the Harare Scheme. The scheme contains provisions on how to deal with the proceeds of crime and laundering of such money
- The Public Complaints Commission Act Cap 377, Laws of the Federation 1990
- The Code of Conduct Bureau and Tribunal Act Cap, Laws of the Federation 1990
- The Criminal Code Act Cap 77, Laws of the Federation 1990
- The Penal Code, Northern States Federal Provisions Act —Cap 345, Laws of the Federation 1990
- Banks and Other Financial Institutions Act 1990
- Recovery of Public Property (Special Military Tribunal) Act Cap 389, Laws of the Federation 1990
- The Failed Banks (Recovery of Debts) and Financial Malpractices Act No. 18 of 1994
- Failed Banks Act No. 16 of 1996
- Advance Fee Fraud and other Related Offences Act No. 13 of 1995, intended to deal with the menace of the so-called "Nigerian fraud letters" or "419"
- The Foreign Exchange (Miscellaneous Provisions) Act No. 17 of 1995
- The Money Laundering Act No. 3 of 1995

All these together with the existing Criminal and Penal Codes Nigeria were before the first term of President Obasanjo. Regardless of these plethora of anti-corruption legislations, corruption and corrupt practices grew increasingly. This was perhaps why the international community saw Nigerian laws as grossly inadequate in dealing with these crimes. There are significant gaps in terms of the coverage of the laws and the adequacy of penal and forfeiture provisions and enforcement procedures. Odozi, (2002) concludes that, the laws lacked diligence in implementation, which was attributable to reasons including the following:

- (i) Inadequate resources for designing and implementing various anti-crime measures;
- (ii) Impediment imposed by the laws on bank secrecy which shielded the criminals and/or allowed them to frustrate prosecution;
- (iii) Large and growing unregulated informal sector with varying degrees of opacity and criminality;
- (iv) Fragmentation of legal provisions and arbitrage opportunities for criminals;
- (v) Poverty in the country which provides excuse, if not justification for various forms of economic crimes;
- (vi) Cross-border porosity and protection for criminals;
- (vii) Lack of political will to resolutely implement tough anti-crime measures.

Consequently, only very few offenders have been successfully prosecuted and tried for corruption as the technicalities of the laws were exploited by defense lawyers to their great advantage. In addition, most of the agencies charged with enforcing the laws were not faithful in keeping

abreast of the dynamics and changes of a modern society, especially the intrigues of corrupt people and their accomplices.

All these formed the background to the Obasanjo administration's determination to combat corruption head-on from 29th May, 1999.

## **PART V**

### **THE ICPC. THE EFCC AND OTHER AGENCIES**

At the inception of the new democratic administration, President Olusegun Obasanjo declared:

“Corruption, the greatest single bane of our society today will be tackled head on at all levels. Corruption is incipient in human societies and in most human activities. But it must not be condoned. No society can achieve anything near the full-blown cancer it has become in Nigeria; the rampant corruption in the public service and the cynical contempt for integrity that pervades every level of bureaucracy will be stamped out.”

As at today the government has enacted the Corrupt Practices and Other Related Offences Act 2000 under the umbrella of Independent Corrupt Practices and Other Related Offences Commission (ICPC), and the Economic and Financial Crimes Commission (EFCC) Act 2002 as well as a thoroughly revised and updated Money Laundering Act. In these Acts, the tools for identifying, investigating and convicting offenders are enhanced. “The use of presumptions, the reversal in the burden of proof, the seizing of assets or freezing of accounts and the establishment of specialized autonomous anti-corruption agencies apart from police are included in the Anti-corruption Acts”. Ajibola (2006).

The responsibility of the ICPC include receiving petitions and investigating them, and in appropriate cases, prosecute the offenders; studying systems and practices of government and where they aid corruption and fraud, to advise government on how to avoid and change procedures and systems; to educate the public and foster their support against corruption.

The EFCC Act was passed in 2002, which created the EFCC with the single establishment purpose of fighting crimes including Advance Fee Fraud, money laundering, fraud, and bank-related malpractices. This Act was amended by the EFCC (Establishment) Act of 2004.

Other agencies in the anti-corruption crusade include the Code of Conduct Bureau, National Food and Drug Administration (NAFDAC), Standard Organization of Nigeria (SON), the Budget Monitoring and Price Intelligence Unit, otherwise known as "Due Process", which enforces strict adherence to probity in the award and execution of government contracts.

The Federal Government has tried to pursue the policy of transparency in revenue allocation and other public remuneration to a considerable degree in order to bring an end to abuse and waste of scarce public resources. It has thus tried to demonstrate good leadership; it, however, remains for many of the state governments to exhibit the same degree of tendency. Some of the concrete manifestation of success in Federal Government efforts in recent years can be mentioned:

- (i) Serving Ministers involved in bribery scandals dismissed and prosecuted;

- (ii) Since the beginning of Obasanjo Administration in 1999, three Senate Presidents have been made to quit their positions for various offences, the last one involving a bribery allegation the case of which is pending in court;
- (iii) An Inspector General of Police was dismissed from office, prosecuted, tried and jailed for corruption and abuse of office;
- (iv) A state Governor was successfully impeached for money laundering, and he is currently being tried in the court;
- (v) The culprits in the biggest international fraud involving US \$242.00 million were arrested, tried and jailed;
- (vi) On a positive note: NAFDAC and NDLEA have been commended in their respective areas of responsibility for effectively destroying fake and dangerous drugs and prosecution of narcotic peddlers. NDLEA received the commendation of the US President on 20th September, 2006 for its effectiveness in the war against narcotics.
- (vii) The Director-General of NAFDAC has received both local and international commendations for the effectiveness of the organization.
- (viii) The Budget Monitoring and Price Intelligence Unit in the award of government contracts has saved over ₦100.00 billion of public funds.

Recently, Nigeria subjected herself to sovereign credit rating and the country was given a B-B rating by Fitch and Standard & Poor's, placing her on a par with Brazil, Serbia, Ukraine, Philippines, and Vietnam. This will enable Nigeria to access international finance on terms equal to countries with equivalent rating. Apart from the improvement in the international debt payment to the Paris Club, the former Minister for Finance attributed

this relatively high and favourable credit rating to the “significant achievements registered in the fight against corruption and in the improvement of transparency, notably through the work of the Due Process Office, the monthly publication of funds shared to the three tiers of government, the proactive engagement with the Extractive Industries Transparency Initiative and the first-rate efforts of the EFCC and the ICPC” Okonjo-Iweala, (2006). This is a good testimony to the progress made so far.

### **CONCLUDING REMARKS**

Corruption has grown with Nigeria as a country. It gets more and more ingrained, especially as the economy deteriorates and the rate of crime increases. There is hardly any day a newspaper will not carry stories of corruption and/or financial crime. Corruption in Nigeria is not practised systematically; it is systemic.

Corrupt practices are met both at public and private places. Almost anywhere a service is to be provided the service is not freely obtained. The Chairman of ICPC was recently quoted as saying that some government institutions are the most corrupt in Nigeria, maybe because those institutions practise their own more openly, or their services touch people more directly.

At the government sector, hardly anything, which has immediate touch on people goes on free of corruption: child education (admission, promotion), seeking employment, licensing or registration of small businesses, financial services, etc. In the private sector obtaining product distributorship, small or major contracts, provision of various needed services, etc. Common to

both sectors are embezzlement, fraud and other financial crimes. Corruption has become the second nature in most places. It is a major paralysis on the economy. Even at the highest level of governance as exemplified by the scandal between the National Assembly and the former Minister for Education, in a bid to increase the budget vote for the Ministry. This type of corrupt practice is highly injurious to the whole economy as a result of the serious distortions it introduces to planned government expenditure, which had earlier been considered and approved by the Federal Executive Council. Corrupt practices and financial crimes may not be confined to that incident only.

Although considerable improvement has been brought to anti-corruption and anti-financial crimes strategy under the Obasanjo Administration through the ICPC and the EFCC, consisting of investigation, prosecution and conviction of offenders, what has been seen so far is at best a “fire-fighting” operation. Only a few known cases can be treated at a given period of time. The larger parts of the system/practice remain untouched, and perhaps immediately unknown. In furtherance with this, an eminent jurist, Prince Bola Ajibola, is proposing what is known as Restitution, whereby, for example, a fraudster can receive double punishment/penalty. First, the court will try him/her and impose penalty for the crime; and secondly, the victim will sue the fraudster to court and get judgment to recover his/her loss to the fraud. But it still falls within the current system of punishing individual offenders. The ICPC Act if fully implemented seems to be a step beyond this situation having included public education, enlightenment, and awareness of the evil and the harm, which the vice has been doing to the country and the economy.

Establishment of effective watch-dogs in strategic places to nip in the bud the tendency to commit these crimes is an urgent necessity. Everything must be done through public enlightenment and mobilization to successfully fight corruption in Nigeria. Corruption is a killer, but it must be killed.

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# TACKLING CORRUPTION AND CORRUPT TENDENCIES THROUGH APPLICATION OF DUE PROCESS: THE CBN EXPERIENCE

**By Mr. S. O. Olatunde (F.C.A) \***

## **1. INTRODUCTION**

*Corruption is like tango, it is a dance for two. If there is a corrupt customs official, it is because there is a businessman who is rewarding him; if there is a tax evader, it is because there is a bureaucrat who is being bribed.*

Nicanor Duarte Frutos, President of Paraguay. (Financial Times Online. U.K. 14 August 2006).

*If the people cannot trust their government to do the job for which it exists - to protect them and to promote their common welfare — all else is lost. And that is why the struggle against corruption is one of the great struggles of our time.*

Extract from a speech by a United States Senator at the University of Kenya. 28 August 2006.

The war against corruption has become a preoccupation of many governments, non-governmental organizations as well as multilateral institutions world-wide. The reasons for this are not far-fetched. Corruption is prevalent in almost every country, as evident in the periodic Corruption Index published by Transparency International (TI) which regularly features most civilized countries, developed and developing alike. Corruption has been identified in the procurement process of the United Nations and The World Bank; the FIFA process for selecting host

\*Mr. S. O. Olatunde is the Director, Internal Audit Department, Central Bank of Nigeria

countries for the World Cup tournament;? the International Olympic Committee activities, etc. If urgent measures are not taken, concerted in some cases, to curtail its almost intractable dimension, corruption would frustrate the efforts of governments, with telling effects on the political and socio-economic well-being of their societies.

