Corruption as Impediment to Implementation of Anti -Money Laundering Standards in Nigeria

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Abstract

Corruption is widespread in Nigeria not because the people are different from people from other parts of the world, but because the conditions are ripe for it. There are many reasons why this is so. The motivation to earn income from among the populace is relatively stronger; exacerbated by poverty, unemployment and low wages. In Nigeria, accountability is generally weak, political competitions and civil liberties are often restricted. Laws and principles of ethics in government are poorly developed and the legal institutions charged with enforcing them are ill- prepared. The impediment to implementation of Anti - Money Laundering standards include Anti - graft Agencies been manned by corrupt personnel, pressure of organized crimes forces on enforcement officials, harassment of political opponents by law enforcement agencies, lack of cooperation by banks and other financial institutions in performing what is required by law, perceived high susceptibility of returned loot to corruption/ laundering all over again. On the whole, to shift from practice to result, it is suggested that there is need for improvement in the socio- economic life of the people and leadership by example; punitive measures on corruption practices and value re -orientation as well as independence of enforcement agencies concern with Anti -Money Laundering.

Key Words: Corruption, Money Laundering, Anti-graft Agencies, Impediment, Accountability, Plea bargaining, Criminalization and Misappropriation.

Introduction

There is no comprehensive and acceptable definition of the term 'corruption'. However, corruption has been used to describe conducts that reflect abuse of public office for private gain. The notion of corruption as the abuse of public power for private gain could be seen as a conflict between the obligation to exercise a public power on the public interest and self -interest of an individual to use or exploit them for private gain. Corruption according to Shehu (2006) is insidious involving often the bribery and extortion cases, the giver and taker, both of who are unwilling to reveal the occurrence of corruption. It is also complex that our understanding of the extent of its impact especially remains limited. If corruption is a complex phenomenon, then a proper understanding of its impact must not only focus on the perpetrators but also on the specific conditions in which it occurs. Shehu (2006) is of the opinion that corruption can be categorised. Grand or petty corruption is said to be more prevalent in societies with weak observance of the rule of law. Corruption can also be passive or active. No matter the category, it has its circumstantial consequences. Rule of law can be used to describe respect for laws and regulations. It is a complex concept as it could be a manifestation as well as a symptom of corruption.

Kaufman (2000), argued that corruption exists within specific conditions in any society, Although it is not peculiar, its incidence is more severe in developing countries.

Corruption is widespread in developing countries, not because the people are different from people from other parts of the world, but because the conditions are ripe for it. There are many reasons why this is so. The motivation to earn income from among the populace in developing countries is relatively stronger; exacerbated by poverty, unemployment and low wages. In Nigeria, accountability is generally weak. Political competition and civil liberties are often restricted. Laws and principles of ethics in government are poorly developed and the legal instrument charged with enforcing them are ill- prepared (Shehu,2006).

Corruption Techniques and Trends

Corruption techniques are largely determined by the prevailing forms of corruption trends. There are various forms and manifestations of corruption.

Shehu (2006a). identified 17 types and patterns of corruption using United Nation Global Program Against Corruption's (GPAC) categorisation.

They are: Grand and petty corruption, bribery, influence - peddling, bribery to avoid liability, bribery in support of fraud, bribery in support of unfair competition, private sector bribery, bribery to obtain confidential or 'inside' information, embezzlement. theft and fraud, abuse of discretion, favouritism, nepotism and clientelism, conduct creating or exploiting conflicting interests and improper political party contributions.

Ayua (2001), believe it is possible to put all the various forms and manifestations into five categories. These are bureaucratic corruption, private sector corruption, political corruption, government corruption and non-governmental association corruption.Forms of corruption vary. while corruption may facilitate criminal enterprise such as drug trafficking, money laundering and trafficking, it is restricted to these organised crime activities. In Nigeria, corruption is so common that it is expected when ordinary businesses or citizens interact with government officials. The end point of political corruption is literally known as rule by thieves.'

