

AN ANALYSIS OF THE EFFORTS OF THE ECONOMIC AND FINANCIAL CRIMES COMMISSION ON OFFICIAL CORRUPTION IN NIGERIA

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ABSTRACT

The incidence of corruption in Nigeria has assumed a disturbing dimension. Corrupt behaviour from bureaucratic impropriety to a large scale looting of the public funds by political office holders has, over the years, impacted negatively on the socio-economic and political transformation of the country. This paper assessed the causes of corruption and the growing trend of massive looting and fraud in spite of the efforts of the EFCC. The paper relied heavily on secondary data sourced from the EFCC site on the internet, books, journals and reports containing issues bordering on corruption in Nigeria. The growing trend and management of corruption in Nigeria is viewed within the context of the prismatic theory in the study of a transitional society. It was discovered that the commission is operationally equipped and readily disposed to intercept cases of financial crimes and bring to book the perpetrators. However, the fight cannot be effectively conclusive with the nature of justice administration and procedure in Nigeria. It is also discovered that the manner in which cases of embezzlement were currently handled by the Nigerian courts is itself breeding corruption. It is again noticed that the commission is limited for lack of prosecuting powers and therefore can only make a little impact in combating corruption. The paper therefore recommended for a tougher and harder measures including capital punishment (china option). Complete ban from public office and confiscation of all property belonging to the culprits. There is need for Economic and Financial Crime tribunal to be presided over by a group of specialised anti- graft judges to handle such cases within a limited time frame after investigation.

INTRODUCTION:

Corruption is one of the social problems bedevilling developing nations that slow the pace of development. The prevalence of corruption in the body polity of Nigeria has degenerated into a very serious problem challenging the survival of the nation. According to Ikoiwak, cited in Sharma and Sadana (2007), corruption by political office holders and bureaucrats in Nigeria has stigmatised the image of the government, weakened its credibility and reduced the effectiveness of the development programs. Corruption and corrupt practices are however not peculiar to the Nigeria state but a global phenomenon that has provoked international concern/efforts to fight it. The apparent difference may be in the extent, causes and management of the scourge by individual nation. The developing nations who are in different transitional stages may converge on a common factor(S) as the basis for the emergence and growth of corruption in their societies while in the developed societies, the reason can be attributed to the growing quest to sustain a global economic and political dominance.

Nigeria being a transitional economy just like other developing nations has been grappling with the challenge of heterogeneity; with existing gap between modernity and conservatism. This contradictory phenomenon leads to confusion and corruption because public officials pay lip services to government engagements which to a very large extent pave ways for the emergence of dual loyalty (tradition and formal rules). Fighting corruption in such society will remain greatly challenging. This paper therefore examines the trend of corruption in Nigeria against government efforts to fight it through the economic and financial crimes commission. The broad objective is to assess the operation of the commission against the growing trend of financial embezzlement and massive looting by political office holders in Nigeria after the return of democratic rule in 2009.

CONCEPTUAL ANALYSIS

It is very difficult to provide a concise definition of corruption. It is however seen as a general term covering misuse of authority as a result of consideration of personal gain which need not be monetary. But Sharma and sadana (2007) see corruption as behaviour which deviates from the formal duties of a public role because of private- regarding (personal ,close family, private clique)

pecuniary or status gains; or violates rules against the exercise of certain types of private- regarding inference. Corruption is equal to monopoly windfalls plus discretion in decision making minus accountability ($C=MD - A$).

Behaviours typical of a violation of “formal duties” include bribery (use of compensation to pervert the judgement of a person in a position of trust), Nepotism (bestowal of patronage positions by reason of ascriptive relationships rather than merit); misappropriation (illegal allocation of public resources for private use); and windfall failure to enforce laws or invoke sanctions that are appropriate to a situation. This description/definition assumes that behaviour is corrupt only when it violates a formal standard or rule as declared to be corrupt by law.

In its contemporary usage, corruption means the betrayal of public trust for individual or group gain. This definition presupposes the existence of public officials with power to choose between two or more causes of actions and possessions by the government of some power or wealth or sources of wealth which the public official can take or use to his private advantage.

Some behaviouralists are of the view that attitude toward corruption and ethical conducts appear to be determined by situational context. It means that definitions of corruption and what constitutes ethical behaviour vary depending on whether the setting is business, medical, legal, political or administrative. For instance, those in administration and management have a greater interest in power and influence, whereas those in commerce/business have stronger acquisitive tendencies. Hence, definitions of corruption vary by profession, setting and culture and so do the standards of ethical behaviour.