## **2. THE MANIFESTATION AND DIMENSION OF CORRUPTION**

Corruption is variously defined as: the abuse of public office for private gain; dishonesty for personal gain; dishonest exploitation of power for personal gain; depravity; and extreme immorality. More specifically, Transparency International (TI) in its Source Book 2000 states:

*While corruption is defined as "the misuse of entrusted power for private benefit," it can also be described as representing non-compliance with the arms-length principle, under which no personal or family relationship should play any role in economic decision-making, be it by private economic agents or by government officials.*

Corruption manifests in varied circumstances and degrees. TI in a cross country survey had identified the levels of corruption:

- Grand Corruption - When the governance process, influential politicians (senators, ministers, etc) and/or government officials are paid huge, irresistible funds by major businesses to obtain favours, for example, oil block permits or to circumvent land/sea/port regulations.
- Petty Corruption - Occurs in the course of public service delivery, where modest, regular payments (or grease money) are made to avoid delays, queues or checks (as in contraband or banned goods).

- Embezzlement/theft of public funds/assets and fraud.
- Extortion - coercing a person to pay in cash or kind in exchange for acting or failing to act.
- Insider- trading.
- Offering/Receiving of an unlawful gratuity or illegal commission.
- Favouritism, Nepotism, — assigning jobs, services or resources based on family ties, party affiliations, tribe, religion, and other preferences.
- Money laundering and Advance Fee Fraud.

### **3. CAUSATIVE FACTORS**

Various causes of corruption have been identified and include:

1. Unemployment, underemployment
2. Inadequate motivation-job role, remuneration, work environment
3. High cost of living-housing, feeding, transportation, education, etc
4. Lack of social safety net
5. Poor up-bringing
6. Wrong values
7. Chauvinism-tribal, gender
8. Self-serving tendencies
9. Taste not commensurate with status in life
10. Saving-for-the-rainy-day syndrome
11. Large/extended family
12. Get-rich-quick syndrome

#### 4. **COSTS OF CORRUPTION**

TI considers the cost of corruption as four-fold: economic, social, political and environmental. Economically, corruption ranks highest in the construction industry and in the provision of infrastructure; mostly because it is difficult to standardize, and so benchmark costs in this sector. This is why for instance, budget decision-makers are constantly tilting the budgets towards infrastructure spending, thus increasing the opportunities for corrupt enrichment. If one looks at the bigger picture one is appalled at the multiplier effects of this selfish act — if roads are more “lucrative” than say, education or health, then there will be more funds allocated to road construction. And, if there is more gain in road construction than in road maintenance, then surely, roads will be constructed, allowed to disintegrate and the same roads will be reconstructed from scratch! This can happen at the expense of less spectacular, but basic projects like schools, hospitals, water and sanitation.

TI also states that corruption costs lives as it deprives people of access to health care, evidenced by revelations by NAFDAC that counterfeiters were substituting water for life-saving adrenalin and active drug reagents for life threatening illnesses diluted for gain.

POLITICALLY and SOCIALLY, corruption constitutes the failure of governance, democratic values, rule of law and the prevalence of poor leadership. These lead to loss of confidence and legitimacy. Indeed, it is this lack of legitimacy that creates fertile soil for corruption to grow.

The President of the Federal Republic of Nigeria, Olusegun Obasanjo put it all succinctly in a speech at the Public Procurement Bill Workshop (Abuja, July 12 2004)

*“Evidently, a corrupt economic arrangement can never produce a political system that is stable, just, inclusive, and democratic.”*

ENVIRONMENTALLY, corruption is evident in the ravages and degradations suffered by host communities through the careless exploitation of mineral resources, particularly in oil and gas prospecting and drilling by both local and international agents. Compensations, special allocations and preferential funding, sadly, present embezzlement opportunities for corrupt leaders.

## **5. CORRUPTION IN CBN**

Now, where does the Central Bank of Nigeria feature in the corruption index and what is the cost to the Bank?

I know that being the “chief compliance officer of the Bank and chief fraud investigator”, I would be expected to reel out statistics of the monumental cases of corruption the Internal Audit Department may have discovered over the years.

Luckily, I dare say, the Bank has not, in recent memory, recorded proven cases of corruption in a degree that can show up in any scale of measurement. We can beat our chest that even when the Bank was investigated by the Okigbo Panel in the 1990s, no cases of corruption among officials of the Bank were unearthed. Recently, you would recall, there were insinuations in the Press, in the heat of the investigation of alleged cases of corruption against some officers/members of the National Assembly, that the Central Bank of Nigeria also bribed the National Assembly. This later turned out to be a false alarm and a ruse, as the

Bank's gesture of support to facilitate the function of the esteemed body was in consonance with its similar gestures to the defunct Failed Banks Tribunal, the Economic and Financial Crimes Commission and various universities across the country.

The foregoing is not to paint the institution as being composed entirely of saints and incorruptible angels. The Bank has its share of deviants, like every organization, who would take advantage of the system if necessary controls were not put in place to check corrupt tendencies. While we lack the necessary statistics, we can frankly admit to ourselves that allegations of corruption in form of the under-listed used to abound, palpably, in the system:

1. Nepotism and tribalism in recruitment exercises
2. Nepotism, tribalism, favouritism and cronyism in promotion exercises
3. Nomination of friends for assignments considered lucrative
4. Transfer to certain locations of the Bank to favour friends or punish perceived enemies
5. Claiming lunch allowance while on duty tour and collecting allowances for duty tours not undertaken.
6. Favouritism in the disposal of obsolete items/boarded vehicles
7. Nomination of less-deserving and "over-trained" friends and relations for more training/courses while other more deserving persons are neglected
8. Preferential allocation of estate flats to favoured persons to the detriment of more deserving persons
9. Selective repairs/refurbishment of staff quarters tilted in favour of friends/executives.

## 10. Contract Process

- Insider dealing in contract awards
- Registration of multiple companies
- Manipulation of bidding and tender process
- Manipulation of market survey findings
- Use of unqualified persons-relatives, friends in execution of contracts for pecuniary benefits
- Padding/inflation of contract cost
- Favourable inspection reports for shoddy jobs for pecuniary benefits

## 11. Inordinate use of the Bank's time, vehicles and other assets

The items listed might appear insignificant but if they are allowed to flourish unchecked, they will escalate and the effects would manifest in dampened morale of those victimized by some of these unwholesome activities while the organization's hard-earned image and solid reputation would be compromised and tarnished.

## **6. EXISTING ANTI-CORRUPTION FRAMEWORK IN THE CBN**

For years, successive governments of Nigeria had shown keen interest in curbing corruption and indeed, in some cases, took concrete measures in the forms of legal enactments, establishment of institutions and initiation/sponsorship of campaigns! slogans which sensitized people to the existence of and prescribed actions to discourage corruption and corrupt tendencies and punishment/sanctions for proven cases.

As other speakers will handle corruption from the perspective of the public sector, I will from this point confine myself to the CBN experience. The CBN, ever before the anti-corruption war took centre stage, had

a robust framework to discourage corruption and corrupt tendencies. I would like to discuss briefly some components of this framework.

### **The CBN Act**

In the very law setting up the Bank, the Central Bank of Nigeria Act, provisions were entrenched to prevent corruption, dishonesty and misconduct.

In order to ensure product conduct on the part of the top management of the Bank, the Act, for example, in Section 12 (2), provides, inter alia, that the Governor, any Deputy Governor or any Director shall cease to hold office in the Bank if he is convicted of any offence involving dishonesty, is guilty of serious misconduct in relation to his duties under the Act or is disqualified or suspended from practicing his profession in Nigeria by order of a competent authority made in respect of him personally.

In the proceedings of the Board, as per the schedule to Section 48, it is also provided that “any Director having any interest, directly or indirectly, in any dealing or business in which the Bank is concerned shall disclose such interest at the meeting of the Board at which the dealing or business is discussed and in no circumstance shall he vote in the matter... .”

The essence of these and other provisions were cascaded to the employees of the Bank in its various manuals and codes of conduct to ensure that the prohibition of misconduct is applicable to every officer of the Bank.

## **Vision and Mission**

The focal point of both the Central Bank of Nigeria's Vision and Mission is the "effective, efficient and transparent implementation of monetary and exchange rate policy".

The Vision and Mission represent our solemn vow to the nation. We have collectively agreed on the supportive corporate values that reflect this to include meritocracy, leadership, learning and customer focus. These core values, in turn have the inherent attributes of professionalism and integrity which require us to uphold high moral and ethical standards. These, you would agree unequivocally, eschews corruption and corrupt dealings.

## **Internal Controls**

The Bank's organizational and management structures provide sufficiently for effective checks and balances in the operations of the Bank and assurances that ultimately, that the Bank's assets are protected. To this effect, the Bank has various policies, guidelines, operational manuals, procedures and internal control requirements for every function. These documents, in various ways, provide that no transaction would be initiated and completed by one officer. Thus, there are always persons at various levels and stages of every transaction process that would countersign, verify, check and approve, as the case may be. Additionally, in the subsequent post-transaction audits, the transaction documents would be reviewed to ensure that the transaction was, ab initio, conducted in line with the applicable policy of the Bank. Thus, barring the collusion of all the persons in a transaction chain, as well as the subsequent auditors of the transaction, there would be reasonable assurance that any impropriety would be detected.

## **Internal Audit**

This is the function that evaluates the adequacy and effectiveness of the operational processes of the Bank, internal controls, risk management and governance processes as well as ensure compliance with all relevant statutes, regulations, directives, procedures and policies guiding the entire operations of the Bank. Ancillary to this is the function of consultancy to the management of the Bank, by prescribing those reinforcements and safeguards that may be needed to address any weaknesses in the controls that the audit function may uncover from time to time. Lastly, the audit is charged with investigating all cases of frauds and other irregularities, including corruption, and making appropriate recommendations to the management of the Bank.

## **The procurement process: Minor and Major Contract Tenders Boards**

Depending on the value of a contract, the appropriate Tender Board will meet to open and consider bids submitted by contractors. This gives a reasonable assurance that transparency and fairness has been applied in selecting the eventual winner of the bid. The execution of the contract, subsequently, is subjected to close supervision/monitoring to minimize cost reviews and ensure that the Bank gets good value for its money

## **Code of Conduct for Bank Examiners**

This Code, which is applicable to officers of the Bank charged with the function of off-site and on-site supervision of banks and other financial institutions, requires CBN Bank Examiners to, among others, display exemplary conduct and maturity in carrying out their assignments, maintain the oath of secrecy regarding their findings in the course of their

work and to avoid accepting obligations from institutions supervised by them.

