

## The Role of EFCC in the Fight against Political Corruption in Nigeria Eze Chidinma Esther

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### ABSTRACT

Corruption is a persistent cancerous phenomenon which bedevils Nigeria. It has been acknowledged in many quarters that corruption is Nigeria's worst problem and is largely responsible for its woes, such as the instability in the Niger Delta, the debt overhang, barriers to democratic elections, and impediment to flow of foreign direct investment. As in many African states, corruption is a malaise that infects the society. Corruption drains from African countries over \$140 billion per year. Corruption deters investment because it is a disincentive to potential investors; it distorts public expenditure, increases the overheads for running businesses, and diverts resources from poor to rich countries. However, the EFCC was created against the backdrop of previous failed schemes to combat corruption and the need to repair Nigeria's image to attract foreign investment. The EFCC as an investigative and prosecutory agency has made some inroads in the fight against corruption among public officers. By investigating and prosecuting corrupt public officials accused of corruption and publishing an advisory list of corrupt and unfit candidates, the EFCC hopes to deter Nigerians from engaging in corrupt activities.

**Keywords:** EFCC, Corruption and Nigeria

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### INTRODUCTION

Corruption in the form of misappropriation, bribery, embezzlement, nepotism, and money laundering permeate Nigerian society [1,2,3,4,5]. Over the years, various administrations have articulated policies and measures designed to combat corruption [6,7,8,9]. Examples include General Murtala Muhammed's (1975-76) crusade to confiscate assets illegally acquired by Nigerians; Shehu Shagari's (October 1979-December 1983) ethical revolution to combat corruption through the introduction of code of conduct for public servants; General Muhammadu Buhari's (December 1983- August 1985) war against indiscipline; and General Ibrahim Babaginda's (August 1985-August 1993) ethical and social mobilization crusade [10,11,12,13]. These efforts have been largely cosmetic attempts to address a systemic problem that is deeply rooted in the country's fabric. In addition to these ethical schemes, there have been a number legislative acts and functional mechanisms to combat corruption. Prominent among them include the Banks and Other Financial Institutions Act (1991), the Financial Malpractices in

Banks Act (1994), the Advance Fee Fraud and Other Related Offences Act (1995), the Nigerian Corrupt Practices and Other Related Offences Act (2000), and so forth [14,15,16].

In its effort to fight corruption and create credibility to attract international investments, the Obasanjo administration (May 1999-May 2007) among other things, established the Economic and Financial Crimes Commission (EFCC) in 2002 [17,18,19,20]. The EFCC is charged with wide ranging responsibilities within the context of preventing, detecting, investigating, and prosecuting cases of economic and financial crimes in Nigeria [21,22,23,24]. The central argument here is that in spite of the creation of the EFCC, major political parties' office seekers, elected officials, and public officers use their positions of authority and access to power to engage in corrupt activities. To this end, the paper examines the severity of corruption in Nigeria, and the government's attempt to combat corruption through the creation of the EFCC [20,21,22,23,24].

### **The Scope of Corruption in Nigeria**

The scope of corruption has expanded significantly since the administrations of Generals Ibrahim Babaginda and Sani Abachi. For some scholars, Nigerian corruption has moved from prebendalism to predation in which office holders and public officials try to repay their supporters, family members, cronies, and ethnic group members with sums of money, contracts or jobs [1]. Corruption was blamed for the collapse of the first (1960-66) and second (1979-83) republics. Part of the reason for the burgeoning of corruption is the economy's reliance on crude oil, which encourages rent-seeking and corruption. The US Senate Kerry Report noted a link between oil and corruption in Nigeria. Among other things, it noted that under- or over-invoicing of imports and exports were common practices, especially in the Nigerian National Petroleum Corporation (NNPC). There were also reports that about £212bn in oil money had been looted from the country's treasury by past and present leaders, and that the EFCC was helping to combat an estimated £12 billion which was annually stolen from state coffers [2]. It is common practice for government contracts to be inflated because public officials factor in kick-backs, which are usually paid upfront before the completion of the contracts. Graft continues to prevent the judiciary from functioning adequately. There is a widespread perception that judges are easily bribed or settled. For example, there were long delays and frequent requests from judicial officials for small bribes to expedite cases. The court Chief Registrar of the Federal Capital Territory, Abuja was charged N37 million for fraud and money laundering in 2005 [3]. There were numerous allegations that legislators both at the national and state levels accepted bribes and favors from the executive branch to facilitate the passage of bills favorable to the executive branch. It was reported that some 'powerful' Nigerians caused bank failures to the tune of N53 billion as a result of insider credit abuses [4]. Nigeria has been vulnerable to official venality.