THEORETICAL FRAMEWORK

Nigeria like any other society is a product of history. This historical experience has shaped the development process at various stages. Thus, this paper adopts the theory of prismatic society as its tool of analysis. The prismatic theory by F.W Riggs (1964) showcases prismatic societies as one which has achieved a certain level of differentiation with specialization of roles necessary for dealing with modern technology but has failed to integrate these roles. It has moved away from the fused stage but has not yet reached the diffracted one. It is thus a transitional society which is at a middle period whose old customs and

traditional ideas exist along with modern standards and values (Sapru, 2008). *Riggs further identifies three dominant features of the prismatic society namely; Heterogeneity: this represents a parallel co-existence of diametrically opposite view points and practice, this make social change in such society inconsistent, incomplete and unresponsive. Formalism; This refers to the extent to which a discrepancy exist between norms and practices, between the prescriptive and descriptive, formal and effective power, actual practice and facts of government and society. Formalism is a situation where a law says one thing but the practice is something different. Overlapping; this is the extent to which formally differentiated structures of a diffracted society coexist with undiffracted structure of a fused type. In such society, functions are performed by old traditional structures as well as by modern ones leading to confusion and irregularities. Overlapping he says manifest in several dimension such as 'Nepotism', polycommunalism, the existence of 'clect', polynepotism and lack of consensus (Naidu, 2007).*

The relevance of the prismatic theory to the present research lies in its accurate description and analysis of a transitional society typical of the Nigeria developmental experience and challenges, especially if the political activities and the personality of our political leaders are to be brought to fore.

METHODOLOGY

This work depends heavily on secondary data gathered from vast literatures related to the topic of study. Adopting the content analysis approach, some periodicals, books, seminar papers and reported cases of corruption contained in the EFCC site on the internet were critically evaluated. Content analysis has been defined as the technique for the analysis of documentary evidence by reducing qualitative data to quantitative terms (Dauda, 2004). The incentive of this technique lies in the opportunity to determine the quantum of data that supports or refutes a particular viewpoint on a subject.

CAUSES OF CORRUPTION

It has been generally observed that beyond other causes of corruption in a society, the following are more instrumental in dragging people into corrupt practices.

Low salaries; inadequate and insufficient supervision; Political Patronage of officials; complicated and dilatory procedures; collection of fund through officials; poor public opinion; lack of examples from above ; unwillingness of people to complain against corrupt officials for various reasons; inadequate or ineffective action against corrupt officials; different standards of conducts for officials and politician; dubious and ineffective machinery to bring corrupt officials to book; the tortuous and costly judicial procedure. Sharma and Sadana (2007) attribute the causes of corruption to historical and cultural, political, structural and bureaucratic factors. Although, the historical and cultural explanation of political corruption holds that corruption is the result of the weaknesses of individuals as a pattern of politics that has routinely accepted corruption. This argument is in tandem with the argument of Riggs (1964) in his study of prismatic society as presented earlier.

Considering the above argument, one may rationally succumb to the fact that, political corruption in Nigeria can find its base to those historical/ and cultural values. In other words, corruption exists because individuals perceive that there are benefits derivable in corruption and that the costs are relatively low compared to the benefits. Looking at bureaucratic corruption on the other hand, Wilson cited in Nicholas (2001), argues that “men steal when there is lot of money lying around loose and no one is watching”. This is to say all public servants are susceptible to corruption and corruption is increased by the opportunity for it .The 1997 World Development Report advanced some causes of corruption and its remedies. This is based on econometric analysis of 69 countries included in its survey. It shows that;

- The greater the policy distortion through controls, the greater the corruption.
- The more predictable the judiciary, the less the corruption
- The better the civil servants are paid the less the corruption.
- The more recruitment of public servants is based on merit, the less the corruption (world Bank,1997)

THE EFCC AND THE EMERGING TREND OF FINANCIAL FRAUD IN NIGERIA

Given the negative impact of corruption on the socio-economic and political life of Nigeria, and the growing necessity to ensure good governance by promoting accountability and transparency, the Economic and Financial Crimes Commission was established in 2002, to among other things fight financial and organised crimes. Having satisfied the legal requirement to operate as a legal entity, the commission commenced its duty to curb the menace of corruption; protect national and foreign investments in the citizenry and discourage ill-gotten wealth and confiscate it; build an upright workforce in both public and private sector of the economy and; contribute to the global war against financial crimes. The commission in its bid to match words with action has since been in a watch and apprehension of financial crime perpetrators. In recent time, the commission has apprehended and charged to court high profile cases of financial embezzlement. The names, charges and stages of the cases shall be presented in summary. This is to allow for an assessment of the efforts of the commission.

FINDINGS

The first case study is that of Tafa Balogun, the former inspector-General of police who according to the EFCC embezzled public fund to the tune of N13 billion. He was charged to court, prosecuted and sentenced to six month jail term. He however regained his freedom on February 9, 2006.