### **Oath of Allegiance and Secrecy**

The Oath of Allegiance and Secrecy is also a creation of the CBN Act and is applicable to both Directors and officers/employees of the Bank. With respect to the discussion at hand, the oath requires the respective declarant to, among others, faithfully perform his/her assigned duties and to the best of his/her ability "uphold the interests of the Central Bank of Nigeria ....." The paramountcy of the interest of the Bank is stressed here as the oath would be, ipso facto, violated if the declarant introduces any element of corruption into the conduct of his duties. This underscores the usual observation of CBN Auditors in their audit reports that "the Bank's interest was not protected", whenever a financial transaction is observed to have been conducted in a less than prudent manner.

### **Code of Conduct for Public Officers.**

As a public service organization, the CBN has always subjected itself and its employees to various laws that affect other public institutions. Thus, the Bank's employees are required to comply with the provisions of the Code of Conduct for Public Officers which seek to discourage corruption. In its various policies and actions the Bank had always upheld high ethical values and encouraged its employees to imbibe the same values and, when necessary, taken steps to address negative trends that could create loopholes for impropriety.

While the policies and measures had helped to prevent "big" corruption, there had always been undercurrents of low-keyed corruption in areas

earlier mentioned. This informed the wide-scale dissatisfaction with the recruitments, training, promotions, retirements and other activities that took place in the past. With the restructuring that has taken place lately, which is leveraging heavily on information and communication technology, sweeping changes have been introduced into all these processes to engender more efficiency, effectiveness and transparency.

## **7. IMPERATIVE FOR CHANGE**

The reform process in the Central Bank of Nigeria actually commenced in 1999 at the re-establishment of democratic governance in the country, when the management of the Bank launched a transformative project code-named "EAGLES" (acronym for Efficiency, Accountability, Goal Orientation, Leadership, Effectiveness and Staff Motivation) to chart a new course for the Bank.

The findings of Project EAGLES, as noted by Dipo Faulkner of Accenture, at the 2nd Edition of the Internal Auditors' Workshop held at Akure in September 2005 were that "despite the significant amount of money spent to-date on Information Technology infrastructure, the Bank did not get adequate returns on these investments.

- Processes within the Bank are still largely manual
- Major banking software (BANKOS) is deployed in offline mode
- Low levels of computer appreciation skills amongst staff
- Further worsening the situation is the unclear/stunted career progression for the staff of the Bank with attendant morale issue"

The transformation process in the Bank formally began when the Project EAGLES embarked upon its mandate of driving the internal reform process

of the Bank in all sphere of activity viz: Strategy and Organisation; Processes; Information and Communication Technology Systems; Staff; and Performance Measurements.

## **8. RECENT REINFORCEMENTS TO THE FRAMEWORK**

The Central Bank of Nigeria is a key ally and an integral part of the Federal Government of Nigeria's widely acclaimed reform process and the anti-corruption war. The well-earned, well-deserved laurels garnered by our Governor, Professor Chukwuma C. Soludo world-wide, due to the resounding success of his reform process in the financial system, is a testimony to this assertion.

The concept of the reforms prescribed for the banking sector was not for the regulated institutions only, but was a holistic one that embraced even the regulator itself. Since the Central Bank of Nigeria is a dynamic organization in a fast changing system, it had imbibed the tenets of change through the instrumentation of Project EAGLES before prescribing for others to enhance the overall effectiveness, efficiency and transparency of the financial sector. The application of the reforms therefore affected the entire operations and processes of the CBN through: Procurement processes; Information and communication technology (ICT) systems; Code of Business Ethics and Conduct; and Human Resources processes.

### **I. PROCUREMENT PROCESSES**

In the past, the Central Bank of Nigeria's procurement process involved all departments and branches which carried out their own procurement and vendor management activities independently. This led to multiplicity of product standards and specifications within the Bank. The system was thus

inefficient, less than transparent and, certainly, more expensive. This has in recent time, however, given way to the new procurement policy, with Centre-led Procurement, driven by transparency, competition and efficiency, as its core thrust. This is a method of procurement whereby the purchase of all goods and services would be coordinated and regulated from one point of control.

The goals of the policy are to ensure:

- (a) That all goods and services are procured efficiently, effectively and at the most favourable cost
- (b) That the Bank's procurement activities are carried out in full compliance with best practices, and defined rules and regulations
- (c) A fair and equitable treatment of all persons or firms involved in purchasing for the Bank

To implement the new policy, the Procurement Framework, with the following guiding principles, was established;

- I. Identify the required items for procurement
- II. Define standards for the procurement items, purchase activities and vendors
- III. Source for qualified vendors based on predefined criteria and item selection
- IV. Negotiate and contract agreement between the Bank and vendors
- V. Coordinate the receipt and storage of goods from vendors
- VI. Ensure prompt payment of vendors for goods received
- VII. Ensure proper inventory management

In order to achieve the goals of the new policy, the following have also been implemented and or established:

1. Price Intelligence Unit
2. Centralized registration of contractors in a database
3. Centre-led payment system
4. Manufacturer-led procurement which eliminates middlemen.
5. On-line, rather than historical, audit review of transactions.
6. Continuous monitoring of the budget of each cost centre so as to minimize overruns.
7. Inventory management to cut waste across board
8. Maintenance of a Fixed Assets Register as well as books and records which detail the acquisition, utilization, maintenance and disposal of assets
9. Requests, approvals and retirement of cash advances follow due process
10. Monetization of benefits
11. Customer service desks where all complaints can be lodged

Some of these measures will bear a few remarks.

### **Price Intelligence Unit**

The Unit collates information on various categories of equipment and consumables used in the Bank, conduct price surveys on those items and provide the information in a database for subsequent dissemination to all the cost centres of the Bank for their guidance in the procurement of such items. This gives reasonable assurance that any item purchased anywhere

in the Bank is at the prevailing market rate.

### **Centralized registration of contractors in a database**

All the particulars of all categories of contractors dealing with the Bank both at the Head Office and at the branch level are in a central database to enhance access and communication with the respective categories when procurements are to be made.

### **Centre-led payment system**

When this is fully functional, payments for procurements will be steered from a central point but with the cheques printed at the respective cost centre.

### **Monetization of benefits**

In the past, employees on duty tours or attending courses outside the Bank's training centres were required to retire their cash advances with the relevant hotel bills, flight tickets, taxi receipts, etc. But the recent monetization of benefits and entitlements has ended all that and, indeed, obviates the need to fraudulently produce expenditure receipts where none existed.

## **II. ICT SYSTEMS**

The Bank has, over the years, invested heavily in information and communication technology (ICT) systems and infrastructure. Nevertheless, more sophisticated software applications- some purchased and adapted, some designed in-house-have lately been introduced to, not only bring more efficiency into the Bank's operations but also to promote more transparency and enforcement of internal controls. The applications, which include ORACLE ERP, Real Time Gross Settlements, Temenos T24

and electronic Financial Analysis and Surveillance System (eFASS) would ensure that all the elements in any work process are executed in line with the established standards and procedures. For example, with automatic cheque preparation and printing built into the IT systems, issuance of cheques for spurious transactions or transactions that violate the established standards is totally eliminated.

### **III. HUMAN RESOURCES PROCESSES**

Apart from procurement, the Management also, recently, introduced more openness, transparency and competition-the core of due process-into other areas of the Bank's activities such as the human resources processes of salary/pension payment administration, hiring and firing, promotion, transfer, etc.

The administration of salary and pension payment bank-wide is fraud-proof as preparation and payment are effected from a central point at the Head Office with cheques printing only, also built into the IT systems, done at the pay-points of the recipient. Thus the issue of "ghost workers" will not arise in the CBN.

The elements of the new recruitment policy also integrate the core values of meritocracy and transparency. Thus advertisement, both internal and external, and competitive examinations and interviews are now an integral part of the recruitment process. Even the on-going recruitment of security personnel, which will draw partly from the existing pool of temporary staff, is following the new requirements of competitive examinations and interviews.

Similarly, examinations and interviews have become prerequisites for promotion, upgrading and appointment into various positions in the Bank. The most acclaimed promotion/appointment exercises in the history of the Bank, which took place this year, as well as the on-going recruitment exercise, in which the Bank's due process was applied is a testimony to the effectiveness and transparency of the new processes.

#### **IV. CBN CODE OF BUSINESS ETHICS AND CONDUCT**

The icing on the cake of the reform process and the various structures and measures put in place to strengthen the operations of the Bank is the distilling of all the elements of the Bank's core values, policies, principles, ethics, focus, commitment and resolve into the Code of Business Ethics and Conduct, which will shortly be approved by the Management of the Bank for formal adoption.

For the purpose of this seminar, it is necessary to cull some provisions of the Code, which highlight and capture the essence of the theme at hand:

- All CBN staff are responsible for ensuring that their personal interests, investments and activities (including those of family members) do not conflict with their objectivity, independent judgment, CBN's best interests or any other obligations to the financial institutions they supervise
- In no event will CBN authorize or condone bribery by or of its staff
- All add-ons to or over-invoicing of prices or terms of goods and services provided to CBN are prohibited. All payments by authorized CBN staff shall be made without demand or receipt of kick-backs or special

favours from the suppliers.

- Connivance, collaboration, contributory negligence and complicity with any person to commit any unlawful act with regards to purchases and payments on behalf of CBN will be duly dealt with by appropriate penalties and disciplinary action.
- CBN prohibits any undisclosed, unrecorded or falsely recorded transactions as well as any payments made for other than their intended purpose.

All employees of the Bank would be bound to familiarize themselves with and internalize the spirit and letter of the Code and apply them in their day-to-day activities and business relationships with the various stakeholders of the Bank.

## **9. CONCLUSION**

The Bank is determined to continue to make great strides in its operational effectiveness and efficiency which would guarantee the fulfillment of its mandate to the government and people of Nigeria as well as other stakeholders.