In popular discourse, studies and official statements, it is the consensus that the trend of corruption is an increasing one. According to Odekunle (2001), corruption in Nigeria is characterised as endemic and, its 'consequences for the economy and the society in all conceivable respects' debilitating.

There was an International Conference on Corruption and Money Laundering in Nigeria in 2000.The then President Olusegun Obasanjo declared that the goal of his administration was to reduce corruption in Nigeria to the barest minimum. In pursuing the goal, the government initiated and lobbied for the passage of legislation (1) the Corrupt Practices and Other Related Offences (Establishment) Act 2000 (ICPC) and (2) the Economic and Financial Crime Commission (Establishment) Act 2004 (EFCC) .

The Act led to the establishment of two independent commissions to handle corruption cases (ICPC and EFCC). In addition, the EFCC is empowered by Section 7 (2) Article was also the coordinating agency for the enforcement of the provisions of:

  a. The Money Laundering Act 2004;
  b. The Advance Fee Fraud and Other Related Offences Act 1995;
  c. The failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act, as amended.
  d. The Banks and Other Financial Institutions Act, 1991, as amended.
  e. Miscellaneous Offenses Act; and
  f. Any other law or legislation relating to economic and financial crimes, including the Criminal Code and Penal Code.

The EFCC Act also provides for the National Financial and Intelligence Unit Act 2004 (NFIU) as the 'Nigeria arm of the Global Financial Intelligence Unit (NFIU).Government and civil society, anti - corruption advocacy and activities are also active in workshops/seminars/conferences while the media has also been active in exposing the corruption.

Nigeria has ratified the ECOWAS, Africa Union and United Nations Conventions, but none has been domesticated, It is important to note however, that MLA agreements (e.g, with Britain, Switzerland) is not in written form. Thus far, the Nigerian government only seek the assistance of these countries in writing whenever the need to recover stolen money from Nigeria in foreign countries is needed. These countries have been very cooperative and some of the known stolen money were recovered from foreign banks. Nigeria also cooperates with or receives assistance from

ECOWAS/GIABA, UN/UNODC/FATF etc.

A study was conducted in 2008 on corruption and money laundering in relation to AML/CFT standards in Nigeria. Methods of data collection and findings are stated below.

Methodology

In conducting this research, three sets of instruments were used, these are primary data collected through survey questionnaire administered to employees of public and private corporate organizations. Secondary data was collected from the ICPC record between (2003 -2007), as well as content analysis of two print media sources selected. That is, This Day (Daily) and Newswatch (Newsmagazine).

From content analysis, 50 cases were generated. It provides some data on the AML/CFT cases, to some degree mitigates the inability to source data from the EFCC.

Findings

In a study conducted by Okeshola and Garba (2008) on Corruption and money laundering in Nigeria, it was found that there is diversity of crimes at the core of corruption. The different types of techniques are grouped into nine. These are money laundering, fraud, misappropriation of funds, bribery, contract inflation, financial scam, forgery and impersonation, embezzlement and abuse of office. Of the nine groups, misappropriation of funds, contract inflation, embezzlement and abuse of office are forms of political corruption.

Out of the 50 cases examined, 30% (15)of all cases is political corruption making it the most significant form of corruption. Next to it is fraud with 26% (13) while money laundering and bribery tie at 20% (10) respectively. That most common case is political corruption, which is intricately linked to money laundering, bribery and fraud re-enforces the finding that political corruption is, the major form of corruption in Nigeria.

Furthermore, content analysis of two national newspapers (This Day newspaper and Newswatch magazine from (2003 - 2007) revealed that the top four manifestations of corruption in Nigeria are:

a. Embezzlement, misappropriations or other diversions of property by government officials;
b. Bribery of government officials;
c. Inflation of contracts; and
d. Abuse or misuse of office.