On this case, a former Inspector General of police M.D Yusuf has queried the light sentencing of Balogun by Justice Binta Nyako as virtually encouraging corruption (Okoi-Uyogbo, 2009).

Case two: Saminu Turaki, the former governor of Jigawa state now a senator was also dragged to court by the EFCC on 32-count charge for money laundering amounting to 36 billion naira as a governor, on the 3rd of May, 2006. Three companies through which he siphoned the money were also charged along with him. The companies are; INC natural resources limited, Arkel construction LTD and world cat construction limited. The accused person is however granted bail since 2007 and case therefore remains undecided. (Adeniran, 2010).

Case three: Reverend Jolly Nyame, also a former governor of Taraba state is standing trial on a 41-court charge of embezzlement of public fund totalling 1.637 billion naira. He was accused of withdrawing a cumulative sum of 1.145b naira from the consolidated revenue and other public funds of the state without the approval of the state house of assembly. He was also alleged to have allocated the sum of 250million for stationary in his office out of which he diverted about 180million for his personal use. These charges he admitted in the confessional statement he signed. The accused person is released on bail since 2008, the case remains undecided.

Case four: Sani Ahmed Yarima, a former governor of Zamfara state, now a senator, is yet to be formally charged as some of his colleagues. However, the EFCC once issued a statement that “the case of Zamfara is a tragedy’ it was a direct stealing by the governor himself. The EFCC had dragged some of the state officials in 2006 to a federal high court in Abuja over allegations of misapplication of funds of about 700million naira.

Case five: Prince Abubakar Audu, the governor of Kogi State, (1999 to 2003) was accused of embezzling N3.8 billion between 1999 and 2003 by lodging into one account, all monies accruing to the state government; in a first bank plc account. The EFCC discovered that Audu used one Ibn Mustapha, who was the director-General, rural development and electrification to divert these funds

Case six: Ali Modu Sheriff, a serving Governor of Borno state from 2003 to date. The EFCC states that, the governor bought motorcycles, scooters, and tricycles under the Borno state poverty alleviation programme at an inflated rate of \$9.8 million. The contract was inflated by 100%. Sheriff was also said to have bought two obsolete rigs at the cost of N20million each, but later sold them to the state government at 250million through a proxy. He also bought two submersible pumps for N126million but later claimed it was bought at 250million, thereby defrauding the state government.

Case seven: Senator Chimaroke Nnamani, a former governor also faced with a 34- count charge of illegal transfer of N5.6 billion to private bank account and other statutory funds.

Case Eight: On the 15th of march, 2010, the former Governor of Nasarawa state as well as Prince Nicholas Ukachukwu were, along with seven others arraigned before the Federal High Court, Lafiya, on a fresh 170 count-charge for defrauding Nasarawa state government to the tune of N15 billion naira. The case is still under consideration.

Case Nine: Another case of financial fraud was that of the rural electrification agency in 2009. The EFCC sometime in 2009 dragged to court Honourable Ndudi Elumelu, Senator Nicholas Ugbane, Hon. Jibo Mohammed and six others for dipping their hands into the 5.2 billion belonging to the Rural Electrification agency. The presiding judge on the 4th of March 2010 dismissed an application by two of the accused persons to quash the case against them. The case is still under consideration.

It is worthy of note here that, some of the cases presented above have been swept under the carpet because the accused person went through a plea bargaining arrangement with the commission and were therefore freed.

CASE 10: Iyabo Obasanjo Bello (serving senator) arraigned on 56 state counts. Plea already taken but case stalled as defence lawyer filed to challenge charges. The Application is kept pending determination. This is part of frivolous applications to delay trial.

CASE 11: Bode George (chieftain of the ruling party, PDP). Arraigned on 68 state counts, Plea taken and trial concluded. Accused convicted and sentenced to 2 years. The Convict is on appeal while serving jail term.

DISCUSSION

The incidence of corruption in Nigeria has done a lot to tarnish the image of Nigeria and Nigerians locally and internationally. The reason (s) for corruption in governance presented earlier in this paper may not be enough to describe the causes of corruption in the Nigeria, especially after the return of democracy in 1999.

Corruption in Nigeria has assumed a disturbing dimension as it keeps defying all government efforts to curtail its spread and growth through various government ant graft agencies. The growing phenomenon of the

scourge in the forth republic, at a time when good governance and development become the central target of the civil rule, corruption is even more pronounced, more indulged in and increase in magnitude when compared to the military era.