The structures that the Management of the Bank has put in place in this regard will continue to evolve in tandem with the dynamics of the financial system and the economy in general. The Management and staff are committed to the tenets of transparency and accountability, complying with all established due processes and eschewing corruption and corrupt tendencies which would, otherwise, compromise and hamper the delivery on the Bank's mandate. The Bank will ever be guided by its vision:

**"TO BE ONE OF THE MOST EFFICIENT  
AND EFFECTIVE WORLD'S CENTRAL BANKS  
IN PROMOTING AND SUSTAINING  
ECONOMIC DEVELOPMENT"**

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# **THE ANATOMY OF ADVANCE FEE FRAUD: FORMS, VICTIMS AND PREVENTIVE MEASURES**

**By Mr. P. A. H. Ataman\***

Corruption, especially in the public sector and economic crimes, including money laundering and advance fee fraud have dominated public discussions in Nigeria in the last few decades because of the serious negative image they create and the harm they cause to the economy. Several initiatives have been made by the government to prevent further escalation of these crimes and indeed to bring the perpetration to the barest minimum. Anti Corruption and Transparency Units have been established in various government ministries and agencies to monitor and report corrupt tendencies and appropriate laws have been enacted. Indeed, this workshop is part of the effort to sensitize the staff of the Central Bank of Nigeria on the need to avoid involvement in any corrupt and criminal activity.

This presentation is an attempt to review the nature and forms of Advance Fee Fraud in Nigeria and the measures put in place to curb the incidence and serve as deterrent.

## **1. Definition of Advance Fee Fraud**

Fraud is a crime that involves the use of deceit to obtain pecuniary advantage. It is not a new phenomenon. However, the most disturbing aspect of fraud is the alarming proportion, its sophistication and intensity worldwide and the fact that it does not respect the niceties of international borders.

**\*Mr. P. A. H. Ataman is Special Adviser, Governor's Office, Central Bank of Nigeria.**

Advance Fee Fraud (AFF), on the other hand, is a class of fraud usually perpetrated by deliberate distortion and misrepresentation of facts of a matter with the aim of deriving financial benefits from unsuspecting, greedy, corrupt and gullible individuals. AFF is usually non-violent in nature. However, event may turn violent when the victim attempts to track the perpetrator who may also devise the means of avoiding prosecution, including elimination of the victim.

AFF proposals have some common elements. The first is that the proposals are usually unsolicited. The victims may not even be aware of the possibility of the deal. It is usually the fraudster who will do everything to convince the victim of the benefit and feasibility of the deal. Second, the fraudster will usually stress the urgency and need for confidentiality of the deal. Third, the victim will need to make advance payment. Finally, the fraudster must have a good knowledge of the victim whereas the victim does not usually know the fraudster well.

Usually, the perpetrators of AFF claim to be responsible highly placed individuals in position of authority or capable of influencing decisions at high level. This is usually not correct. They are usually literate and semi-literate, but jobless persons with knowledge and good in the use of internet for communication. Quite often they have collaborators from outside their own country. AFF is perpetrated in different forms. Sometimes, proposals are sent to victims either to participate in government contract, or be involved in transfer of money or lifting of crude oil. This is usually with the promise of huge financial benefit to the victim who himself has to part with some money before the deal is done or while the deal is on-going. Such advance payments by the victims are

either required to pay tax, bribe officials, use as fee for money transfer, etc. As soon as the advance payment has been made, the fraudster disappears and sometimes the contact address could be faked thus making the victim to suffer huge financial loss.

Very often the victims themselves are unable to report the matter to the law enforcement agency given that the transaction itself is illegal. As a result of the fear of being regarded as an accomplice in the criminal activity, he bears the loss alone.

A number of factors that can be ascribed to the incidence of fraud include systemic failure, (societal and institutional inadequacies), personal traits, distortion in macroeconomic policy, technological advancement which facilitates communication through the Internet, as well as contagious influences.

## **2. How Advance Fee Fraudsters Operate**

The operating methods of the AFF fraudsters are similar. AFF is usually initiated through posted letter, fax message, telephone call or e-mail. It is not quite common to initiate AFF at first stage through a face-to-face contact.

The information including name, address and financial situation of the victim are obtained through any means including careless display of complimentary cards, business directory, trade journals, etc. The fraudster could use the little information about the victim to conduct further research about the person in order to ensure that by the time he attacks he will not likely fail.

They can either forge or obtain through inside collaborator, the letter head of the institution they want to use as a cover, to convey tempting proposals with huge financial benefits to the potential victim. Such proposal will usually request for details of the victim's bank account and his signed letter head stationery for the purpose of lodgment of the sum of money.

While requesting the victim to maintain confidentiality of the deal, the fraudster will do everything to make the victim believe that there is no reason for fear and that he is very honest about the deal which will benefit both of them. Indeed, the emphasis is usually on the huge proceeds to the victim at virtually little or no cost. As soon as the criminal knows he has secured the victim's trust, he will identify a little obstacle which should be resolved before the transfer could be effected. This is usually in terms of money for payment of stamp duties, tax on amount to be remitted or to bribe an official. He will go ahead to submit all proofs necessary to convince the victim, including the copy of the debit note from the tax authority. All of these may be forged or obtained illegally from the relevant tax office.

Once the victim pays, it will be difficult to resist other requests from the fraudster. This signals the entry of the victim to the trap of AFF. The tendency is for the victim to invest more in order to recover his money and possibly his own share of the huge sum in contention. This is referred to as the "Gambler's Mentality" which makes him continue to meet the demands of the fraudster until the facts become clear to the victim.

Another dimension is the syndicated nature of the crime with representative agents in several countries which sometimes make investigation and prosecution of fraudsters difficult and expensive.

Similarly, AFF which used to be a simple exercise in mental and verbal ability could involve the dangerous element of violence and or threat of violence. Many cases of victims attempting to pursue their losses have ended in mental and physical abuse and sometimes death. Some victims of AFF have not just lost long-term savings, but are heavily indebted having gone to borrow in order to meet the demand of the fraud perpetrators.

Another characteristic of the AFF perpetrators is their capacity to forge documents or collaborate with insiders of organizations they intend to use. Hence you sometimes have letter head papers and forged signatures of highly placed government officials among their working tools in the criminal activities.

### **3. Different Forms of Advance Fee Fraud**

Different countries have had several versions of this crime perpetrated by their nationals and foreign collaborators. What determines the type that is prevalent in any country depends on level of efficiency in government procurement, structure of the economy and macroeconomic stability, the ease of foreign exchange transfer, the level of corruption in the country, etc. The most notable versions of Advance Fee Fraud relate to:

- a) Transfer of funds from over invoiced contracts: - In this case, proposals are made for the victim to part with some money to

facilitate the transfer of an excess payment on a contract already executed by a contractor who apparently is unaware of the excess payment. The fraudster pretends to be either the Minister, the Permanent Secretary or a Director who awarded the purported contract, for say ₦65.00 million, while, the actual project cost was ₦50.00 million. The balance of ₦15.00 million is what he wants his victim (usually a foreigner) to receive into the latter's account on his behalf and the sum will be shared with the victim in certain proportions, sufficiently attractive to the victim.

The second stage after the victim would have consented and forwarded his account number, is to ask him (the victim) to make some advance payments to enable him meet some Transfer charges, bribe some officials, including the Governor of the Central Bank, etc. Such payment eventually becomes substantial and normally represents the loss to the victim as the transfer itself will not take effect.

- b) Benefactor of a Will: - This type is usually targeted at churches and non-governmental organizations purported to be beneficiary of a rich man's will in another country. In this case, the organization is written and informed of what has been assigned to it in the will which is ready for collection. However, before the fund or property is released to the beneficiary, certain conditions, including payment of some charges, must be fulfilled. To accept the deal is to become a victim.
- c) Lifting of Crude Oil at a Relatively Low Price: - In this case the fraudster claims to be in position to grant licence to lift crude oil at a price far below the market price. However, certain down payment has to be made to settle the Minister or other top government

officials he represents as well as other incidental expenses prior to oil lifting.

- d) Contract Fraud: - Here the victim is assured of payment on delivery of goods without proper documentation or with fake documentation and address. Once the victim delivers, no payment follows.

Another variant is for the supplier to be convinced on the need for him to pay local registration for his goods to be introduced to local market. Forged documents could be presented to make it look as if local regulations dictate that. Once such money is paid the victim is shortchanged.

Yet another variant is for the fraudster to pay for one or two previous orders only for a large order to be placed and for the payment not to be made by the fraudster when the third but large order has been delivered.

- e) Real Estate Purchases: - In this case, partial advance or full payment is made for rental or purchase of properties. The fraudster may in fact not have lien over the property. He disappears after receiving the money.
- f) Currency Conversion: - The victim is promised a more attractive rate of exchange than prevails officially to convert dollar to local currency or vice versa. Once the remittance is made in advance, the transaction becomes hooked with the victim losing his deposit.

- g) Clearing House/Venture Capital Organization: - The fraudsters in collaboration with people outside set up a clearing house that issues payment instructions allegedly from the CBN to victims. Seeing that it is from the CBN, the victims tend to attach some credibility to the deal. Such clearing house will normally not be in the victims' country. This is to make it difficult for the victim to undertake proper investigation as to legality of its existence. The clearing house will either launder the proceeds of AFF or funnel it to the criminals who deposit in accounts in countries with strict banking laws that limit police access. Such funds are usually used to import cars with Form 'M' not valid for foreign exchange or drawn in cash to build houses in the country.

#### **4. The Victims of Advance Fee Fraud**

Experience from the cases of AFF that have been blown open shows that victims are characteristically the corrupt and gullible individuals who want to be rich quick and with the tendency to be fraudulent.

The victims are usually of age 45 years and above in the middle or the upper class in the economy. They are usually perceived to be strong financially and have flair for quick money. Most of the time, the fraudsters have information about the victims and must have undertaken some research about them. Details regarding their life styles, telephone numbers, business interests, etc, of the victims are usually available to them.

Honest citizens also bear the cost of this crime. This comes in the form of man-hour lost by witnesses during investigation and trial appearances. Similarly, consumers sometimes pay higher prices in crime-affected

businesses since such extra cost involved in such AFF deals are often passed on to the products. In the same way, tax evasion by fraudsters results in higher tax burden for honest citizens as government activities have to be financed with tax revenue.

The cost of Advance Fee Fraud to an economy is enormous. This cost manifests in the following forms among others:

- a) Discourages investments, particularly foreign investment inflows and inhibits economic growth;
- b) Brings loss of confidence in the economies of the countries of the perpetrators;
- c) Reduces the confidence of the citizens in the capacity of its government to protect them from fraudsters;
- d) Leads to high cost of crime prevention and detection where it is prevalent;
- e) Distorts the flow of trade as confidence level falls;
- f) Undermines the stability of banks and other financial institutions;
- g) Increases inflationary pressures; and
- h) Makes a country a candidate for listing as a non-cooperating country and territory by the Financial Action Task Force on Money Laundering and Financing of Terrorism.