Elected officials, public servants, and military officials in position of authority use their positions to engage in corrupt activities. It has been projected by the EFCC that between 1960 and 1999 about £220 billion or \$380 billion has been plundered and squandered by public officials in Nigeria [5]. This is more than six times the amount the US provided for the reconstruction of post-World War II Europe under the Marshall Plan. During the early months of General Sani Abacha's administration, an official report indicated that an estimated \$12.2 billion had been side-tracked to off-budget accounts from 1988 through 1993, when General Ibrahim Babaginda was the Head of State [1]. TI's 2004 Global Corruption Report listed General Sani Abacha (1993-98) among the top ten presidents who had allegedly embezzled between two and five billion dollars. The 2006 row between President Obasanjo and the vice president over corruption was indicative of how high corruption had permeated the Nigeria society. In fact, it has been estimated that during the eight years of the Obasanjo administration, Nigeria lost a minimum average of \$4 billion to \$8 billion per year to corruption (equaling between 4.25 percent and 9.5 percent of its total GDP in 2006) [6]. Nigeria has been consistently ranked very low by TI. For examples, in 2006, Nigeria ranked 146 out of 163 with 2.2 corruption perception index (CPI) score; and in 2007, it was ranked 148 with 2.2 score. According to TI, low CPI scores indicate that the public institutions are heavily compromised. Furthermore, TI noted that in Nigeria, more than 50 percent of bribes were directly asked for, while 60 percent were offered to avoid problems with authorities; and more that 40 percent offered bribes to obtain access to a service they were entitled to (TI, 2005). According to the Independent Advocacy Project (IAP) corruption index, the most corrupt sectors in Nigeria were the Nigerian Police Force, the Power Holding Company of Nigeria, the Ministry of Education, and the Customs and Excise Department [7]. The most worrisome aspect is that corruption is deepening and

taking new dimensions, especially among the Nigerian states.

### **The Economic and Financial Crimes Commission (EFCC)**

The Economic and Financial Crimes Commission (EFCC) is the second anti-corruption agency set up by the President Obasanjo government. Its focus is to combat financial and economic crimes. The Commission is empowered to prevent, investigate, prosecute and penalise economic and financial crimes and is charged with the responsibility of enforcing the provisions of other laws and regulations relating to economic and financial crimes, including: Economic and Financial Crimes Commission Establishment act (2004), the Money Laundering Act 1995, the Money Laundering (Prohibition) act 2004, the Advance Fee Fraud and Other Fraud Related Offences Act 1995, the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act 1994, the Banks and other Financial Institutions Act 1991, and Miscellaneous Offences 25Act.

### **The Purpose, Powers and Structure of the EFCC**

The Establishment Act of 2002 (as amended in the EFCC Establishment, Etc. Act, 2003), bestows on the EFCC the broadest and most current laws against financial and economic crimes and terrorism in Nigeria. As a financial intelligence unit the EFCC is mandated to coordinate the various institutions involved in the fight against money laundering and enforcement of all laws dealing with economic and financial crimes, and terrorism (EFCC, 2004). Under its broad economic and financial crime and terrorism mandate, the EFCC is charged with preventing, investigating, prosecuting, and penalizing financial and economic crimes such as illegal oil bunkering, terrorism, capital market fraud, cyber crime, advance fee fraud (419 or obtaining through different fraudulent schemes), banking fraud and economic governance fraud (transparency and accountability). The EFCC has extensive special and police powers including the power to: investigate persons and/or properties of persons

suspected of breaching the provision of the Establishment Act of 2002 and any other law or regulation relating to economic and financial crimes in Nigeria. The EFCC has enabling powers under the Establishment Etc. Act 2003 and 2004 to deal with terrorism and terrorist offences including: willful provision or collection of money from anyone, directly or indirectly, to perpetrate an act of terrorism; committing or attempting to commit, participate, or facilitate the commission of a terrorist act; and making funds, financial assets, or economic resources available for use by any person or persons to commit or attempt to commit, facilitate, or participate in the commission of a terrorist act.

### **The Structure**

The EFCC is an independent agency headed by an executive chairman under the direction of a board. The chairman, supported by the directors of the five operations units—financial crimes and intelligence; advance-fee fraud and other economic crimes, enforcement, and general operations; prosecution and legal counsel; organization and support; and training school—is the chief executive and accounting officer. The Commission receives support from the presidency, the legislature, and the judiciary. The agency also cooperates with like organizations from other countries to uncover corruption and money laundering activities involving Nigerians. In terms of its structure and organization, the Commission is committed to containing economic and financial crimes, generating and disseminating effective economic and financial crimes intelligence to assist law enforcement, and inculcating prudent and sincere dealing amongst Nigerians via a transparent value system and preventive measures. The organizational structure reflects the major broad activity areas of the commission, namely, economic and financial crimes intelligence, investigation and enforcement, prosecution, crime prevention through mass communication and advocacy, and proactive and reactive execution of anti-terrorism operations. The head office is in Abuja, with regional

offices in Lagos, Enugu, and Port Harcourt.