This paper is of the view therefore that, the reason for corruption in Nigeria may be better understood if Nigeria is viewed from its transitional stage, using the study of transitional society as conceptualised by Riggs (1964). To this end, the ecological factors surrounding the administrative/governmental activities which include Socio-cultural, economic and political factors, the symbolic representation of the entity are the fundamental basis upon which corruption by our political leaders are orchestrated. Arguably, the political factor has a serious impact/ influence on the leadership quality and political direction of the country. This factor can be appreciated from the nature of change in political regime (electoral process), political party composition (political ideals, discipline, and orientation), the personality of the political leaders (leaders of political parties, party internal democratic process, funding and manifesto).

The political factor, looking at its ramification, will be enough reason to justify this ugly trend in the political leadership aspect of this country. It is within common knowledge that, among the political issues that has received both national and international condemnation that requires urgent attention is the electoral process. The intervention will have to begin with the party composition and funding to the general election.

The case of the former Governor of Jigawa state was allegedly to fund the third term agenda of the obasanjo's administration. The Peoples Democratic Party campaign machinery is beyond reasonable doubt sponsored by the party's controlled state governments through contributions and other private business men who, in turn, receive government patronage. Consider the case of Dangote group which received the highest contribution in the privatisation exercise of the Obasanjo era.

Another reason for corruption in Nigeria is the fact that the corrupt officials are not adequately punished to discourage any possible reoccurrence of such act. Light punishment no doubt will never stop it. See case one Tafa Balogun,, who served six month jail for stealing N13 billion, now a free man

to enjoy his loot. It can be constructively argued therefore that, if the benefits of corruption minus the probability of being caught times the penalty of being caught are greater than the benefits of not being caught, then an individual will rationally choose to be corrupt ($B - C_t \times p > bnc = C$). This argument confirms the position of the former Inspector General of police, M.D. Yusuf on the case of Tafa Balogun, when he said light sentencing of Balogun by Justice Binta Nyako as virtually encouraged corruption in Nigeria.

Another ugly dimension to this is the introduction of the concept of plea bargain to extenuate sentence or free corrupt officials who cooperate therewith. The Economic and Financial Crimes Commission has done impressively well from its inception by impounding, investigating and apprehending those culprits. The actual fight against corruption does not end at apprehension/ exposing the corrupt cases, but proper and adequate penalty be applied to stop the prevalence. The culprits, as it is now, were dragged to the court to determine sentence. The presiding Judges in the Nigerian courts, some of whom are close associates of the political leaders, at some point even helped to confirm their rigged elections at tribunals and high courts. The delay process associated to court proceedings and dubious activities of some judges are all contributing factors to encourage corruptions.

It is to this extent that the fight against corruption in Nigeria will remain unsuccessful. The Economic and Financial Crimes Commission can therefore not be effective by just identifying, investigating and apprehending/ dragging culprits to court after which the culprit make his ways to freedom through the Nigerian- type legal system, characterised by those factors associated with a prismatic society. As presented earlier some of those culprits are serving senators/ parliamentarian of the federal republic, making laws for the good governance of the country. These are men with undecided cases of corruption against them but move freely due to the nature of the society and our system of justice administration.

CONCLUSION

The argument running through this paper presents Nigeria as a transitional state facing serious developmental challenges. But development remains a mirage in a society where corruption thrives and even celebrated. Given the nature of Nigerian development experience, as a transitional

society, a deliberate and sincere attempt is required to confront the spread of corruption. The EFCC in its present form is incapacitated by the very law that established it for limiting its powers to only investigation and take to court, where light sentences can be applied to serious criminal cases. Given the cases of fraud/ looting that the commission has so far intercepted from its inception, it is obvious that if appropriate measures were taken against them, the spread of corruption would have been reduced. Unfortunately, reverse is the case. The English legal system operational in Nigeria cannot not be adequate to actually deal with the nature of corruption and looting by Nigerian leaders. Considering the grievous nature of these corrupt cases, a more severe punishment is required. This should include; Capital punishment (the china option), Life imprisonment and confiscation of all property belonging to the culprit.

It is also recommended that, complete ban of corrupt officials from assuming public responsibility as a penalty remains inevitable if corruption is to be sincerely fought in a society like Nigeria. Nigerians have taken undue advantages of the liberal nature of the English legal procedure, especially the removal of capital punishment and emphasis on rules and procedures which to a large extent promote corruption in the polity. It is a matter of necessity to deemphasise this procedure, face the challenge of eliminating the scourge by being hard on the culprits.

There is also imperative to establish an Economic and Financial Crimes Tribunal (E.F.C.T). The tribunal is to be presided over by special anti corruption judges with responsibility to deal with only financial crimes within a limited time frame.

Finally, there should also be anti financial crime and criminal law to be used in this tribunal that can be applicable to electoral malpractice and other irregularities in the judicial process.

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