##### **5. Some Necessary Precautions and Warning Signs**

The starting point is for all countries to ensure good governance, accountability and transparency in its activities. A country where all of these are absent is usually a fertile ground for fraudsters to exploit.

Given the methods generally adopted by the perpetrators of Advance Fee

Fraud, the following warnings, precautions and signs should be observed in order not to be a victim.

- i) Extreme care should be taken in entertaining proposals of individuals and companies that were not previously known;
- ii) Establishment of business dealings should be based on diligent search. Attempts should be made to “know your customers well”. Ensure that a company introducing a business deal is properly registered in the country of residence. This constitutes a basis for seeking redress in the court of law as an unregistered company is not a legal entity;
- iii) It is necessary to examine self role in any activity. The legality of the deal should be of interest to the potential victim. Any transaction that is not legal cannot constitute basis for seeking redress;
- iv) There is the need to be suspicious when the first contact with the business partner is on phone or through a letter;
- v) Investigate the caller, the business he is involved in and his life style; and
- vi) There is need to report suspicious cases to the law enforcement authorities. The EFCC has the primary responsibility for investigating and prosecution of all financial crimes, including AFF.

## **6. Some Measures Aimed At Curbing Advance Fee Fraud in Nigeria**

The high incidence of AFF and the bad image it has created for Nigeria prompted the government to adopt some measures which were aimed at combating the activities of the fraudsters. These include:

- a) The provision of section 419 of Nigeria Criminal Code, though admittedly obsolete in terms of its definition, recognized the corporate, economic and national consequences of the activities of fraudsters.
- b) The "Advance Fee Fraud and Other Fraud Related Offences Act, 1995" did not only correct the inadequacies of the Criminal Code, but proscribed all forms of conduct used in advance fee fraud and other fraud schemes. The Act has extra-territorial effect in that it proscribes the conduct carried out within and outside Nigeria which results in a person or organization being defrauded. The Act makes it possible for Nigerian and foreign syndicates to be prosecuted in Nigeria for offences committed within and outside the country. Offenders can be tried in absentia and convicted while they suffer the punishment after returning to Nigeria. There is also the severe penalty of up to 10 years imprisonment without an option of fine for convicts.
- c) Enlightenment programmes for local and the international communities have also been stepped up to sensitize the public of the risk involved in unsolicited offers and advice given on what action to take when such proposals come up.
- d) Investigation and enforcement of AFF are taken very seriously by the EFCC which is empowered by the provisions of the EFCC (Establishment) Act 2004. As in many countries, difficulties are often encountered in combating this crime. The problems include false identities and addresses often used by fraudsters to open accounts with banks, as well as the reluctance of victims to open up because of the fear of prosecution as accomplices. Moreover, the more the crime becomes internationalized the more difficult it is to get the

- culprits.
- e) Deterrent and preventive measures aimed at making AFF less profitable and stopping reinvestment of proceeds of Advance Fee Fraud and other related crime are contained under Section 7 of the Advance Fee Fraud and Other Fraud Related Offences Act, 1995.
  - f) Anti-money laundering measures put in place and enforced through the banks are aimed at ensuring that any amount above ₦1.0 million for individual and ₦5.0 million for corporate bodies going through banks are reported and properly investigated. Proceeds of AFF and other criminal activities of an amount beyond these thresholds can easily be traced. Offenders are often prosecuted.

The CBN Anti-corruption site has provided avenue for reporting AFF cases. Such cases have often been handled in collaboration with the EFCC and other agencies of government.

## **7. Conclusion**

The above has aptly summarized the nature of advance fee fraud and the various measures that are adopted in Nigeria to combat the illegal activity. Since by its nature, it is an activity that cuts across borders, the solution would come through effective collaboration among countries. Fraudsters should not have a hiding place. It is for this reason that while Nigeria is doing so much to prevent and punish offenders, other countries should join hands by prevailing on their nationals to resist unsolicited offers. They should also report fraudsters to the law enforcement authorities of their countries which should liaise with their Nigerian counterpart with a view to apprehending people with such criminal tendencies for prosecution. At the national level everyone should take part in the fight against AFF. It

portrays Nigeria and Nigerians in bad light. Indeed, the G-7 and Russia met in Lyon, France in 1996 and formed a sub-group to combat "Nigerian Criminal Activity". Similarly, the United States and other 38 governments have raised this issue with the Nigerian Government at several bilateral meetings. This is quite disgraceful. It is for these reasons that the EFCC should be given maximum support to get rid of these criminals.

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# **COMBATING CORRUPTION IN THE PUBLIC SECTOR AND THE ROLE OF THE ICPC**

**By Mrs. Rasheedat A. Okoduwa, *MIMC, MNIM\****

## **INTRODUCTION**

Distinguished Ladies and Gentlemen, I am indeed delighted to be at this seminar to present a paper on **“Combating Corruption In The Public Sector And The Role Of The ICPC”**. I congratulate and commend you on the initiative to convene this sensitization forum on the Anti-corruption crusade. It is a testimony of the responsiveness of the CBN to the demands and tone of the times. The seminar is definitely appropriate given the authoritative presence of the Anti-corruption agencies of government in the socio-economic space and the wave of reforms that has become the hallmark of the present administration. In fact, there is no more immediate example of this reform agenda of government than the CBN itself.

This paper will place the word ‘corruption’ in perspective, discuss corruption in the Nigerian public sector and describe the singular role of the ICPC in combating the malaise. Beyond the provision of information on the intervention of the ICPC however, the essence of this discourse is to locate and underscore your individual and corporate responsibilities in the fight against corruption.

**\*Mrs. R. A. Okoduwa is the Assistant Director, Education, Independent Corrupt Practices and Other Related Offences Commission, (ICPC)**

## WHAT IS CORRUPTION?

Corruption can be difficult to define since there is no one single definition to capture its multifarious manifestations because as Onigu Otite says:

*"...although the ubiquity of corruption is otherwise acknowledged, its magnitude and character are defined by different social and cultural contexts and time dimensions".*

Therefore, a universally agreed definition for "corruption" that will cover the whole gamut of human behaviour may be elusive but for practical purposes, suffice it to provide one or two working definitions.

The Corrupt Practices and Other Related Offences Act 2000 says corruption ***"includes bribery, fraud and other related offences"*** while the Vision 2010 Committee in its report explains corruption as ***"all those improper actions or transactions aimed at changing the normal course of events, judgement and position of trust."***

The World Bank (1997) describes corruption as ***"the abuse of public office for private gains. Public office is abused for private gain when an official accepts, solicits or extorts a bribe. It is also abused when private agents actively offer bribes to circumvent public policies and processes for competitive advantage and profit. Public office can also be abused for personal benefit even if no bribery occurs, through patronage and nepotism, the theft of state assets or the diversion of state revenue."***

## THE NATURE OF CORRUPTION

From the above definitions, a number of deductions can be made about the nature of corruption:

- It involves the abuse of office.
- It involves the subordination of the interest of a larger group to a narrower group/personal interest.
- It is not limited to monetary issues.
- Its many different forms include bribery, kick-backs, falsification of account, fraud, theft, diversion of state assets, nepotism, perversion of justice and all other "improper actions and transactions aimed at changing the normal course of events..."
- Where bribery is the issue, both the givers (supply) and the takers (demand) are culpable.
- It is not limited to the public sector.

The dynamics of corruption are aptly captured in the following formula by Robert Klitgaard:

$C$  (corruption) =  $M$  (monopoly power) +  $D$  (discretion) -  $A$  (Accountability).

This means that corruption thrives in situations where monopoly power exists along with large discretion without accountability. In practical terms, any socio-economic arrangement where organizations or individuals involved in the process of service delivery have monopoly power over the resource's production, allocation and utilization; have discretionary power to decide who receives or is allocated the resource and in what proportion;

and where accountability is relegated to the background, will provide fertile ground for corruption.

Other socio-economic factors that can be defined as the motivators and reinforcers for corrupt practice include: extremely poor welfare and working conditions which render incomes far below escalating costs of decent living; unwieldy operational procedures that engender “the short-cut/fast-forward mentality” which triggers inducement from the public; prevalent job and social insecurity; pervasive poverty that provokes social pressure on office holders; high societal tolerance for corruption; a culture of impunity engendered by the ‘sacred cow’ mentality; weak enforcement mechanisms; defective leadership; low risk of penalties as against the high proceeds realizable from corruption; greed; excessive materialism; very weak ethical environment; the lust for power etc.

## **CLASSIFICATION OF CORRUPTION**

Corruption can be classified using different parameters: size or amount of money involved, the degree of incidence, location of occurrence, etc. Thus, some classifications of corruption are:

**Grand Corruption:** occurs at the highest level of government usually in the contract process and involves enormous monetary value. It often impacts heavily on government budget and growth prospects.

**Political Corruption:** this involves the subversion of the political process and it is aimed primarily at capturing power for determining the rules of economic and political engagement. It also seeks illicit pecuniary benefits and is associated with Grand Corruption.

**Bureaucratic Corruption:** this occurs at the level of government bureaucracy and often involves perversion of laid –down rules of due process. It usually aims at private monetary gain through wrongful inducements and illicit payments for rendering public service. It can also be classified as Petty Corruption because of the usually small amount of money involved.

**Judicial Corruption:** this takes place when judicial officers fall short of the standard of Integrity and the course of justice is perverted for personal gains.

**Moral Corruption:** this covers all immoral behavior that is socially unacceptable to the generality of people.

## **CORRUPTION IN THE PUBLIC SECTOR**

### **What Is The Public Sector?**

The Public Sector is that part of the economy that is owned and controlled by the government. It is the operational space within which the government relates to the people and delivers its obligations to them. These obligations include among others, security, welfare, education, social infrastructure, social justice, and an enabling regulatory or deregulatory framework on the economy. The Ministries, Parastatals and Agencies of government which make up the public sector and their aggregated functions form the government/people interface; the quality of which shapes assessment of governance by the public. Incompetence and corruption by public sector operatives corrode this interface, thus translating to poor governance and leading to the censure of government.

In Nigeria, the public sector is very significant because the government is the chief driver of the economy.