- It was found that foreign banks and producers of goods and services are the major beneficiaries of money proceeds of corruption in Nigeria;
- Financial organizations (banks and non - banks) and business partners are the major conduits through which monetary gains from corruption is transferred abroad;

  - The awareness of FAFT 40* 9 by personnel of corporate organizations in both public and private sectors including law enforcement agencies and the National Assemblies is very low;
  - Compliance with FAFT 40* 9 is very low within corporate organizations in Nigeria;
  - Knowledge of legal provisions against money laundering or of the existence of AML organizations in Nigeria is not a major factor in determining the size or transfer paths of laundering money from Nigeria; and
  - Abuse of office (use of office for personal gain) in isolation or, in combination with bribery/ corruption of enforcement personnel is the major impediment to the effectiveness of AML organizations in Nigeria.
  - From the secondary data collected from ICPC for a period of five years (2003 -2007), the gap between arrests/ petition received and under prosecution / filled in court is significant high.
  - There is very low rate of conviction when measured by conviction to arrests (20/3,746 =0.7%) or by conviction to under prosecution (20/ 219 =9.2%) over a period of five years. Such a poor record of conviction suggests that the net benefits of corruption (gains less costs) are likely to be very high.

Attention was drawn to the capacities of the ICPC to effectively investigate and prosecute cases as well as ,the effectiveness in the dispensation of justice by the Nigerian judiciary (timeliness and fairness). Often cases are not decided quickly and are bogged down by legal technicalities. For cases still pending investigation at the ICPC, there is no systematic links between cases pending and prosecution.

Corruption as Impediment to the Effective Implementation of Anti- Money Laundering Standards in Nigeria

The Vienna Convention defines money laundering as 'the conversion or transfer of property, knowing that such property is derived from any offence or offences related to narcotic drugs..' The FATF, the International setter of standards for anti-money laundering efforts has expanded this definition to include the processing of criminal proceeds to disguise their illegal origin in order to legitimize the illicit gains of the crime. It follows   that corruption is now recognised as a major predicate offence for money laundering. The AML/CFT standards that anti-corruption agencies in Nigeria are expected to implement can be seen especially in the 40 recommendations of the Financial Action Task Force (FATF) against money laundering. These recommendations according to Fwa (2006) include: verification of identity of customers by financial institutions, retention of customers records including their passports for at least six years, reporting of suspicious transactions to appropriate Authorities, development of system sustaining programmes such as training and internal control, and indulgences in international cooperation   within the context of the law.

The impact of corruption as an impediment to implementing AML/CTF standards may directly or indirectly be felt by the AML agencies. In term of direct impact, Shehu (2006a) and Usman (2006) argue that as long as these agencies are manned by corrupt personnel, the lack of professional integrity will always stand against effective law enforcement, including AML standards. Another impediment of corruption to AML agencies manifest in form of pressure on enforcement officials by organised crime. According to Shehu (2006a:100), organized crime creates and attracts corruption. In addition, they have greater incentive and organization for wanting to launder their assets, minimize their risk and maximize their benefits. Hence, their result to corruption in furthering the enjoyment of the corrupt proceeds is quite extensive. The overbearing control of AML agencies by government, especially the executive arm, is another corrupt impediment to their effectiveness. For example, where the president uses such agencies to harass and intimidates his political opponents as Orngu (2006) and several others have claimed Obasanjo did with EFCC.

Lack of cooperation by banks and other financial transactions that passed through their institutions to AML agencies. For example, Shehu (2006a &b) and Pallister etal (2005), reveal that the transaction of Abacha in transferring stolen loot in several European countries were clearly suspicious and called for the banks to have blown the whistle long before Abacha died. The concerned banks chose to look the other way. Corruption also indirectly impedes implementation standards in several ways. These are essentially in term of lack of adequate capacity of AML agencies because the general pervading atmosphere in the larger Nigerian society has negatively impacted on the quality of AML agencies themselves. Due to corrupt and inept leadership, Nigeria is lagging behind in adopting the innovations of globalization and technological advancement (see Shehu,2006a:100;Fwa,2006:146) that could translate to better capacity for law enforcement, legislative authorities constitute clogs to the passage of enabling laws because being guilty or collaborators in crime of money laundering themselves they are apprehensive of the effect of the operation of such laws (see Alubo,2006).