#### **Activities of the EFCC**

Following its establishment, the Commission swung into action by launching Operation Redemption, which was intended to get all economic and financial criminals out of business and behind bars [8]. The Commission challenged Nigerians to send any information on any government officials to it so that it could commence investigation. Nigerians responded, and those efforts paid dividends. The Commission has been involved in a number of investigations, arrests, and detentions resulting in indictments, return and recovery of stolen money, and imprisonment. The agency has been responsible for a number of high profile investigations such as that involving the former inspector general of Nigeria Police, Tafa Balogun who was accused of stealing more than \$121 million and was jailed for six months, fined \$30,000, and had property worth \$150 million seized [9]. The Commission was also responsible for the arrest of Hon. Morris Ibekwe (Imo State) for allegedly obtaining under false pretences the sum of \$300,000 from a German national and head of the Munich System Organization Company [3]. Other notable cases include the former governor of Lagos State, Major General Mohammed Buba Marwa; the former Chairman of the Nigeria Ports Authority, Bode George; the bribery scandal and fraud involving members of the National Assembly Committee and the Minister for Education over budget matters; the former governor of Bayelsa State, Chief Depreye Alamieyeseigha; the investigation of all state governors and local government officials as of December 2006; the thirty-year imprisonment of civil servant fraudsters in 2008; the trial of the Chairman of the National Electricity Regulatory Commission; and the trial of Mallam Nasir Ahmed El-Rufai, the Minister of the Federal Capital Territory, Abuja, in 2009 [3]. The 2006 indictment of the serving Vice President, Atiku Abubakar for abuse of office, fraud, and embezzlement by both the EFCC and the Administrative

Panel of Inquiry is indicative of how deep and pervasive corruption has permeated the Nigerian society. The list is almost inexhaustible. In addition to its investigative power, the EFCC has the power to bring charges of corruption so that accused persons can be brought to court for criminal trial. In 2006, the EFCC had received 4,200 petitions on illegal corruption, investigated 1,200 cases, and taken 406 cases to the court [10]. After months of investigation of the petitions and allegations of corruption against thirty-one out of thirty-six states in Nigeria, the EFCC decided to indict fifteen governors and gave a clean bill to only six state governors. The appendix provides a summary of the list of governors that were indicted or under investigation or cleared of corruption in 2006. The EFCC's indictments, arrests, and reports on corruption involving high profile public officials were indicative of the distance high level public officials in Nigeria were willing to go to exploit, loot, steal, misappropriate and launder public money for personal aggrandizement instead of improving the well-being of the people.

#### **Challenges Facing the EFCC**

The EFCC faces some major challenges in the fight against corruption. One is the claim of immunity from arrest and prosecution by the president, vice president, and governors and their deputies. Many state governors and their legal defense lawyers have interpreted the provisions in subsections 308(1) and 308(2) of the immunity clause of the 1999 Constitution as giving absolute immunity from criminal prosecution while in office. As a result of this institutional and legalistic argument, it has been difficult to prosecute these governors and also the vice president and the president while in office. This claim of immunity is absurd because it was not the intention of the framers of the constitution to allow elected officials to steal and plunder the nation's wealth. However, although claiming immunity under subsection 308(1), governors can be prosecuted under civil law as provided by subsection 308(2). The significant delays, frustrations, and waste of resources in the

current prosecution regime constitute another challenge facing the EFCC. It has become an art for defense attorneys to ensure that financial crime cases do not continue, and substantive cases are never tried on their merits. Defense attorneys can delay and prolong cases by a tactic of applying for stays on proceeding. Where such application is not granted, the defense attorneys accuse the judges of bias and therefore grounds for application to transfer their cases to other judges [8]. Similar to the above challenge is the problem of congestion and the slow pace of court proceedings caused by an insufficient number of courts and judges and antiquated manual recording system. Delays and congestion in judicial proceedings can be reduced by establishing a special financial crime court for the adjudication of corruption and money laundering cases. Of equally importance is the cyber nature of financial crimes. This has created a jurisdictional challenge and increased the costs of investigation and prosecution. The digital revolution has collapsed

traditional physical boundaries and therefore altered the territorial jurisdiction for the prosecution of cyber crimes. Associated with this jurisdictional problem is the challenge posed by the increasing costs of prosecuting these cases, which run into millions of naira. Furthermore, the EFCC faces the challenge of the inadequacy of the existing procedural laws in Nigeria that question the evidential status and admissibility of computer and electronically generated documentation. In fact, the Nigerian legal procedural system has not kept pace with evidential value of information generated by the cyber revolution. Finally, the EFCC faces the challenge posed by instability and continuity in leadership. By the end of 2007, Alhaji Ribadu was ordered to proceed on study leave and replaced by Ibrahim Lamorde in an interim capacity; and on May 2008, Farida Waziri was appointed as the Chairman of EFCC. Changes in leadership driven by partisanship without sufficient cause might jeopardize the efficacy of the Commission.

#### CONCLUSION/RECOMMENDATION

The EFCC was created against the backdrop of previous failed schemes to combat corruption and the need to repair Nigeria's image to attract foreign investment. The EFCC as an investigative and prosecutory agency has made some inroads in the fight against corruption

among public officers. By investigating and prosecuting corrupt public officials accused of corruption and publishing an advisory list of corrupt and unfit candidates, the EFCC hopes to deter Nigerians from engaging in corrupt activities.

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