Everything deliberately done or not done, in order to subvert laid down procedures for official transaction in the public sector is corruption. This can be with regard to recruitment, procurement, internal staff issues such as training, promotion, welfare, policy implementation etc. As stated earlier, the incentive for corruption is always not pecuniary even though the very obvious cases have to do with monetary benefit. The private gain sought may be power, influence, ego, status, etc. Any reward or inducement that is intended to deflect a person from the honest and impartial discharge of his duties constitutes a corrupt act.

Although corruption is by no means peculiar to Nigeria or to its public sector, it had until recently, almost become a synonym of the Nigerian official environment. Various shades of corrupt practices characterize public offices e.g. embezzlement, fraud, diversion of funds, gratification, nepotism, falsification of documents, outright theft of government property, favouritism, willful absenteeism, awarding contracts to 'front' companies, lodging public funds in private accounts, over-invoicing, approval of sub-standard projects, disregard of due process etc.

Endemic corruption in Nigeria has negatively affected the fabric of society in profound ways. It has created the sad paradox of widespread and dehumanizing poverty in the midst of abundant natural and human resources. The crippling effects of corruption are manifest in the erosion of the institutional and administrative capacity of government, the decayed

infrastructure and appalling service delivery across all sectors of the economy.

The devastating consequences of corruption on the polity further include the stunted social and economic development, astronomical levels of unemployment, escalating crimes, violent ethnic and religious hostilities, moral decadence, brazen injustices, unsavory standing in the brotherhood of nations, etc. Given the quantum of these negative effects, the unmistakable fact is that corruption is a clear danger to the corporate and individual existence of Nigerians.

President Olusegun Obasanjo captured this scenario so aptly when he declared at the inauguration of the Independent Corrupt Practices and Other Related Offences Commission (ICPC) on 29<sup>th</sup> September, 2000 that **“I have for many years held the view that corruption, in all its ramification, is the greatest single impediment to our national aspiration to enter the new millennium with confidence; corruption checkmates all vision for a morally strong and economically prosperous society. Indeed corruption is the antithesis of development and progress ...”**

## **THE ICPC AS AN INTERVENTION MECHANISM AGAINST CORRUPTION**

The Independent Corrupt Practices and Other Related Offences Commission (ICPC) was inaugurated on the 29<sup>th</sup> of September 2000 on the legal platform of the Corrupt Practices and Other Related Offences Act 2000 which is the legislation that prohibits and prescribes punishment for corrupt practices. The Act came into operation on the 13<sup>th</sup> day of June

2000. Prior to its enactment, certain laws had been and are still in existence as legal instruments meant to combat corruption in the country. These laws include: the Criminal Code; the Penal Code; the Recovery of Public Property (Special Military Tribunal Act Cap. 389, Laws of the Federation of Nigeria 1990(as amended in 1999); the Failed Bank (Recovery of Debts and Financial Malpractices in Banks) Decree 1994(as amended in 1999); the Code of Conduct Bureau and Tribunal Act (Cap 56 Laws of the Federation of Nigeria 1990); the Criminal Justice (Miscellaneous Provisions) Decree, 1966 and the Corrupt Practices Decree 1975.

In some of these laws, the offences of corruption were not comprehensively defined and classified. Their interpretations and applicability to certain situations were also rather complex. These facts, along with the ingenuity of corrupt elements in fashioning out novel methods of perpetrating their nefarious acts, rendered the provisions of these laws inadequate in the fight against corruption. This inadequacy informed the enactment of the Corrupt Practices and Other Related Offences Act 2000.

There are certain features of the ICPC Act 2000 which make it unique and well-positioned as an effective weapon in fighting corruption in Nigeria. Some of these features are:

- statutory independence of the Commission - S. 3 (14)
- the holistic, three-pronged approach to fighting corruption (enforcement, prevention and education) - S. 6 (a) - (f)
- provision for an independent counsel to investigate allegations of corruption against officers with constitutional immunity - S. 52

- non-admission of custom or tradition as a plea - S. 60
- designation of Judges to hear corruption cases - S. 61 (3)
- protection of information and informer - S. 64

### **THE DUTIES OF THE COMMISSION:**

The duties of the Commission as stated in Section 6 (a) - (f) of the Act are, in summary, as follows:

- To receive and investigate reports of the attempts to commit or the actual commission of offences as created by the Act and, in appropriate cases; prosecute the offender (s) (Enforcement).
- To examine, review and enforce the correction of corruption-prone systems and procedures of public bodies with a view to eliminating and/or minimizing corruption in public life (Prevention).
- To educate and enlighten the public on and against corruption and related offences with a view to enlisting and fostering public support for the fight against corruption (Education).

As is evident from the above, the Commission's duty is not only to investigate, arrest and prosecute people for corruption, but it is also charged with corrective, preventive and educational responsibilities. The whole essence of the Act is not just to punish offenders but to facilitate the creation of a corruption-free society by engaging in a systemic overhaul of the machinery of the state which hitherto had sheltered administrative lacunas and thus encouraged the widespread incidence of corruption; the creation of this new society is also expected to be facilitated through the general re-orientation of the Nigerian populace.

## OFFENCES AND PUNISHMENTS CREATED UNDER THE ACT

The Act creates a wide range of offences and punishments which include:

SECTION	OFFENCE	PUNISHMENT
8.	Acceptance of gratification by an official either directly or through an agent.	7 Years
9.	Corrupt offers to Public Officers.	7 Years
10.	Corrupt demand by persons.	7 Years
12.	Fraudulent acquisition of property.	7 Years
13. & 14.	Fraudulent receipt of property; Where the fraudulent receipt is related to postal matter, chattel, money or valuable security.	3 Years; 7 Years
15.	Deliberate frustration of investigation by the Commission.	7 Years
16.	Making false statements or returns.	7 Years
17.	Gratification by and through agents.	5 Years
18.	Offer and acceptance of gratification to and by a public officer as an inducement or reward.	5 Years with Hard labour
19.	Offence of using office or position to gratify or confer unfair advantage on oneself, relation or associate.	5 Years
21.	Bribery in relation to auction transactions.	3 Years and fine of the current price of property
22 (1&2)	Bribery for giving assistance, etc, in regard to contracts.	7 Years or ₦1.0 million fine
22 (3)	Inflating the price of goods or service above the prevailing market price or professional standards.	7 Years and ₦1.0 million fine
22 (5)	The transfer or the spending of money for a particular project or service on another project.	1 Year or ₦50,000.00 fine
23.	Failure to report bribery transactions	2 Years and/or ₦100,000 fine max.

24.	Dealing with, using, holding, receiving or concealing gratification.	5 Years max.
25	Making of statements, which are false or intended to mislead.	2 Years and/or N100,000 fine max.
64 (3)	Making false petitions	10 Years and N100,000 fine max.

## **ENFORCING THE PROVISIONS OF THE ANTI-CORRUPTION LAW: THE JOURNEY SO FAR**

The ICPC is determined to enforce the letter of the law without fear or favour. The Commission has received over 2000 petitions from inception to date out of which several have been fully investigated. It is currently prosecuting 86 criminal cases in courts involving over 179 Nigerians who cut across all walks of life - former Ministers, High Court Judges, Local Government Chairmen, Chief Medical Directors, other top public officers, policemen etc. Several of these cases have been concluded and offenders were convicted.

Activities recorded under the preventive function include the establishment of Anti-corruption and Transparency Monitoring Units (ACTU) in over 165 government Ministries, Agencies and Parastatals. These Units serve as the watchdogs on corrupt practices in their environments and they are responsible for the study and review of the operational procedures and systems of their organizations. The Units also carry out enlightenment functions. The Commission conducts training for the ACTUs as necessary.

The Commission is undertaking a major preventive exercise in the Federal Ministries to forestall the misappropriation of surplus funds in the votes of

Ministries as the year draws to a close. At the end of the exercise, about ₦3 billion would be saved and returned to government coffers. In addition, the Commission has recovered huge sums of money from suspects on the enforcement platform and also assisted the Federal Inland Revenue Service to recover over N3 billion from corporate tax defaulters.

The public education and enlightenment function of the Commission focuses on the re-orientation of the Nigerian psyche through an aggressive promotion of Integrity issues pursued via workshops, seminars, television, the establishment of Anti-corruption clubs and NYSC Anti-corruption CDS Groups, the development of the National Values Curriculum (an Anti-corruption curriculum for use across all tiers of education), television/radio programmes, publications and other initiatives. Recent additions to the initiatives on re-orientation include the National Anti-corruption Volunteer Corps (NAVC), the National Anti-corruption Coalition and the Integrity First Initiative for the private sector.

### **THE EFFECT OF ICPC'S ACTIVITIES**

The impact of the Commission's manifold activities on the society gives much encouragement and heightened expectation for ultimate success in ridding Nigeria of corrupt practices. Some of the positive effects of ICPC on the society are:

- ♦ Increased sensitization and awareness of the Anti-corruption crusade
- ♦ Reduced opportunities for corruption through the preventive mechanism
- ♦ Deterrence occasioned by the dread of punitive sanctions

It is worthy of note that the Commission's impact on corruption and the efforts of sister law enforcement agencies, in conjunction with various reform initiatives of the government have earned the country a delisting from the Financial Action Task Force (FATF) on Non-Cooperative Countries and Territories' black book on Money Laundering and Financing of Terrorism. These efforts also created the platform for the consideration and granting of the \$18 billion debt relief to the country. The 2006 rating on the Transparency International Corruption Perception Index showed a positive movement from the most corrupt nation (1<sup>st</sup>) to the eleventh (11<sup>th</sup>) position within a 6-year span (2000 – 2006). All these are clear indications that the Anti-corruption crusade is on course and there is light at the end of the tunnel.

### **ADDRESSING THE ISSUE OF CORRUPTION IN THE PUBLIC SECTOR: SUGGESTED ANTI-CORRUPTION ACTION FRAMEWORK**

For an effective and enduring anti-corruption campaign, each component Ministry or Agency in the Public Sector ultimately has to localize government's efforts to sanitize the polity. The following points are suggested as a possible way forward in checking endemic corruption in the public sector in the hope that the CBN will find certain elements useful and worthy of adaptation.

1. Adequate remuneration and better working conditions: the popular aphorism that "if you pay peanuts, you will have monkeys working for you" comes to mind here. A situation where the pay of public servants compares ridiculously with that of their counterparts in the private sector and cannot assure basic decent living cannot help the drive for excellence and honesty in service delivery. While nothing

should be an excuse for corrupt practice, extremely poor pay will demoralize staff and the feeling would definitely carry through to the way the public is served.