Other indirect impediments include poor salaries of agents, inefficient delivery of public service by government, muddle-up of several inter agency functions, general lack of financial security, and the existence of unjustifiable immunity laws protecting certain public officials.

Way Forward

There is need to plug certain gaps in the enabling laws of the relevant Nigerian AML agencies so as to bring them at par with international AML/CTF standards. Ekeanyanwu (2006) pointed out such gaps in CPROA, EFCC Act, CCB, and the extradition Act and demonstrated how they fall short of the UN and AU Conventions' standards.

According to Ekeanyanwu (2006:13-17) to bring CPROA into compliance with the AU Convention standards, the following amendments in the Act are needed:

i.   Amendment to embrace prevention, investigation and prosecution of offences committed by private sector officials;
ii. Incorporation of issues such as Mutual Legal Assistance and Co-operation, joint investigations, Extradition and exchange of   information;

iii.   Incorporation of two instrument namely the Freedom of Information Law and the Whistle-Blowers Protection Law;
iv.   Creation and criminalization of the offence of illicit enrichment;
v.   Greater independence, especially financial independence, of anti-   corruption agencies;
vi.   Institution of a policy framework for sustainable dialogue, interaction and collaboration with civil society and the media;
vii.   Incorporation of Article 16 (c) of the AU Convention which provides for repatriation of proceeds of corruption;
viii.   Entering into Bi-lateral Treaties with other State parties to give effect to the convention in relation to other countries.

To bring CPROA into compliance with the UN Convention (UNCAC), the law in addition to what has been stated above, need the following futher amendments:

i.   Make provision for return of proceeds of corruption to countries   outside Nigeria;
ii.   Construction and adoption of a National Action Plan against corruption, and
iii.   Incorporation of Plea Bargaining and similar issues.

To bring the EFCC Act into compliance with the AU Convention it should be amended to incorporate the following;

i.   The requirement for minimum Guarantees of Fair Trial as prescribed   in Article 14 of the Convention.
ii.   Article 5 (3) of the Convention which provides for meaningful protection of reporting persons, witnesses and victims;
iii.   Article 6 of the Convention which provides against money laundering   of the proceeds of corruption;
iv.   Article 8 of the Convention which provides against illicit enrichment;   and Article 13 on jurisdiction.

In addition to the above, further steps need to be taken to bring the EFCC Act into compliance with the UN convention. These will entail such amendments as will incorporate:

i.   Article 5 on National Action Plan Against Corruption;
ii.   Article 53 on measures for direct recovery of property;
iii.   Article 57 of UNCAC on return and disposal of assets.

Conclusion

The offenses at the core of corrupt actions are diverse as shown in this study. Wide and diverse range of anti - corruption measures are required to combat corruption in its different forms. It is also necessary that the designed intervention is designed with a clear understanding of the unending games of strategy by local and global players seeking esteem and material wealth. That the individuals, corporate bodies, private sector officials, political office holders, civil servants, law enforcement agencies and the judiciary are highly exposed to corruption and will have to contend with the corrupt forces (local and global) if they choose to uphold the truth, in corruption, wisdom, understanding and prudence. Therefore, motivations would play critical roles in the success of CML/AFT efforts in Nigeria.

Recommendations

- There is need for improvement in socio -economic life of Nigerians.
- Leadership should be by example.
- Punitive measures on corrupt practices should be improved upon.
- There is need for value re- orientation among Nigerians to shun corrupt practices in whatever form.
- For speedy dispensation, specialized courts should be created for the exclusive handling of corruption and money laundering cases.
- Central banks should   strengthen their oversight and monitoring functions over private sector, commercial banks and other non- bank financial institutions.
- Nigeria as one of the signatory to AML standards should domesticate it for use in country.

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