2. The character of the leadership and prevailing organizational culture are crucial factors in institutionalizing reforms. There is no gainsaying the importance of leadership by example in reforming the public sector. If we are to rid the sector of bad eggs, then leadership, at all levels must not pay lip service to the Anti-corruption crusade.
3. Policy guidelines on major areas of operation must be clearly articulated and communicated as required down the line.
4. A code of work ethics must be put in place, publicized and strictly enforced. Such a code will underscore accountability, diligence and responsibility in the execution of duties.
5. Attention must be paid to the official socialization process to prevent socialization into corrupt practices through group pressure. Withholding group acceptance from those that dare to be upright is one of the ways to pressurize them into joining the dirty bunch. One way to forestall this is to adequately protect those that blow the whistle on corruption.
6. An emphasis on discipline at all times: when discipline declines virtually everything else does, as a culture of impunity is created since officers perceive the disciplinary system as ineffectual.

Effective supervision, discipline, and clear accountability of officials through adequate monitoring of behaviour can go a long way to check the spread of corrupt practices as punishment meted out to the bad eggs will serve as a deterrent to others. To be effective as a deterrent, discipline must, within the requirements of due process, be prompt, evenly applied and publicized.

7. Acknowledge models of Integrity: Reward is the other side of discipline. Acknowledging deserving staff as models of integrity reinforces the positive behaviour and serves as a motivator for others to emulate.
8. Empowering your ACTU: the Anti-corruption and Transparency Monitoring Unit is a potent preventive mechanism against corruption in public organizations if adequately empowered with the necessary authority and resources. The Commission has on record success stories of remarkable improvement brought about in some notorious organizations by their ACTUs.
9. Creating a broad-based awareness of the provisions of the Corrupt Practices and Other Related Offences Act 2000 which criminalizes and proscribes the offences of bribery, gratification, illegal use of position for personal advantage, among others.

## **THE INDIVIDUAL RESPONSIBILITY FOR THE ANTI-CORRUPTION CRUSADE**

To assure a permanent victory against corruption for generations to come, the Commission believes the crusade must be people-centred and people-

driven. Towards this end therefore, the participation and dedication of all and sundry are required. The crucial unit and starting point of this communal collaboration is of course the individual. Each individual has to make a personal commitment to live up to the obligations of forging an ethical destiny for Nigeria. Each has to locate his role in returning Nigeria to the ethos of morality, hard work, integrity and dedication towards the full realization of its abundant God-given potentials. To aid this paradigm shift, some action steps are outlined below:

- Imbibe and display an ethical way of life - it is essential that you exhibit courage of your ethical convictions. If you believe something is wrong, speak up against it and refuse to participate. However, note that your dissension should be made as courteously as necessary especially when the issue involves higher authorities.
- Avoid Conflict of Interest – whenever your personal interests conflict with your official obligations, you must have the courage to declare such conflict so as to absolve you of allegations of corrupt practice.
- Refuse bribes and corrupt influences
- Report corrupt practices
- Educate others on the need for integrity at all times
- Be actively involved in the Nigerian Project of Probity, Honesty and Transparency and Accountability

### **Conclusion**

On a concluding note, I want to reiterate that the success of combating corruption in the public sector and indeed everywhere else in Nigeria, comes down to what you and I are prepared to do to rid the country of corruption.

I urge you to thoroughly study the Act 2000 and guard against falling foul of its provisions. Educate others to shun corrupt practices as eventually everybody loses, both the corrupt and innocent ones. When the nation's economy stagnates or regresses, it catches up with everyone. When violent crimes increase because of poverty and lack of provision for our youths, there is no hiding place for the haves and the have-nots. Let us reflect on the words of Robert Kennedy who once said ***"Few will have the greatness to bend history itself, but each one of us can work to change a small portion of events, and in the totality of all those acts will be written the history of this generation"***.

Enlightened self-interest urges that we as citizens of this great nation should collectively and individually work for its good. Concerted effort by all concerned, I believe, will assure success for the Anti-corruption crusade and we can all once again be proud to call Nigeria our country.

Thank you for your attention.

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# **FIGHTING FINANCIAL CRIMES IN THE BANKING SECTOR IN NIGERIA: A CALL FOR CONCERTED APPROACH PRESENTED**

**BY MR. A. B OKAURU\***

## **INTRODUCTION**

May I first express my gratitude to the management of the CBN for giving me the honor and privilege to speak on the above subject. Crime is as old as man and equally dynamic. Financial crimes in particular, are among the largest challenges facing businesses and financial institutions worldwide today. Though it may be difficult to quantify how much is being lost to financial crimes globally, it is generally believed that losses are growing steadily while annual losses are estimated to be in billions of dollars. Globalization or advancement in technology has opened up many possibilities for criminals to carry out financial crimes in new ways thereby complicating the wave of the crime. Besides taking advantage of technology, weak controls in the financial system and minimal enforcement activity for financial crimes allow criminals to take advantage of the global financial system. The collaborative effort of criminals is also another critical factor that contributes to their success. Networking or alliances among financial criminals help to facilitate the perpetration of financial crimes globally. In view of above, every attempt to curb financial crimes must be comprehensive.

Before proceeding to address how financial crimes could be fought in our banking sector, it will be necessary to understand what financial crime is,

**\*Mr. A. B. Okauru is Director, Nigeria Financial Intelligence Unit (NFIU)**

offenses that constitute financial crimes, the impact of these crimes and how banks can be involved in these crimes.

### **WHAT ARE FINANCIAL CRIMES?**

While there is no one definition that is generally accepted, it is agreed that financial crime is a non-violent offense that is committed by or against an individual or corporation which results in a financial loss. It is a planned illegal or unethical act of deception committed usually during the course of legitimate occupational activity by persons of high or respectable social status, for personal or organizational gain that violates accepted accounting practices/fiduciary responsibility or public trust. The hallmarks of financial crimes are conspiracy, deception and concealment. These make financial crimes sophisticated (hard to detect) and complex (hard to prosecute and convict). The goal of financial criminals is usually to achieve personal financial gain.

### **OFFENSES THAT CONSTITUTE FINANCIAL CRIMES**

Specifically, the following are some financial crimes typically committed against banks and financial institutions:

**Kiting** - This type of cheque fraud uses a combination of the time between a check deposit and its presentment to the paying bank and the willingness of the receiving bank to advance funds against the uncollected balance. In many kiting schemes several accounts at different banks are carefully manipulated to make it appear that the behavior of the account is predictable and low risk thereby enticing the bank into advancing withdrawals against uncollected fund. Since many honest business accounts operate on overdrawn account balances, it is often difficult to

detect the true kiting scheme. Left to run undetected, kiting can result in major losses to the bank.

**Forgery** - For a business, forgery typically takes place when an employee issues a cheque without proper authorization. Criminals will also steal a cheque, endorse it and present for payment at the bank, probably using bogus personal identification. If this sails through and the criminal escapes, the bank incurs losses.

**Counterfeiting** - Counterfeiting can either mean wholly fabricating a cheque or simply duplicating a cheque using advanced technology.

**Stolen Cheques** - One way to attack another person's current account is to steal the person's cheque. Sometimes a few stolen cheques are used as the basis for counterfeiting. Without appropriate detection methods, stolen cheques often go undiscovered until the account holder detects the activity in an end-of-month statement.

**Paperhanging** - This problem primarily has to do with people purposely-writing cheques on closed accounts (their own or others), as well as re-ordering cheques on closed accounts (their own or others).

**Money Laundering** - Money that is made through illegal activities needs to be placed into the banking system so it can be integrated into the economy and be made legitimate. Criminals have developed endless array of schemes in the process of converting ill gotten wealth from "dirty" to "clean" funds and the banks are always conduit. The major risk to a bank

is in the potential for complicity and violation of Money Laundering Prohibition requirements.

**Embezzlement** - Anyone with ready access to financial accounts has the potential of conducting embezzlement. Accounts within the bank, or the accounts of the bank's customers may be attacked. The methods used for embezzlement are very diverse and may include forgery, stolen cheques, counterfeiting, misuse of debit/credit/ATM cards, wire transfers and many other schemes.

Other forms of financial crimes are: identity theft; Mail fraud; Bankruptcy fraud; Wire fraud; Advance fee schemes; Computer fraud; Health care and insurance fraud; Pension and trust fund fraud; Embezzlement; Securities and investment fraud (including commodities); Cellular phone fraud; Antitrust fraud; Telemarketing fraud etc.

### **IMPACTS OF FINANCIAL CRIMES**

Generally, financial crimes have significant impact on developing economies with relatively small or fragile financial system that are particularly susceptible to disruption as a result of criminal activities. Financial crimes are detrimental in a number of ways: they increase the profitability of crime, damage critical financial sector institutions and scare away foreign investors. Banking institutions in particular are vulnerable to the adverse consequences of financial crimes. Financial crimes expose financial institutions to reputational, regulatory, compliance and financial risks. In fact, once financial crime is uncovered in a bank (especially, large scale), it can affect public confidence, undermines investors trust and

hence the bank's stability. It can equally affect the bank's business relationship with other banks.

### **HOW ARE BANKS INVOLVED IN FINANCIAL CRIMES?**

Banks can be involved in financial crimes in three ways:

1. As a victim
2. As a perpetrator
3. As an instrumentality.

Under the first category, banks can be subject or victims to the different forms of financial crimes earlier enumerated. Under category two (less common), banks can commit different types of fraud on others including misappropriation of clients' funds while the third category involves instances where banks are used to keep or transfer funds that are themselves proceeds or profits of crime either wittingly or unwittingly.

### **ROLES OF BANKS IN CURBING FINANCIAL CRIMES**

Fighting financial crimes is not an optional action given the grave implications of these crimes on the banking sector. The fight against financial crime is vital to the stability of both domestic and international financial system. It is a fight that calls for unwavering commitment and constant re-assessment of threats and counter-measures in order to stay one step ahead of the criminals. In the light of the fact that financial crime is dynamic and criminals are increasingly going into alliances, players within the Nigerian financial system must be creative as well as make concerted efforts to put in place appropriate measures to close all the loop-holes which financial criminals have taken advantage of. Also, to counter financial crimes, operators in the banking sector must engage in

partnership or strategic alliances with regulatory and law enforcement agencies for effective result.

Besides the foregoing, Banks have specific roles to play to effectively contend financial crimes within their system. Some of these roles are considered below:

1. Banks should strengthen internal financial controls, policies, and operations. Laxness and the easing of internal controls merely because no one has ever been caught "stealing," has been the start of many internal crime cases. Internal controls are necessary to check the "enemies" within and block loopholes that may be taken advantage of. To check internal fraud/crime, banks should look out for the following indicators among employees:
  - Staff under stress without a high workload - marked personality changes
  - Always working late with no apparent justification
  - Reluctance to take leave
  - Unexplained wealth or living beyond apparent means
  - Sudden change of lifestyle
  - Customer complaints of missing statements, unrecognized transactions
  - New staff resigning quickly
  - Rising costs with no explanation
  - Key employees having too much control or authority without audit checks
  - Employees with external business interests

2. Identification of customers- banks should do comprehensive "Know Your Customers" (KYC) before opening account or entering into fiduciary transaction with any person(s) to avoid dealing with criminals.
3. Staff training and development; regular training for employees on money laundering issues including how to detect suspicious transactions, staff duties under the Money Laundering Prohibition Act 2004 and on other financial crimes.
4. Deployment of anti crime prevention IT solution - When talking about security and the rising occurrence of financial crime, there are several factors to be considered, all of which are interconnected and imperative to resolve. These include understanding the changing nature of financial crime; the technologies available to counter attacks, particularly the growing number of online incursions; and the need to educate employees and customers on this digital warfare.
5. The responsibility to authorize transactions, the responsibility for collecting or paying cash, and the responsibility to maintain accountability records must be separated within a bank.
6. Job descriptions must be clearly defined and responsibilities for each position clearly delineated.
7. Banks should maintain a strict accountability procedure related to the movement or flow of cash. Banks should not deviate or become lax in the enforcement of this protocol. The rules must apply to everyone in the bank, no matter how the length of service and level of trust.
8. Banks should reconcile and audit their books regularly. Regular

- audits should be occasionally backed up by an unscheduled and unannounced audit.
9. Banks should ensure that passwords to computer files, pass codes to enter facilities, and security protocols are frequently changed to reduce the potential for abuse. Evaluate the necessity for someone in your bank to know certain passwords or codes. Do not permit people to use other's passwords for convenience sake.
  10. Lock up unused cheques and account for them numerically in a log. Limit access to the cheques to a limited number of authorized personnel. Bank statements should be reconciled independently and away from those employees authorized to handle accounts payable/receivable or employees recording the information.
  11. Do not fail to discipline employees that deviate from the bank's policy. An atmosphere of permissiveness breeds the potential for internal corruption.
  12. Banks should always beware of large-scale cash transactions, the large or rapid movement of funds, and an unrealistic net worth compared to reported income and/or employment.
  13. Banks should strengthen and improve on the culture of records preservation for the purpose of audit trail and also to meet regulatory requirement.
  14. Banks should strengthen existing inter-bank relationship as well as cooperate with all regulatory and law enforcement authorities in all cases relating to financial crimes. Unless, banks work together and cooperate with relevant authorities, it will be difficult to achieve significant success in the fight against financial crimes within the banking sector.

## **CONCLUSION**

Financial crimes have devastating effects not only on the financial system but on the general economic and political facets of every country. To effectively address the menace of financial crimes and engender development, banks and all stakeholders must collaborate as well as make concerted efforts aimed at fighting these crimes.

## **CASE STUDIES ON CORRUPTION AND FINANCIAL CRIMES**

**BY MALLAM NUHU RIBADU\***

### **INTRODUCTION**

I wish to commend the Central Bank of Nigeria for organizing this seminar for its senior staff. It is a good effort towards the right direction. I equally thank the organizers for inviting me and affording me the opportunity of sharing with you some case studies on corruption and financial crimes.

I am optimistic this will go a long way in further enlightening the participants of the dynamics of crimes and frauds as well as the 'creativity' of fraudsters and the criminally minded. Hopefully we will be able to come up with preventive and counter measures.

Most of the case studies presented here are cases that are currently being investigated or prosecuted by the Economic and Financial Crimes Commission (EFCC). In order not to prejudice the prosecution or jeopardize the investigation, I would black out the real names of the individuals and institutions involved.

In what follows, I will first define corruption and financial crimes before presenting the case studies.

### **Definition**

According to Section 2 of the Corrupt Practices and other Related Offences Act "corruption includes bribery, fraud and other related offences".

**\*Mallam N. Ribadu is Executive Chairman, Economic and Financial Crimes Commission**

Section 46 of EFCC Act defines Economic and Financial Crime as non violent criminal and illicit activity committed with the objectives of earning wealth illegally either individually or in a group or in an organized manner thereby violating existing legislation governing the economic activities of government and its administration...

The cases that are being investigated and prosecuted by the EFCC all fall within the above definitions and are covered by the relevant acts covering the activities of the Commission.

## **2. CASE STUDIES**

### **(a) Payroll Scheme**

EFCC is investigating a case involving a Federal Research Institute. Some of the startling revelations we uncovered so far, include:

- The Institute keeps three different nominal rolls of varying strength of staff. Of the three, only one contained the names of purely genuine staff, while the other two have varying number of ghost workers.
- Even among the genuine staff, substantial number of them were redundant. For instance, the Institute has 74 security guards, 19 messengers and 20 cleaners out of the total number of 331 staff.
- There are different types of ghost workers contained in the nominal roll. These include:
  - ◆ dead, retired and sacked workers whose names continued to litter the nominal roll and monies collected in their names;
  - ◆ employees who were hired without proper authorization;
  - ◆ Entirely strange names of non existent 'employees'. Some

of the names are a combination of the surnames of two existing employee.

- The Federal Government is believed to have lost about ₦80 million in one year alone in the process.

#### **(b) Tour Allowance Scheme**

Making false travel claims was the means by which a syndicate in a Federal agency commits fraud against the agency. They would fill tour allowance forms and collect money for journeys never undertaken. The syndicate whose membership include the branch manager of the agency, have jointly collected money worth ₦16 million in two years only.

The chief executive of yet another Federal agency, runs a post graduate programme full-time at a University in a state that is very far from his station. On the Friday of every week he would fly to that city and return on Monday of the following week under the guise of official assignment. Needless to say, not only that the agency is made to bear the cost of his flights, the officer also collected tour allowances for the days he spent out of station.

#### **(c) Abuse of Office**

A supervising 'minister' of a Federal trust fund ordered for the placement of large amount of funds belonging to the trust fund in Banks where he has substantial interests. No sooner had the funds placed than the Bank gave them out as facilities either to companies where he is a substantial investor or for execution of contracts from which the minister expected kickbacks. Investigation into the case is still going on.

A Head of the Administrative unit of another Federal establishment operates (through proxies) a business centre within the office premises.

When the only photocopier of the agency broke down, she saw an opportunity to oil her business. All photocopying needs of the agency, which was obviously monumental, were now done at the business centre and a grossly inflated bill is submitted by the business centre for payment at the end of every month.

**(d) Loan Related Fraud**

A Bank granted XYZ a facility of over ₦600 million with the condition of providing security of a choice property in Lagos. Determined to take the facility and further his nest of dirty money, XYZ approached Mrs. ABC who put up a house for sale and indicated his interest in buying the house on the condition that the woman would allow him to use the house first as a security for the loan he was taking from the Bank. She obliged him.

However, not wanting to take chances or trying to be more cunning than him, the woman executed the third party legal mortgage in the name of her predecessor-in-title who had died almost a decade earlier. The deceased's signature was forged with the connivance of some lawyers in the Bank's legal department. The Bank's lawyers ignored the ownership aspect of the external solicitor's search report. The report clearly stated that Mrs. ABC was the current owner of the property even as it concluded that the property was free from any encumbrance.

As to be expected, XYZ refused to repay his indebtedness to the Bank on its maturity. When the Bank tried to exercise its right of sale over the property as contained in the Dead of Legal Mortgage, Mrs. XYZ protested that she was not a party to the contract and could not therefore, be bound by it.

The Bank reported the case to EFCC. We have already recovered the monies XYZ owed the Bank, while the criminal aspect of the case is receiving the attention of our legal unit.

**(e) Stealing through Identity Theft**

Gbemi was a banker with more than one talent. As the Western Union Money Transfer operator at his branch, he would access transfers meant for customers on his system and forward the receiver information to a syndicate of fraudsters who specialize in forgery.

Using forged identities, members of the syndicate would then move to various banks and receive the money after presenting the required information. He was arrested and apprehended after the syndicate had made off with over \$25,000 that belonged to innocent victims.

**(f) Obtaining Under False Pretence — Marriage Scam**

Labaike, a University drop-out, swindled an American lady he met on a dating website of thousands of United States dollars. He posed as an American working with an oil servicing company in Nigeria and he proposed to marry the lady. As soon as she developed interest in him, he began to milk her of her life savings under different guises. One of the pretext he used was to demand for donation to renovate the place of worship where the wedding solemnization would supposedly take place.

The fraudster who never intended to marry his victim, shamelessly and fraudulently lured the unsuspecting woman into coming to Nigeria. She was stranded at the airport, on arrival, as the fraudster was nowhere to be found. EFCC came to her rescue and the fraudster is now serving a 19-year jail sentence having been convicted.

### **(g) Obtaining Under False Pretence/Forgery**

An agent of a foreign shipping company used the opportunity of an upcoming lengthy public holiday in Nigeria (national census 2006) to defraud his foreign principals. On the eve of the public holidays, he obtained a court order for the arrest of the foreign company's vessel subject to payment of \$100,000 which he claimed was for anchorage and other charges the vessel incurred.

Desperate to get the vessel off Nigerian shores before the impending holidays, the foreign company immediately remitted the requested amount. They were later shocked, however, when they found out from the Nigerian Ports Authority that the total charges incurred by their vessel was less than \$10,000. So they reported to EFCC.

He has since confessed to his malfeasance and is currently refunding the money he fraudulently obtained. He will soon be charged to court.

### **3. CONCLUSION**

Fraudsters are busy devising new methods of their nefarious activities. We should in like manner devise preventive and counter measures to check them.

Organizations should have in place internal control mechanism/checks and balances and provide adequate remuneration and reward for excellence and good conduct. There should be steadfastness in punishing offenders and adoption of zero tolerance to corruption. The society should imbibe our cultural value system of treating fraudsters with contempt.

## **REFERENCES**

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